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

FORM 10-Q

(Mark One)

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

For the quarterly period ended March 30, 2012

Or

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

For the transition period from to

Commission file number: 1-8703

WESTERN DIGITAL CORPORATION
(Exact Name of Registrant as Specified in Its Charter)

Delaware	**33-0956711**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
3355 Michelson Drive, Suite 100 Irvine, California	**92612**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (949) 672-7000

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer ☒	Accelerated filer ☐ (Do not check if a smaller reporting company)	Non-accelerated filer ☐	Smaller reporting company ☐

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

As of the close of business on May 4, 2012, 260,026,442 shares of common stock, par value $.01 per share, were outstanding.

WESTERN DIGITAL CORPORATION

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Our fiscal year ends on the Friday nearest to June 30 and typically consists of 52 weeks. Approximately every five years, we report a 53-week fiscal year to align our fiscal year with the foregoing policy. Our fiscal third quarters ended March 30, 2012 and April 1, 2011 both consisted of 13 weeks. Fiscal year 2011 was comprised of 52 weeks and ended on July 1, 2011. Fiscal year 2012 will be comprised of 52 weeks and will end on June 29, 2012. Unless otherwise indicated, references herein to specific years and quarters are to our fiscal years and fiscal quarters, and references to financial information are on a consolidated basis. As used herein, the terms "we," "us," "our," the "Company" and "WD" refer to Western Digital Corporation and its subsidiaries.

We are a Delaware corporation that operates as the parent company of our hard drive business, Western Digital Technologies, Inc., which was formed in 1970.

Our principal executive offices are located at 3355 Michelson Drive, Suite 100, Irvine, California 92612. Our telephone number is (949) 672-7000 and our Web site is www.westerndigital.com. The information on our Web site is not incorporated in this Quarterly Report on Form 10-Q.

PART I. FINANCIAL INFORMATION

Item 1. ***FINANCIAL STATEMENTS***

WESTERN DIGITAL CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(in millions, except par values; unaudited)

	Mar. 30, 2012	Jul. 1, 2011
ASSETS		
Current assets:		
Cash and cash equivalents	$ 3,377	$3,490
Accounts receivable, net	2,377	1,206
Inventories	1,282	577
Other current assets	409	214
Total current assets	7,445	5,487
Property, plant and equipment, net	4,171	2,224
Goodwill	1,851	151
Other intangible assets, net	840	71
Other non-current assets	203	185
Total assets	$14,510	$8,118
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 2,774	$1,545
Accrued expenses	837	349
Accrued warranty	194	132
Short-term debt	500	—
Current portion of long-term debt	230	144
Total current liabilities	4,535	2,170
Long-term debt	2,013	150
Other liabilities	546	310
Total liabilities	7,094	2,630
Commitments and contingencies (Notes 4, 5 and 12)		
Shareholders' equity:		
Preferred stock, $.01 par value; authorized — 5 shares; issued and outstanding — none	—	—
Common stock, $.01 par value; authorized — 450 shares; issued and outstanding 261 and 233 shares, respectively	3	2
Additional paid-in capital	2,150	1,091
Accumulated other comprehensive loss	(4)	(5)
Retained earnings	5,267	4,400
Total shareholders' equity	7,416	5,488
Total liabilities and shareholders' equity	$14,510	$8,118

The accompanying notes are an integral part of these condensed consolidated financial statements.

WESTERN DIGITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(in millions, except per share amounts; unaudited)

	Three Months Ended		Nine Months Ended	
	Mar. 30, 2012	Apr. 1, 2011	Mar. 30, 2012	Apr. 1, 2011
Revenue, net	$ 3,035	$ 2,252	$7,724	$ 7,123
Cost of revenue	2,058	1,842	5,558	5,801
Gross margin	977	410	2,166	1,322
Operating expenses:				
Research and development	265	179	649	515
Selling, general and administrative	155	73	340	198
Charges related to flooding, net	15	—	214	—
Total operating expenses	435	252	1,203	713
Operating income	542	158	963	609
Other income (expense):				
Interest income	3	2	9	6
Interest and other expense	(7)	(1)	(17)	(6)
Total other income (expense), net	(4)	1	(8)	—
Income before income taxes	538	159	955	609
Income tax provision	55	13	88	41
Net income	$ 483	$ 146	$ 867	$ 568
Income per common share:				
Basic	$ 2.00	$ 0.63	$ 3.67	$ 2.46
Diluted	$ 1.96	$ 0.62	$ 3.61	$ 2.42
Weighted average shares outstanding:				
Basic	241	232	236	231
Diluted	246	236	240	235

The accompanying notes are an integral part of these condensed consolidated financial statements.

WESTERN DIGITAL CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in millions; unaudited)

	Nine Months Ended	
	Mar. 30, 2012	Apr. 1, 2011
Cash flows from operating activities		
Net income	$ 867	$ 568
Adjustments to reconcile net income to net cash provided by operations:		
Depreciation and amortization	486	452
Stock-based compensation	61	54
Deferred income taxes	42	4
Non-cash portion of charges related to flooding	119	—
Changes in:		
Accounts receivable, net	122	86
Inventories	17	(14)
Accounts payable	227	71
Accrued expenses	(27)	(26)
Other assets and liabilities	24	13
Net cash provided by operating activities	1,938	1,208
Cash flows from investing activities		
Purchases of property, plant and equipment	(393)	(625)
Acquisition, net of cash acquired	(3,541)	—
Net cash used in investing activities	(3,934)	(625)
Cash flows from financing activities		
Issuance of stock under employee stock plans	41	35
Taxes paid on vested stock awards under employee stock plans	(14)	(8)
Excess tax benefits from employee stock plans	22	11
Repurchases of common stock	—	(50)
Proceeds from debt, net of issuance costs	2,775	—
Repayment of assumed debt	(585)	—
Repayment of debt	(350)	(75)
Net cash provided by (used in) financing activities	1,889	(87)
Effect of exchange rate changes on cash	(6)	—
Net increase (decrease) in cash and cash equivalents	(113)	496
Cash and cash equivalents, beginning of period	3,490	2,734
Cash and cash equivalents, end of period	$ 3,377	$3,230
Supplemental disclosure of cash flow information:		
Cash paid for income taxes	$ 10	$ 10
Cash paid for interest	$ 7	$ 4
Supplemental disclosure of non-cash financing activities:		
Common stock issued in connection with acquisition	$ 877	$ —

The accompanying notes are an integral part of these condensed consolidated financial statements.

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

1. Basis of Presentation

The accounting policies followed by Western Digital Corporation (the "Company") are set forth in Part II, Item 8, Note 1 of the Notes to Consolidated Financial Statements included in the Company's Annual Report on Form 10-K for the year ended July 1, 2011. In the opinion of management, all adjustments necessary to fairly state the unaudited condensed consolidated financial statements have been made. All such adjustments are of a normal, recurring nature. Certain information and footnote disclosures normally included in the consolidated financial statements prepared in accordance with accounting principles generally accepted in the United States ("U.S. GAAP") have been condensed or omitted pursuant to the rules and regulations of the Securities and Exchange Commission ("SEC"). These unaudited condensed consolidated financial statements should be read in conjunction with the consolidated financial statements and the notes thereto included in the Company's Annual Report on Form 10-K for the year ended July 1, 2011. The results of operations for interim periods are not necessarily indicative of results to be expected for the full year.

On March 8, 2012 ("Closing Date"), the Company completed its acquisition (the "Acquisition") of all the issued and outstanding paid-up share capital of Viviti Technologies Ltd., until recently known as Hitachi Global Storage Technologies Holdings Pte. Ltd ("HGST"), from Hitachi Ltd. ("Hitachi"). The Acquisition is further described in Note 11 below. In connection with the Acquisition, HGST became an indirect wholly-owned subsidiary of the Company. HGST's results of operations since the date of the Acquisition are included in the condensed consolidated financial statements. The condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, including HGST. All significant intercompany accounts and transactions have been eliminated in consolidation.

Company management has made estimates and assumptions relating to the reporting of certain assets and liabilities in conformity with U.S. GAAP. These estimates and assumptions have been applied using methodologies that are consistent throughout the periods presented. However, actual results could differ materially from these estimates.

2. Supplemental Financial Statement Data

Inventories

	Mar. 30, 2012	Jul. 1, 2011
	(in millions)	
Raw materials and component parts	$ 329	$172
Work-in-process	667	263
Finished goods	286	142
Total inventories	$1,282	$577

See Note 11 below for a discussion of inventories acquired as a result of the Acquisition.

Warranty

The Company records an accrual for estimated warranty costs when revenue is recognized. The Company generally warrants its products for a period of one to five years. The warranty provision considers estimated product failure rates and trends, estimated repair or replacement costs and estimated costs for customer compensatory claims related to product quality issues, if any. A statistical warranty tracking model is used to help prepare estimates and assists the Company in exercising judgment in determining the underlying estimates. The statistical tracking model captures specific detail on hard drive reliability, such as factory test data, historical field return rates, and costs to repair by product type. Management's judgment is subject to a greater degree of subjectivity with respect to newly introduced products because of limited field experience with those products upon which to base warranty estimates. Management reviews the warranty accrual quarterly for products shipped in prior periods and which are still under warranty. Any changes in the estimates underlying the accrual may result in adjustments that impact current period gross margin and income. Such changes are generally a result of differences between forecasted and actual return rate experience and costs to repair. If actual product return trends, costs to repair returned products or costs of customer compensatory claims differ significantly from estimates, future results of operations could be materially affected. Changes in the warranty accrual were as follows (in millions):

	Three Months Ended		Nine Months Ended	
	Mar. 30, 2012	Apr. 1, 2011	Mar. 30, 2012	Apr. 1, 2011
Warranty accrual, beginning of period	**$ 156**	$ 176	**$ 170**	$ 170
Warranty liabilities assumed as a result of the Acquisition	**139**	—	**139**	—
Charges to operations	**34**	42	**104**	132
Utilization	**(51)**	(41)	**(135)**	(120)
Changes in estimate related to pre-existing warranties	**—**	(3)	**—**	(8)
Warranty accrual, end of period	**$ 278**	$ 174	**$ 278**	$ 174

Accrued warranty also includes amounts classified in other liabilities of $84 million at March 30, 2012 and $38 million at July 1, 2011. See Note 11 below for a discussion of the warranty liabilities assumed as a result of the Acquisition.

3. Income per Common Share

The Company computes basic income per common share using net income and the weighted average number of common shares outstanding during the period. Diluted income per common share is computed using net income and the weighted average number of common shares and potentially dilutive common shares outstanding during the period. Potentially dilutive common shares include certain dilutive outstanding employee stock options, rights to purchase shares of common stock under the Company's Employee Stock Purchase Plan ("ESPP") and restricted stock unit awards.

The following table illustrates the computation of basic and diluted income per common share (in millions, except per share data):

	Three Months Ended		Nine Months Ended	
	Mar. 30, 2012	Apr. 1, 2011	Mar. 30, 2012	Apr. 1, 2011
Net income	**$ 483**	$ 146	**$ 867**	$ 568
Weighted average shares outstanding:				
Basic	**241**	232	**236**	231
Employee stock options and other	**5**	4	**4**	4
Diluted	**246**	236	**240**	235
Income per common share:				
Basic	**$ 2.00**	$0.63	**$ 3.67**	$2.46
Diluted	**$ 1.96**	$0.62	**$ 3.61**	$2.42
Anti-dilutive potential common shares excluded*	**3**	4	**5**	4

* For purposes of computing diluted income per common share, certain potentially dilutive securities have been excluded from the calculation because their effect would have been anti-dilutive.

4. Debt

On the Closing Date, the Company, in its capacity as the parent entity and guarantor, Western Digital Technologies, Inc. ("WDT") and Western Digital Ireland, Ltd. ("WDI"), an indirect wholly owned subsidiary of the Company, entered into a five-year credit agreement ("the Credit Facility") with Bank of America, N.A., as administrative agent, swing line lender and letter of credit issuer and the other lenders party thereto from time to time (collectively, the "Lenders"). The Credit Facility provides for $2.8 billion of unsecured loan facilities consisting of a $2.3 billion term loan facility and a $500 million revolving credit facility. The only borrower under the term loan facility is WDI and the revolving credit facility is available to both WDI and WDT (WDI and WDT are referred to as "the Borrowers"). The revolving credit facility includes a $50 million sublimit for letters of credit and a $20 million sublimit for swing line loans. In addition, the Borrowers may elect to expand the credit facilities by up to $500 million if existing or new lenders provide additional term or revolving commitments.

The $2.3 billion term loan and $500 million revolving loan were borrowed by WDI on the Closing Date and were used together with existing cash and 25 million newly issued shares of the Company's common stock to fund the Acquisition, to repay the existing term loans of WDT, to repay the debt assumed with the Acquisition and to pay related fees, costs and expenses.

Borrowings under the Credit Facility bear interest at a rate equal to, at the option of the applicable Borrowers, either (a) a LIBOR rate determined by reference to the British Bankers Association LIBOR Rate for the interest period relevant to such borrowing, subject to certain exceptions (the "Eurodollar Rate") or (b) a base rate determined by reference to the higher of (i) the federal funds rate plus 0.50%, (ii) the prime rate as announced by Bank of America, N.A. and (iii) the Eurodollar Rate plus 1.00% (the "Base Rate"), in each case plus an applicable margin. The applicable margin for borrowings under the Credit Facility ranges from 1.50% to 2.50% with respect to borrowings at the Eurodollar Rate and 0.50% to 1.50% with respect to borrowings at the Base Rate. The applicable margins for borrowings under the Credit Facility are determined based upon a leverage ratio of the Company and its subsidiaries calculated on a consolidated basis. The interest rate at March 30, 2012 was 2.24%.

In addition to paying interest on outstanding principal under the Credit Facility, the applicable Borrower is required to pay a facility fee to the lenders under the revolving credit facility in respect of the aggregate, available revolving commitments thereunder. The facility fee rate ranges from 0.25% to 0.50% per annum and is determined based upon a leverage ratio of the Company and its subsidiaries calculated on a consolidated basis. The applicable Borrower is also required to pay letter of credit fees (a) to the revolving credit facility lenders, on the aggregate face amount of all outstanding letters of credit equal to an applicable margin in effect with respect to the Eurodollar Rate borrowings and (b) to the letter of credit issuer, computed at a rate equal to 0.125% per annum on the face amount of the letter of credit, plus such letter of credit issuer's customary documentary and processing fees and charges.

The term loans and the revolving credit loans may be prepaid in whole or in part at any time without premium or penalty, subject to certain conditions. As of March 30, 2012, the outstanding balance of the term loan facility was $2.2 billion. The Company is required to make principal payments on the term loan facility totaling $58 million through the remainder of fiscal 2012, $230 million a year for fiscal 2013 through fiscal 2016, and the remaining $1.3 billion balance (subject to adjustment to reflect prepayments or an increase to its term loan facility) in fiscal 2017, with the term loan facility balance due and payable in full on March 8, 2017 (the "Maturity Date"). The outstanding amount of revolving credit loans are also required to be repaid on the Maturity Date. The Company intends to repay the revolving credit facility within one year; therefore, the outstanding balance of $500 million under the revolving credit facility is classified as a current liability on the condensed consolidated balance sheets.

The Credit Facility requires the Company to comply with a leverage ratio and an interest coverage ratio calculated on a consolidated basis for the Company and its subsidiaries. In addition, the Credit Facility contains customary covenants, including covenants that limit or restrict, subject to certain exceptions, the Company's and its subsidiaries' ability to incur liens, incur indebtedness, make certain restricted payments, merge, consolidate or dispose of substantially all of its assets, and enter into certain speculative hedging arrangements and make any material change in the nature of its business. Upon the occurrence of an event of default under the Credit Facility, the Administrative Agent at the request, or with the consent, of the Required Lenders (as defined in the Credit Facility) may cease making loans, terminate the Credit Facility and declare all amounts outstanding to be immediately due and payable, require the cash collateralization of letters of credit and/or exercise all other rights and remedies available to it, the Lenders and the letter of credit issuer. The Credit Facility specifies a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults, cross-defaults to other material indebtedness, bankruptcy and insolvency defaults, material judgment defaults and a change of control default. As of March 30, 2012, the Company was in compliance with all covenants.

The obligations of the Borrowers under the Credit Facility are guaranteed by the Company and the Company's material domestic subsidiaries, and the obligations of WDI under the Credit Facility are also guaranteed by WDT.

The Company was required to pay a commitment fee at the rate of 0.35%, per annum of the aggregate unfunded amount committed to be borrowed under the Credit Facility from the date of commitment on March 7, 2011 through the Closing Date. During the three and nine months ended March 30, 2012 through the Closing Date, the Company incurred debt commitment fees of $1 million and $7 million, respectively, which are included within interest and other expense in the condensed consolidated statements of income.

On the Closing Date, the Company repaid the entire outstanding principal amount of $231 million on its previously existing term loan facility originally scheduled to mature on February 11, 2013, plus accrued and unpaid interest, as well as $585 million of debt assumed in the Acquisition.

5. Legal Proceedings

When the Company becomes aware of a claim or potential claim, the Company assesses the likelihood of any loss or exposure. The Company discloses information regarding each material claim where the likelihood of a loss contingency is probable or reasonably possible. If a loss contingency is probable and the amount of the loss can be reasonably estimated, the Company records an accrual for the loss. In such cases, there may be an exposure to potential loss in excess of the amount accrued. Where a loss is not probable but is reasonably possible or where a loss in excess of the amount accrued is reasonably possible, the Company discloses an estimate of the amount of the loss or range of possible losses for the claim if a reasonable estimate can be made, unless the amount of such reasonably possible losses is not material to the Company's financial position, results of operations or cash flows. Unless otherwise stated below, for each of the matters described below, the Company has either recorded an accrual for losses that are probable and reasonably estimable or has determined that, while a loss is reasonably possible (including potential losses in excess of the amounts accrued by the Company), a reasonable estimate of the amount of loss or range of possible losses with respect to the claim or in excess of amounts already accrued by the Company cannot be made. The ability to predict the ultimate outcome of such matters involves judgments, estimates and inherent uncertainties. The actual outcome of such matters could differ materially from management's estimates.

Solely for purposes of this footnote, "WD" refers to Western Digital Corporation or one or more of its subsidiaries prior to the acquisition of HGST, "HGST" refers to HGST or one or more of its subsidiaries as of the Closing Date, and "the Company" refers to Western Digital Corporation and all of its subsidiaries on a consolidated basis including HGST.

Intellectual Property Litigation

On June 20, 2008, plaintiff Convolve, Inc. ("Convolve") filed a complaint in the Eastern District of Texas against WD, HGST, and one other company alleging infringement of U.S. Patent Nos. 6,314,473 and 4,916,635. The complaint sought unspecified monetary damages and injunctive relief. On October 10, 2008, Convolve amended its complaint to allege infringement of only the '473 patent. The '473 patent allegedly relates to interface technology to select between certain modes of a disk drive's operations relating to speed and noise. A trial in the matter began on July 18, 2011 and concluded on July 26, 2011 with a verdict against WD and HGST in an amount that is not material to the Company's financial position, results of operations or cash flows. WD and HGST have filed post-trial motions challenging the verdict and will evaluate their options for appeal after the court rules on the post-trial motions.

On December 8, 2008, plaintiffs MagSil Corporation and the Massachusetts Institute of Technology filed a complaint in the District of Delaware against WD, HGST and six other companies in the disk drive industry alleging infringement of U.S. Patent Nos. 5,629,922 and 5,835,314. The complaint seeks unspecified monetary damages and injunctive relief. The asserted patents allegedly relate to tunneling magneto resistive technology. In January 2010, MagSil amended its complaint to allege infringement of only the '922 patent. As disclosed in the Company's Annual Report on Form 10-K, filed with the SEC on August 13, 2010, MagSil and WD settled the matter for an amount that was not material to the Company's financial position, results of operations or cash flows. With respect to the claim pending against HGST, in February 2011, HGST obtained a ruling invalidating the patent on summary judgment. MagSil has appealed the decision. HGST intends to defend itself vigorously in this matter.

On July 15, 2009, plaintiffs Carl B. Collins and Farzin Davanloo filed a complaint in the Eastern District of Texas against WD, HGST and nine other companies alleging infringement of U.S. Patent Nos. 5,411,797 and 5,478,650. Plaintiffs are seeking injunctive relief and unspecified monetary damages, fees and costs. The asserted patents allegedly relate to nanophase diamond films. On October 11, 2011, plaintiffs and WD filed a joint motion to stay all deadlines applicable to claims involving WD, indicating that the parties had reached an agreement in principle that would resolve the case for an immaterial amount that was accrued by the Company in the first quarter of fiscal 2012. The court approved the motion on October 13, 2011. Plaintiffs and WD entered into a formal written settlement agreement on November 18, 2011, and the court granted an order dismissing the case as to WD with prejudice on December 7, 2011. With respect to the claim pending against HGST, mediation in the matter was held on March 20, 2012, and the parties reached an agreement in principle to settle the case for an immaterial amount that was accrued by the Company in the third quarter of fiscal 2012. No formal settlement agreement has been entered into, however, and there is no assurance that settlement will be reached. Any such settlement would require court approval before it can become final. Absent settlement, HGST intends to continue to defend itself vigorously in this matter.

On December 7, 2009, plaintiff Nazomi Communications filed a complaint in the Eastern District of Texas against WD and seven other companies alleging infringement of U.S. Patent Nos. 7,080,362 and 7,225,436. Plaintiffs dismissed the Eastern District of Texas suit after filing a similar complaint in the Central District of California on February 8, 2010. The case was subsequently transferred to the Northern District of California on October 14, 2010. Plaintiffs are seeking injunctive relief and unspecified monetary damages, fees and costs. The asserted patents allegedly relate to processor cores capable of Java hardware acceleration. WD intends to defend itself vigorously in this matter.

On January 5, 2010, plaintiff Enova Technology Corporation filed a complaint in the District of Delaware against WD and Initio Corporation alleging infringement of U.S. Patent Nos. 7,136,995 and 7,386,734. Plaintiff subsequently amended its complaint to include an additional party and additionally allege infringement of U.S. Patent No. 7,900,057. Plaintiff is seeking injunctive relief and unspecified monetary damages, fees and costs. The asserted patents allegedly relate to real time full disk encryption application specific integrated circuits, or ASICs. WD intends to defend itself vigorously in this matter.

On November 10, 2010, plaintiff Rembrandt Data Storage filed a complaint in the Western District of Wisconsin against WD alleging infringement of U.S. Patent Nos. 5,995,342 and 6,195,232. Plaintiff is seeking injunctive relief and unspecified monetary damages, fees and costs. The asserted patents allegedly relate to specific thin film heads having solenoid coils. After a favorable claim construction ruling by the court, WD secured a stipulation from plaintiff to dismiss the case. Plaintiff has indicated it will appeal the court's claim construction ruling. WD intends to continue to defend itself vigorously in this matter.

On December 1, 2010, Rambus, Inc. filed a complaint with the U.S. International Trade Commission pursuant to 19 U.S.C. Section 1337 alleging that six "Primary Respondent" semiconductor chip companies and twenty-seven "Customer Respondents," including HGST, infringe various U.S. patents. On December 29, 2010, the U.S. International Trade Commission initiated an investigation into Rambus's allegations in response to the complaint. HGST is accused of infringing U.S. Patent Nos. 6,591,353; 7,287,109; 7,602,857; 7,602,858; and 7,715,494. The complaint alleges that certain of HGST's hard drives that contain Double data rate-type memory controllers, Serial Advanced Technology Attachment interfaces, Peripheral Component Interconnect Express interfaces, DisplayPort interfaces, or Serial Attached SCSI interfaces infringe the patents. The complaint seeks to enjoin the importation into the U.S. of the allegedly infringing semiconductor chips and products. It also requests a cease-and-desist order preventing the parties from exhausting allegedly infringing inventory in the U.S. HGST intends to defend itself vigorously in this matter.

On August 1, 2011, plaintiff Guzik Technical Enterprises filed a complaint in the Northern District of California against WD and various of its subsidiaries alleging infringement of U.S. Patent Nos. 6,023,145 and 6,785,085, breach of contract and misappropriation of trade secrets. Plaintiff is seeking injunctive relief and unspecified monetary damages, fees and costs. The patents asserted by plaintiff allegedly relate to devices used to test hard disk drive heads and media. WD has filed counterclaims against plaintiff for patent infringement of U.S. Patent Nos. 5,844,420; 5,640,089; 6,891,696; and 7,480,116. The patents asserted by WD relate to devices and methods used in the testing of hard disk drive heads and media. WD intends to defend itself vigorously in this matter.

On September 6, 2011, plaintiff Powerline Innovations filed a complaint in the Eastern District of Texas against WD alleging infringement of U.S. Patent No. 5,471,190. Plaintiff is seeking unspecified monetary damages, fees and costs. The asserted patent allegedly relates to power line Ethernet communications. The Company is being indemnified by a third party. All three parties entered into a formal written settlement agreement on January 9, 2012, and the court granted an order dismissing the case as to WD with prejudice on February 6, 2012.

Seagate Matter

On October 4, 2006, plaintiff Seagate Technology LLC ("Seagate") filed an action in the District Court of Hennepin County, Minnesota, naming as defendants WD and one of its now former employees previously employed by Seagate. The complaint in the action alleged claims based on supposed misappropriation of trade secrets and sought injunctive relief and unspecified monetary damages, fees and costs. On June 19, 2007, WD's former employee filed a demand for arbitration with the American Arbitration Association. A motion to stay the litigation as against all defendants and to compel arbitration of all Seagate's claims was granted on September 19, 2007. On September 23, 2010, Seagate filed a motion to amend its claims and add allegations based on the supposed misappropriation of additional confidential information, and the arbitrator granted Seagate's motion. The arbitration hearing commenced on May 23, 2011 and concluded on July 11, 2011.

On November 18, 2011, the sole arbitrator ruled in favor of WD in connection with five of the eight alleged trade secrets at issue, based on evidence that such trade secrets were known publicly at the time the former employee joined WD. Based on a determination that the employee had fabricated evidence, the arbitrator then concluded that WD had to know of the fabrications. As a sanction, the arbitrator precluded any evidence or defense by WD disputing the validity, misappropriation, or use of the three remaining alleged trade secrets by WD, and entered judgment in favor of Seagate with respect to such trade secrets. Using an unjust enrichment theory of damages, the arbitrator issued an interim award against WD in the amount of $525 million plus pre-award interest at the Minnesota statutory rate of 10% per year. In his decision with respect to these three trade secrets, the arbitrator did not question the relevance, veracity or credibility of any of WD's ten expert and fact witnesses (other than WD's former employee), nor the authenticity of any other evidence WD presented. A hearing to consider the amount of pre-award interest was held on January 10, 2012. On January 23, 2012, the arbitrator issued a final award adding pre-award interest in the amount of $105.4 million for a total final award of $630.4 million. On January 23, 2012, WD filed a petition in the District Court of Hennepin County, Minnesota to have the final arbitration award vacated. A hearing on the petition to vacate was held on March 1, 2012.

The Company believes the arbitrator exceeded his authority and refused to consider material evidence and that confirmation of the award would violate public policy. The Company strongly disputes the arbitrator's conclusion that WD "had to know" of the alleged fabrication and believes that if all of its evidence had been properly considered it would have prevailed on all remaining claims. WD intends to pursue vigorously its motion to vacate the award and, if necessary, to appeal the award if it is confirmed by the District Court of Hennepin County, Minnesota. The Company does not believe it is probable that the arbitrator's award will be sustained and accordingly has not recorded any cost or liability for the arbitrator's award in excess of the amount previously accrued by the Company ($25 million). There is no assurance that WD's efforts to vacate the award or to overturn the award on appeal if it is confirmed by the District Court of Hennepin County, Minnesota will be successful. It is reasonably possible that losses with respect to this matter could range from $0 to $605.4 million in excess of the amount previously accrued ($25 million). This estimate does not include additional interest (as simple interest, not compounding) at the Minnesota statutory rate of 10% per year, which will continue to accrue on the amount of the final award ($630.4 million) while WD pursues its motion to vacate the award, and if necessary, an appeal if the motion to vacate the award is unsuccessful.

Other Matters

In the normal course of business, the Company is subject to other legal proceedings, lawsuits and other claims. Although the ultimate aggregate amount of probable monetary liability or financial impact with respect to these other matters is subject to many uncertainties and is therefore not predictable with assurance, management believes that any monetary liability or financial impact to the Company from these other matters, individually and in the aggregate, would not be material to the Company's financial condition, results of operations or cash flows. However, there can be no assurance with respect to such result, and monetary liability or financial impact to the Company from these other matters could differ materially from those projected.

6. Income Taxes

The Company's income tax provision for the three months ended March 30, 2012 was $55 million as compared to $13 million in the prior-year period. The Company's income tax provision for the nine months ended March 30, 2012 was $88 million as compared to $41 million in the prior-year period. The differences between the effective tax rate and the U.S. Federal statutory rate are primarily due to tax holidays in Malaysia, the Philippines, Singapore and Thailand that expire at various dates through 2023 and the current year generation of income tax credits.

In the three months ended March 30, 2012, the Company recorded a net increase of $45 million in its liability for unrecognized tax benefits. This includes $41 million related to the Acquisition. As of March 30, 2012, the Company had a recorded liability for unrecognized tax benefits of approximately $277 million. Interest and penalties recognized on such amounts were not material.

The Internal Revenue Service ("IRS") has completed its field examination of the federal income tax returns for fiscal years 2006 and 2007 for the Company and calendar years 2005 and 2006 for Komag, Incorporated ("Komag"), which was acquired by the Company on September 5, 2007. In September 2011, the Company received a final Revenue Agent Report ("RAR") and Closing Agreement with respect to the years under examination for Komag. This agreement resulted in an immaterial benefit to the Company's income tax provision. The Company has also received RARs from the IRS that seek adjustments to income before income taxes of approximately $970 million in connection with unresolved issues related primarily to transfer pricing and certain other intercompany transactions. The Company disagrees with the proposed adjustments. In May 2011, the Company filed a protest with the IRS Appeals Office regarding the proposed adjustments. Meetings with the Appeals Office began in February 2012. In January 2012, the IRS commenced an examination of the Company's fiscal years 2008 and 2009 and Komag's fiscal year ended September 5, 2007.

The Company believes that adequate provision has been made for any adjustments that may result from tax audits. However, the outcome of tax audits cannot be predicted with certainty. If any issues addressed in the Company's tax audits are resolved in a manner not consistent with management's expectations, the Company could be required to adjust its provision for income taxes in the period such resolution occurs. As of March 30, 2012, it is not possible to estimate the amount of change, if any, in the unrecognized tax benefits that is reasonably possible within the next twelve months. Any significant change in the amount of the Company's unrecognized tax benefits would most likely result from additional information or settlements relating to the examination of the Company's tax returns.

7. Fair Value Measurements

Financial assets and liabilities that are remeasured and reported at fair value at each reporting period are classified and disclosed in one of the following three levels:

Level 1. Quoted prices in active markets for identical assets or liabilities.

Level 2. Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3. Inputs that are unobservable for the asset or liability and that are significant to the fair value of the assets or liabilities.

The following table presents information about the Company's financial assets and liabilities that are measured at fair value on a recurring basis as of March 30, 2012, and indicates the fair value hierarchy of the valuation techniques utilized to determine such value (in millions):

	Fair Value Measurements at Reporting Date Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Cash equivalents				
Money market funds	$ 869	$ —	$ —	$869
U.S. Treasury securities	—	33	—	33
U.S. Government agency securities	—	63	—	63
Total cash equivalents	869	96	—	965
Foreign exchange contracts	—	6	—	6
Auction-rate securities	—	—	14	14
Total assets at fair value	$ 869	$ 102	$ 14	$985
Liabilities:				
Foreign exchange contracts	—	(3)	—	(3)
Total liabilities at fair value	$ —	$ (3)	$ —	$ (3)

The following table presents information about the Company's financial assets and liabilities that are measured at fair value on a recurring basis as of July 1, 2011, and indicates the fair value hierarchy of the valuation techniques utilized to determine such value (in millions):

	Fair Value Measurements at Reporting Date Using			
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Total
Assets:				
Cash equivalents				
Money market funds	$ 721	$ —	$ —	$721
U.S. Treasury securities	—	60	—	60
U.S. Government agency securities	—	78	—	78
Total cash equivalents	721	138	—	859
Auction-rate securities	—	—	15	15
Total assets at fair value	$ 721	$ 138	$ 15	$874
Liabilities:				
Foreign exchange contracts	—	(5)	—	(5)
Total liabilities at fair value	$ —	$ (5)	$ —	$ (5)

Money Market Funds. The Company's money market funds are funds that invest in U.S. Treasury securities and are recorded within cash and cash equivalents in the condensed consolidated balance sheets. Money market funds are valued based on quoted market prices.

U.S. Treasury Securities. The Company's U.S. Treasury securities are investments in Treasury bills with original maturities of three months or less, are held in custody by a third party and are recorded within cash and cash equivalents in the condensed consolidated balance sheets. U.S. Treasury securities are valued using a market approach which is based on observable inputs including market interest rates from multiple pricing sources.

U.S. Government Agency Securities. The Company's U.S. Government agency securities are investments in fixed income securities sponsored by the U.S. Government with original maturities of three months or less, are held in custody by a third party and are recorded within cash and cash equivalents in the condensed consolidated balance sheets. U.S. Government agency securities are valued using a market approach which is based on observable inputs including market interest rates from multiple pricing sources.

Auction-Rate Securities. The Company's auction-rate securities have maturity dates through 2050, are primarily backed by insurance products and are accounted for as available-for-sale securities. These investments are classified as long-term investments and recorded within other non-current assets in the condensed consolidated balance sheets. Auction-rate securities are valued by a third party using trade information related to the secondary market.

Foreign Exchange Contracts. The Company's foreign exchange contracts are short-term contracts to hedge the Company's foreign currency risk related to the Thai Baht, Malaysian Ringgit, Japanese Yen, Singapore Dollar, Philippine Peso, Euro and British Pound Sterling. Foreign exchange contracts are classified within other current liabilities in the condensed consolidated balance sheets. Foreign exchange contracts are valued using an income approach that is based on a present value of future cash flows model. The market-based observable inputs for the model include forward rates and credit default swap rates.

In the three months ended March 30, 2012, the Company had a $1 million settlement in its Level 3 financial assets measured on a recurring basis, reducing the balance from $15 million to $14 million. In the six months ended December 30, 2011, there were no changes in Level 3 financial assets measured on a recurring basis.

The carrying amounts of cash, accounts receivable, accounts payable and accrued expenses approximate fair value for all periods presented because of the short-term maturity of these assets and liabilities. The carrying amount of debt approximates fair value because of its variable interest rate.

8. Foreign Exchange Contracts

Although the majority of the Company's transactions are in U.S. dollars, some transactions are based in various foreign currencies. The Company purchases short-term, foreign exchange contracts to hedge the impact of foreign currency exchange fluctuations on certain underlying assets, revenue, liabilities and commitments for operating expenses and product costs denominated in foreign currencies. The purpose of entering into these hedging transactions is to minimize the impact of foreign currency fluctuations on the Company's results of operations. These contract maturity dates do not exceed 12 months. All foreign exchange contracts are for risk management purposes only. The Company does not purchase foreign exchange contracts for trading or speculative purposes. As of March 30, 2012, the Company had outstanding foreign exchange contracts with commercial banks for Thai Baht, Malaysian Ringgit, Japanese Yen, Singapore Dollar, Philippine Peso, Euro and British Pound Sterling. Thai Baht contracts are designated as either cash flow or fair value hedges. Malaysian Ringgit and Japanese Yen contracts are designated as cash flow hedges. Singapore Dollar, Philippine Peso, Euro and British Pound Sterling contracts are designated as fair value hedges.

If the derivative is designated as a cash flow hedge, the effective portion of the change in fair value of the derivative is initially deferred in other comprehensive income (loss), net of tax. These amounts are subsequently recognized into earnings when the underlying cash flow being hedged is recognized into earnings. Recognized gains and losses on foreign exchange contracts entered into for manufacturing-related activities are reported in cost of revenue. Hedge effectiveness is measured by comparing the hedging instrument's cumulative change in fair value from inception to maturity to the underlying exposure's terminal value. As of March 30, 2012, the net amount of unrealized gains expected to be reclassified into earnings within the next 12 months was $2 million.

A change in the fair value of fair value hedges is recognized in earnings in the period incurred and is reported as a component of operating expenses. All fair value hedges were determined to be effective. The fair value and the changes in fair value on these contracts were not material to the condensed consolidated financial statements during the three and nine months ended March 30, 2012 and April 1, 2011.

As of March 30, 2012, the Company did not have any foreign exchange contracts with credit-risk-related contingent features. The Company opened $680 million and $2.1 billion, and closed $598 million and $2.2 billion in foreign exchange contracts in the three and nine months ended March 30, 2012, respectively. The fair value and balance sheet location of such contracts were as follows (in millions):

	Asset Derivatives				Liability Derivatives			
	Mar. 30, 2012		Jul. 1, 2011		Mar. 30, 2012		Jul. 1, 2011	
Derivatives Designated as Hedging Instruments	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value	Balance Sheet Location	Fair Value
Foreign exchange contracts	Other current assets	$ 6	—	—	Accrued expenses	$ 3	Accrued expenses	$ 5

The impact on the condensed consolidated financial statements was as follows (in millions):

	Amount of Gain Recognized in Accumulated OCI on Derivatives				Location of Gain (Loss) Reclassified from Accumulated OCI into Income	Amount of Gain (Loss) Reclassified From Accumulated OCI into Income			
	Three Months Ended	Nine Months Ended	Three Months Ended	Nine Months Ended		Three Months Ended	Nine Months Ended	Three Months Ended	Nine Months Ended
Derivatives in Cash Flow Hedging Relationships	Mar. 30, 2012		Apr 1, 2011			Mar. 30, 2012		Apr 1, 2011	
Foreign exchange contracts	$ 15	$ 9	$ 2	$ 76	Cost of revenue	$ (1)	$ 2	$ 15	$ 79

The total net realized transaction and foreign exchange contract currency gains and losses were not material to the condensed consolidated financial statements during the three and nine months ended March 30, 2012 and April 1, 2011.

9. Stock-Based Compensation

In connection with the Acquisition, the Company assumed all of the unvested stock options, stock appreciation rights ("SARs"), and restricted stock unit awards ("RSUs") outstanding under HGST's stock plans as of the Closing Date. The assumed stock options, SARs and RSUs were converted into equivalent stock options, SARs and RSUs with respect to shares of the Company's common stock using an equity award exchange ratio. As of the Closing Date, March 8, 2012, options to purchase 4.2 million shares of the Company's common stock, 0.4 million RSUs, and 1.9 million SARs were outstanding under these assumed awards. No new awards may be granted under the HGST stock plans

During the three and nine months ended March 30, 2012, the Company recognized in expense $11 million and $35 million, respectively, for stock-based compensation related to the ESPP and the vesting of options issued under the Company's stock option plans or assumed in connection with the Acquisition, compared to $9 million and $29 million in the comparative prior-year periods. As of March 30, 2012, total compensation cost related to unvested stock options and ESPP rights issued to employees but not yet recognized was $137 million and will be amortized on a straight-line basis over a weighted average service period of approximately 2.3 years.

During the three months ended March 30, 2012, the Company recognized in expense $1 million related to the vesting of cash-settled SARs assumed under the HGST stock plans. As of March 30, 2012, the Company had a total liability of $32 million related to SARs included in accrued liabilities in the accompanying condensed consolidated balance sheet. As of March 30, 2012, total compensation cost related to unvested SARs issued to employees but not yet recognized was $32 million and will be accrued on a straight-line basis over a weighted average service period of approximately 2.0 years.

As indicated above, approximately 0.4 million RSUs were outstanding at the Closing Date in connection with the RSUs assumed in the Acquisition. In addition, the Company granted approximately 1.1 million RSUs during the nine months ended March 30, 2012, which are payable in an equal number of shares of the Company's common stock at the time of vesting of the units. The aggregate market value of the shares underlying the RSUs was $49 million at the date of grant or, in the case of the RSUs assumed in the Acquisition, at the date of assumption. The compensation expense for granted and assumed RSUs is being recognized as expense over the corresponding vesting periods of the awards. For purposes of recognizing awards granted, the Company has assumed a forfeiture rate of 2.29% based on a historical analysis indicating forfeitures for these types of awards. During the three and nine months ended March 30, 2012, the Company recognized in expense $9 million and $25 million, respectively, related to the vesting of awards of RSUs compared to $8 million and $25 million in the comparative prior-year periods. As of March 30, 2012, the aggregate unamortized fair value of all unvested RSUs was $53 million, which will be recognized on a straight-line basis over a weighted average vesting period of approximately 1.6 years.

Stock Option Activity

The following table summarizes activity under the Company's stock option plans (in millions, except per share amounts and remaining contractual lives):

	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Life (in years)	Aggregate Intrinsic Value
Options outstanding at July 1, 2011	10.2	$ 22.49		
Granted	2.5	29.64		
Exercised	(0.2)	7.99		
Options outstanding at September 30, 2011	12.5	$ 24.20		
Granted	0.2	26.20		
Exercised	(0.2)	15.38		
Options outstanding at December 30, 2011	12.5	$ 24.34		
Granted	0.1	38.33		
Assumed	4.2	8.47		
Exercised	(0.9)	20.99		
Options outstanding at March 30, 2012	15.9	$ 20.49	4.7	$ 333
Exercisable at March 30, 2012	7.3	$ 19.43	3.8	$ 160
Vested and expected to vest after March 30, 2012	13.1	$ 20.24	4.5	$ 276

If an option has an exercise price that is less than the quoted price of the Company's common stock at the particular time, the aggregate intrinsic value of that option at that time is calculated based on the difference between the exercise price of the underlying options and the quoted price of the Company's common stock at that time. As of March 30, 2012, the Company had options outstanding to purchase an aggregate of 15.9 million shares with an exercise price below the quoted price of the Company's stock on that date resulting in an aggregate intrinsic value of $333 million at that date. During the three and nine months ended March 30, 2012, the aggregate intrinsic value of options exercised under the Company's stock option plans was $15 million and $23 million, respectively, determined as of the date of exercise, compared to $9 million and $20 million in the comparative prior-year periods.

SARs Activity

The share-based compensation liability for SARs assumed is recognized for the portion of fair value for which service has been rendered at the reporting date. The share-based liability is remeasured at each reporting date through the requisite service period. The Company uses estimated forfeiture rates on unvested awards to calculate a liability only for those SARs expected to vest. The total vested portion of the SARs represents the proportion of the fair value of the SARs vested based upon the percentage of the required service rendered at the reporting date. As of March 30, 2012, 1.8 million SARs were outstanding with a weighted average exercise price of $7.61. SARs activity was immaterial to the condensed consolidated financial statements for the three and nine months ended March 30, 2012.

Fair Value Disclosure — Binomial Model

The fair value of stock options and SARs granted or assumed is estimated using a binomial option-pricing model. The binomial model requires the input of highly subjective assumptions including the expected stock price volatility, the expected price multiple at which employees are likely to exercise stock options and SARs and the expected employee termination rate. The Company uses historical data to estimate exercise, employee termination, and expected stock price volatility within the binomial model. The risk-free rate for periods within the contractual life of the option or SAR is based on the U.S. Treasury yield curve in effect at the time of grant. The fair value of stock options granted was estimated using the following weighted average assumptions:

	Three Months Ended		Nine Months Ended	
	Mar. 30, 2012	Apr. 1, 2011	Mar. 30, 2012	Apr. 1, 2011
Suboptimal exercise factor	**1.80**	1.81	**1.81**	1.81
Range of risk-free interest rates	**0.19% to 1.61%**	0.27% to 2.90%	**0.12% to 1.61%**	0.26% to 2.90%
Range of expected stock price volatility	**0.43 to 0.53**	0.41 to 0.56	**0.41 to 0.55**	0.41 to 0.59
Weighted average expected volatility	**0.48**	0.49	**0.48**	0.52
Post-vesting termination rate	**2.51%**	2.95%	**2.62%**	2.44%
Dividend yield	**—**	—	**—**	—
Fair value	**$15.46**	$14.71	**$12.09**	$11.39

The weighted average expected term of the Company's stock options and SARs granted or assumed during the three and nine months ended March 30, 2012 was 5.0 years and 4.9 years, compared to 5.0 years and 4.7 years, respectively, in the comparative prior-year periods.

Fair Value Disclosure — Black-Scholes-Merton Model

The fair value of ESPP purchase rights issued is estimated at the date of grant of the purchase rights using the Black-Scholes-Merton option-pricing model. The Black-Scholes-Merton option-pricing model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. The Black-Scholes-Merton option-pricing model requires the input of highly subjective assumptions such as the expected stock price volatility and the expected period until options are exercised. Purchase rights under the current ESPP provisions are granted on either June 1 or December 1. ESPP activity was immaterial to the condensed consolidated financial statements for the three and nine months ended March 30, 2012 and April 1, 2011.

RSU Activity

The following table summarizes RSU activity (in millions, except weighted average grant date fair value):

	Number of Shares	Weighted Average Grant-Date Fair Value
RSUs outstanding at July 1, 2011	3.1	$ 28.85
Granted	0.9	29.64
Vested	(0.6)	23.94
RSUs outstanding at September 30, 2011	3.4	$ 29.83
Granted	0.1	26.30
Vested	(0.1)	19.54
RSUs outstanding at December 30, 2011	3.4	$ 30.00
Granted	0.1	38.38
Assumed	0.4	38.98
Vested	(0.6)	34.17
RSUs outstanding at March 30, 2012	3.3	$ 32.33
Expected to vest after March 30, 2012	3.2	$ 32.44

10. Pensions and Other Post-retirement Benefit Plans

In connection with the Acquisition, the Company assumed pension and other post-retirement benefit plans in various countries, including Japan, the Philippines, Thailand and Taiwan. The values assigned to the plan assets and benefit plan liabilities are preliminary and may be adjusted as further information becomes available (see also Note 11). The expected long-term rate of return on plan assets is 3.5%.

The following table presents the unfunded status of the benefit obligations and plan assets as of March 30, 2012 (in millions):

	Mar. 30, 2012	
	Japan Pension Benefits	Other Benefits
Benefit obligation	$ 288	$ 29
Fair value of plan assets	(163)	—
Unfunded status	$ 125	$ 29

The following table presents the unfunded amounts as recognized on the Company's condensed consolidated balance sheets as of March 30, 2012 (in millions):

	Mar. 30, 2012	
	Japan Pension Benefits	Other Benefits
Current liabilities	$ 3	$ 1
Non-current liabilities	122	28
Net amount recognized	$ 125	$ 29

The net periodic benefit cost of the Company's assumed pension plans was not material to the condensed consolidated financial statements in the three and nine months ended March 30, 2012 and April 1, 2011. In fiscal 2012, the Company expects to pay contributions of $4 million for its Japanese pension plans.

11. HGST Acquisition

On March 8, 2012, the Company, through Western Digital Ireland ("WDI"), its indirect wholly-owned subsidiary, completed the Acquisition pursuant to a Stock Purchase Agreement, dated March 7, 2011 (the "SPA"). HGST is a developer and manufacturer of storage devices. As a result of the Acquisition, HGST became an indirect wholly-owned subsidiary of the Company. The preliminary, aggregate purchase price of the Acquisition was approximately $4.7 billion, which was paid on the Closing Date and funded with $3.7 billion of existing cash and cash from new debt, as well as 25 million newly issued shares of the Company's common stock with a fair value of $877 million. The fair value of the newly issued shares of the Company's common stock was determined based on the closing market price of the Company's shares of common stock on the date of the Acquisition, less a 10% discount for lack of marketability as the shares issued are subject to a restriction that limits their trade or transfer for one year from the Closing Date. The purchase price consideration included preliminary estimates of the working capital assets acquired and liabilities assumed, and therefore, may be adjusted when finalized. The Acquisition is intended over time, and subject to compliance with applicable regulatory conditions imposed on the Acquisition, to result in a more efficient and innovative customer-focused storage company with significant operating scale, strong global talent and a broad product lineup backed by a rich technology portfolio. HGST's results of operations since the date of the Acquisition are included in the accompanying condensed consolidated financial statements.

The total preliminary purchase price for HGST was approximately $4.7 billion and was comprised of:

(in millions)	Mar. 8, 2012
Acquisition of all issued and outstanding paid-up share capital of HGST	$4,612
Preliminary fair value of stock options, restricted stock-based awards and SARs assumed	102
Total	$4,714

The preliminary fair values of stock options and SARs assumed were estimated using a Binomial option-pricing model. See “Stock-Based Compensation” included below in this Note 11 for a further discussion concerning stock awards assumed as a result of the Acquisition.

The Company identified and recorded the assets acquired and liabilities assumed at their estimated fair values at the Closing Date, and allocated the remaining value of approximately $1.7 billion to goodwill. The values assigned to certain acquired assets and liabilities are preliminary, are based on information available as of the date of this Quarterly Report on Form 10-Q, and may be adjusted as further information becomes available during the measurement period of up to 12 months from the date of the Acquisition. Additional information that may become available subsequently and may result in changes in the values allocated to various assets and liabilities, including, but is not limited to, unidentified claims from suppliers or other contingent obligations, the amounts required to settle them, the progress or outcomes of various litigation, pension plans and the value of deferred taxes. Any changes in the fair values of the assets acquired and liabilities assumed during the measurement period may result in material adjustments to goodwill. The preliminary purchase price allocation was as follows (in millions):

	Mar. 8, 2012
Tangible assets acquired and liabilities assumed:	
Cash and cash equivalents	$ 194
Accounts receivable	1,293
Inventories	723
Other current assets	187
Property, plant and equipment	1,974
Other non-current assets	106
Accounts payable	(841)
Accrued liabilities	(585)
Debt assumed	(585)
Pension and other post-retirement benefit liabilities	(145)
Other liabilities	(100)
Intangible assets	793
Goodwill	1,700
Total	$4,714

During the three and nine months ended March 30, 2012, through the Closing Date, the Company incurred $34 million and $61 million, respectively, of expenses related to the Acquisition, of which $33 million and $54 million are included within selling, general and administrative expense in the condensed consolidated statements of income. The remaining $1 million and $7 million of expenses related to the Acquisition in the three and nine months ended March 30, 2012 through the Closing date, related to debt commitment fees, which are included within interest and other expense in the condensed consolidated statements of income.

Property, Plant and Equipment

The property, plant and equipment acquired as part of the Acquisition were valued using either the replacement cost or market value approach, as appropriate, as of the Closing Date. The following table summarizes the preliminary estimated fair value of the property, plant and equipment acquired from HGST and their estimated useful lives:

	Estimated Fair Value (In millions)	Estimated Weighted-Average Useful Life (In years)
Land	$ 342	—
Buildings	239	30.0
Machinery and equipment	1,354	3.0
Furniture and fixtures	5	2.9
Leasehold improvements	34	4.8
Total property, plant and equipment	$ 1,974	

Inventories

The Company acquired $723 million of inventories as a result of the Acquisition. Finished goods were valued at estimated selling prices less costs of disposal and a reasonable profit allowance for the selling effort. Work-in-process inventory was valued at estimated selling prices less costs to complete, costs of disposal and a reasonable profit allowance for the completion and selling effort, or at estimated replacement costs for certain components. Raw materials were valued at estimated replacement cost at the Closing Date.

Warranty

The product warranty obligation assumed as a result of Acquisition was recognized at its estimated fair value of $139 million.

Stock-Based Compensation

In connection with the Acquisition, each outstanding HGST option, cash-settled SAR and RSU that was unvested as of the Closing Date was converted into equivalent options, cash-settled SARs and RSUs, with respect to shares of the Company's common stock, using an equity award exchange ratio in accordance with the SPA. All awards will be recognized by the Company over the remaining service periods. As of March 30, 2012, the future expense for the converted HGST unvested options, SARs and RSUs was $103 million, which will be recognized over a weighted average service period of approximately 2.1 years.

Identifiable Intangible Assets Acquired

The following table summarizes the preliminary fair values and estimated useful lives of the intangibles acquired from HGST:

	Estimated Fair Value (In millions)	Estimated Weighted-Average Useful Life (In years)
Existing technology	$ 431	3.7
Customer relationships	146	3.4
Joint development agreement	35	2.5
Trade names	26	3.0
Non-compete agreement	3	5.0
In-process research and development	140	—
Leasehold interests	12	5.0
Total acquired identifiable intangible assets	$ 793	

The fair values of the identifiable intangible assets acquired from HGST were estimated using an income approach. The fair value of the intangible assets will be amortized to cost of revenue over their weighted average useful lives, with the exception of intangible assets related to customer relationships and acquired in-process research and development projects. Customer relationship intangible assets will be amortized to operating expense over their weighted average useful lives. HGST had in-process research and development projects associated with areal density improvements that had not yet reached technological feasibility as of the Closing Date. These projects are expected to incorporate significant changes in the magnetic structure of the media to achieve higher recording density for the Company. Accordingly, the Company recorded indefinite-lived intangible assets of $140 million for the fair value of these projects, which will not initially be amortized. Instead, the projects will be tested on an annual basis or more frequently whenever events or changes in circumstances indicate that the projects may be impaired or may have reached technological feasibility. Once a project reaches technological feasibility, the Company will begin to amortize the intangible asset over its estimated useful life.

Adverse/Favorable Leasehold Interests

The Company analyzed the contractual facility leases assumed as part of the Acquisition to determine the fair value of the leasehold interests. An adverse leasehold position exists when the present value of the contractual rental obligation is greater than the present value of the market rental obligation, and conversely for a favorable leasehold interest. The Company recorded a net favorable leasehold interest of $12 million, which is classified within intangible assets in the preliminary purchase price allocation table above in this Note 11. The $12 million will be amortized to cost of revenue over the average lease term of five years.

Goodwill

The $1.7 billion of goodwill recognized is primarily attributable to the benefits, subject to compliance with applicable regulatory conditions imposed on the Acquisition, the Company expects to derive from a more efficient and innovative customer-focused storage company with significant operating scale, strong global talent and a broad product lineup backed by a rich technology portfolio. None of the goodwill is expected to be deductible for tax purposes.

The changes in the carrying amount of goodwill for the nine months ended March 30, 2012 are as follows (in millions):

Balance at July 1, 2011	$ 151
Goodwill acquired from the Acquisition	1,700
Balance at March 30, 2012	$1,851

The Company is currently assessing the number of reporting units under which goodwill will be allocated and tested for impairment.

HGST Revenue and Net Income

The amount of revenue and earnings attributable to HGST in the Company's condensed consolidated statement of income during the three and nine months ended March 30, 2012 from the Closing Date were as follows:

(in millions)	Three Months Ended Mar. 30, 2012	Nine Months Ended Mar. 30, 2012
Revenue	$ 614	$ 614
Net income	$ 40	$ 40

Regulatory Conditions

In connection with the regulatory approval process, the Company announced on February 28, 2012 that it had reached an agreement with Toshiba Corporation ("Toshiba") to, subject to regulatory approval, divest certain assets related to the production of 3.5-inch hard drives to address the requirements of regulatory agencies that had conditionally approved the Acquisition. In addition, subject to completion of the divestiture transaction, the Company agreed to the purchase of Toshiba Storage Device (Thailand) Company Limited ("TSDT") by WDI. The net assets of TSDT consist primarily of real estate and receivables. The divestiture transaction and the acquisition of TSDT are not expected to have a material impact on the Company's consolidated financial statements. This divestiture transaction has received all required regulatory approvals and must be completed within the time periods agreed upon with the jurisdictions whose approval of the Acquisition was conditioned on the divestiture, subject to any extensions that are obtained.

Maintenance of Competitive Requirement

In connection with the regulatory approval process of the Acquisition, the Company agreed to certain conditions required by the Ministry of Commerce of the People's Republic of China ("MOFCOM"), including adopting measures to maintain HGST as an independent competitor until MOFCOM agrees otherwise (with the minimum period being two years). The Company is working closely with MOFCOM to finalize an operations plan that is expected to outline in more detail the conditions of the competitive requirement.

Pro Forma Financial Information

The unaudited financial information in the table below summarizes the combined results of operations of the Company, HGST and TSDT as well as the related proposed divestiture of assets to Toshiba, on a pro forma basis, as though the combinations and divestiture had occurred as of the beginning of fiscal 2011. The pro forma financial information presented includes the effects of adjustments related to the fair value of acquired inventory and warranty obligation, acquired or divested fixed assets, amortization charges from acquired intangible assets, depreciation charges from acquired or divested fixed assets and the elimination of certain activities excluded from the transactions. The pro forma financial information as presented below is for informational purposes only and is not necessarily indicative of the results of operations that would have been achieved if the acquisitions, divestiture and any borrowings undertaken to finance the acquisitions had taken place at the beginning of the earliest period presented, nor does it intend to be a projection of future results.

	Three months ended		Nine months ended	
(in millions, except per share amounts)	Mar. 30, 2012	Apr. 1, 2011	Mar. 30, 2012	Apr. 1, 2011
Revenue	**$4,497**	$ 3,654	**$12,091**	$11,566
Net income	**$ 715**	$ 160	**$ 1,284**	$ 718
Basic income per common share	**$ 2.69**	$ 0.62	**$ 4.92**	$ 2.80
Diluted income per common share	**$ 2.64**	$ 0.61	**$ 4.85**	$ 2.76

12. Thailand Flooding

In October 2011, severe flooding in Thailand inundated all of the Company's Thailand manufacturing facilities and submerged certain equipment located there. These facilities included the Company's magnetic head slider fabrication facilities, as well as its hard drive, head gimbal assembly and head stack assembly facilities. As a result, the Company recorded $15 million and $214 million of net flood-related charges in the three and nine months ended March 30, 2012, including fixed asset impairments, recovery charges, a write-down of damaged inventory and wage continuation during the shutdown period of the Company's facilities, offset by $21 million of insurance recoveries and other cost reimbursements. These charges are separately stated as a line item, "Charges related to flooding, net," within operating expenses on the accompanying condensed consolidated statements of income.

The following table summarizes the flood-related charges for the six months ended March 30, 2012 (in millions):

	Impairment of Property, Plant and Equipment	Recovery Charges	Inventory Write-Downs	Wage Continuation	Total
Accrual for flood-related charges at September 30, 2011	$ —	$ —	$ —	$ —	$ —
Flood-related charges	109	39	28	23	199
Cash payments	—	(20)	—	(23)	(43)
Inventory write-off	—	—	(28)	—	(28)
Non-cash charges	(109)	—	—	—	(109)
Accrual for flood-related charges at December 30, 2011	$ —	$ 19	$ —	$ —	$ 19
Flood-related charges	10	22	—	4	36
Cash payments	—	(33)	—	(4)	(37)
Non-cash charges	(10)	—	—	—	(10)
Accrual for flood-related charges at March 30, 2012	$ —	$ 8	$ —	$ —	$ 8

The accrued balance of $8 million is expected to be paid in the Company's fourth quarter of fiscal 2012 and is included within accrued expenses in the accompanying condensed consolidated balance sheets. The Company maintains insurance coverage that provides property and business interruption coverage in the event of losses arising from flooding. The Company has submitted claims to its insurers and is awaiting a determination of how much of its total losses will be covered by insurance. For an additional discussion of the Thailand flooding, see Part I, Item 2 of this Quarterly Report on Form 10-Q.

13. Recent Accounting Pronouncements

In June 2011, the FASB issued Accounting Standards Update ("ASU") 2011-05 "Presentation of Comprehensive Income" ("ASU 2011-05"). The new standard requires that all non-owner changes in shareholders' equity be presented either in a single continuous statement of comprehensive income or in two separate but continuous statements. If presented in two separate statements, the first statement should present total net income and its components followed immediately by a second statement of total other comprehensive income, its components and the total comprehensive income. In December 2011, the FASB deferred certain changes in ASU 2011-05 that relate to the presentation of reclassification adjustments. The new standard is effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2011, which for the Company is the first quarter of fiscal 2013. The Company is currently evaluating how it will report comprehensive income, but the adoption of either method will constitute a change in the Company's financial statement presentation.

Item 2. ***MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS***

This information should be read in conjunction with the unaudited condensed consolidated financial statements and the notes thereto included in this Quarterly Report on Form 10-Q, and the audited consolidated financial statements and notes thereto and Part II, Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations, contained in our Annual Report on Form 10-K for the year ended July 1, 2011.

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

Forward-Looking Statements

This document contains forward-looking statements within the meaning of the federal securities laws. Any statements that do not relate to historical or current facts or matters are forward-looking statements. You can identify some of the forward-looking statements by the use of forward-looking words, such as "may," "will," "could," "would," "project," "believe," "anticipate," "expect," "estimate," "continue," "potential," "plan," "forecast," and the like, or the use of future tense. Statements concerning current conditions may also be forward-looking if they imply a continuation of current conditions. Examples of forward-looking statements include, but are not limited to, statements concerning:

- *expectations regarding industry demand in the June quarter and the ability of the industry to support this demand;*
- *expectations regarding the shipment of drives in the June quarter with sliders produced in our Penang, Malaysia facility;*
- *expectations concerning the anticipated benefits of our acquisition of Viviti Technologies Ltd., until recently known as Hitachi Global Storage Technologies Holdings Pte. Ltd.;*
- *demand for hard drives and solid-state drives in the various markets and factors contributing to such demand;*
- *our plans to continue to develop new products and expand into new storage markets and into emerging economic markets;*
- *our entry into and position in the traditional enterprise market;*
- *emergence of new storage markets for hard drives;*
- *emergence of competing storage technologies;*
- *our share repurchase plans;*
- *our stock price volatility;*
- *expectations regarding the outcome of legal proceedings in which we are involved, including the outcome of our motion to vacate the award entered against us in our arbitration with Seagate Technology LLC and, if necessary, our appeal of the award;*

- *our beliefs regarding the adequacy of our tax provisions and the timing of future payments, if any, relating to the unrecognized tax benefits;*
- *contributions to our pension plans in fiscal 2012;*
- *expectations regarding our capital expenditure plans in fiscal 2012 and calendar 2012, and depreciation and amortization for fiscal 2012;and*
- *our beliefs regarding the sufficiency of our cash and cash equivalents to meet our working capital, capital expenditure and other cash needs.*

Forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those expressed in the forward-looking statements. You are urged to carefully review the disclosures we make concerning risks and other factors that may affect our business and operating results, including those made in Part II, Item 1A of this Quarterly Report on Form 10-Q, and any of those made in our other reports filed with the Securities and Exchange Commission (the "SEC"). You are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date of this document. We do not intend, and undertake no obligation, to publish revised forward-looking statements to reflect events or circumstances after the date of this document or to reflect the occurrence of unanticipated events.

Our Company

We are a global provider of solutions for the collection, storage, management, protection and use of digital content, including audio and video. Our principal products are hard drives, which are devices that use one or more rotating magnetic disks ("magnetic media") to store and allow fast access to data. Hard drives are currently the primary storage medium for digital content. Our hard drives are used in desktop and notebook computers, corporate and cloud computing data centers, home entertainment equipment and stand-alone consumer storage devices. In addition to hard drives, we offer solid-state drives and home entertainment and networking products.

Acquisition

Hitachi Global Storage Technologies Holdings Pte. Ltd. ("HGST") Acquisition

On March 8, 2012 (the "Closing Date"), we, through Western Digital Ireland ("WDI"), our indirect wholly-owned subsidiary, completed the acquisition (the "Acquisition") of all the issued and outstanding paid-up share capital of Viviti Technologies Ltd., until recently known as Hitachi Global Storage Technologies Holdings Pte. Ltd. ("HGST"), from Hitachi Ltd. ("Hitachi"), pursuant to a Stock Purchase Agreement, dated March 7, 2011, among us, WDI, Hitachi and HGST (the "SPA"). The Acquisition is intended over time, and subject to compliance with applicable regulatory conditions imposed on the Acquisition, to result in a more efficient and innovative customer-focused storage company, with significant operating scale, strong global talent and a broad product lineup backed by a rich technology portfolio.

The preliminary, aggregate purchase price of the Acquisition amounted to approximately $4.7 billion, which was paid on the Closing Date and funded with existing cash, new debt, and 25 million newly issued shares of our common stock. The cash portion of the purchase price is subject to a post-closing adjustment (an increase or a decrease) that has not been determined for changes in the working capital of HGST and certain other payments and expenses.

Following the issuance of the 25 million shares of our common stock to Hitachi in accordance with the SPA, Hitachi owns approximately ten percent of our outstanding shares of common stock. The shares issued to Hitachi are subject to a restriction that limits their trade or transfer for one year from the Closing Date. Pursuant to the terms of a separate Investor Rights Agreement we entered into with Hitachi in connection with the Acquisition, Hitachi has the right to designate two individuals (the "Hitachi Designees") to serve as directors on our Board of Directors. This right will terminate (i) with respect to one of the Hitachi Designees, at the end of the second full calendar year following the Closing Date, (ii) in the event Hitachi ceases to beneficially own at least 50% of the shares of our common stock it received in connection with the Acquisition, (iii) if Hitachi has sold at least 10% of the shares of our common stock it received in connection with the Acquisition, in the event that Hitachi ceases to beneficially own at least 5% of our outstanding common stock, (iv) upon Hitachi's breach of certain standstill or transfer restriction obligations of the Investor Rights Agreement, or (v) upon Hitachi's material breach of a separate Agreement Not to Compete that we entered into with Hitachi on the Closing Date.

On the Closing Date, WDC, WDI and Western Digital Technologies, Inc. ("WDT") entered into a five-year credit agreement (the "Credit Facility") with Bank of America, N.A., as administrative agent, swing line lender and L/C issuer, and the lenders party thereto. The Credit Facility provides for $2.8 billion of unsecured loan facilities consisting of a $2.3 billion term loan facility and a $500 million revolving credit facility. The only borrower under the term loan facility is WDI and the revolving credit facility is available to both WDI and WDT. The $2.3 billion term loans and $500 million revolving loans were used, together with additional cash and the 25 million newly issued shares of our common stock, to fund the Acquisition. See "Liquidity and Capital Resources—Contractual Obligations and Commitments" for a further description of the Credit Facility.

Maintenance of Competitive Requirement

In connection with the regulatory approval process of the Acquisition, we agreed to certain conditions required by the Chinese Ministry of Commerce ("MOFCOM"), including adopting measures to maintain HGST as an independent competitor until MOFCOM agrees otherwise (with the minimum period being two years). We are working closely with MOFCOM to finalize an operations plan that is expected to outline in more detail the conditions of the competitive requirement.

Regulatory Conditions

In connection with the regulatory approval process, we announced on February 28, 2012 that we had reached an agreement with Toshiba Corporation ("Toshiba") to, subject to regulatory approval, divest certain assets related to the production of 3.5-inch hard drives to address the requirements of regulatory agencies that had conditionally approved the Acquisition. In addition, subject to completion of the divestiture transaction, we agreed to the purchase of Toshiba Storage Device (Thailand) Company Limited ("TSDT") by WDI. The net assets of TSDT consist primarily of real estate and receivables. The divestiture transaction and the acquisition of TSDT are not expected to have a material impact on our consolidated financial statements. This divestiture transaction has received all required regulatory approvals and must be completed within the time periods agreed upon with the jurisdictions whose approval of the Acquisition was conditioned on the divestiture, subject to any extensions that are obtained.

Thailand Flooding

We suspended production in all of our Thailand manufacturing facilities during the week of October 10, 2011 due to severe flooding in Thailand, where flood waters inundated our facilities and submerged certain equipment located there. The flooded facilities in Thailand included our magnetic head slider fabrication facilities, which supplied a substantial majority of our magnetic head requirements prior to the flooding. The flooded facilities in Thailand also included our hard drive, head gimbal assembly ("HGA") and head stack assembly ("HSA") facilities. In addition to the temporary suspension of our Thailand operations and the internal slider shortages, we experienced other shortages of component parts in the December and March quarters from vendors located in several Thailand industrial parks that were flooded or affected by protective plant shutdowns.

Since the flooding, we have restarted and continue to increase hard drive production capacity and have recommenced slider production in Thailand. We are also extending slider production capacity into Malaysia and expect to begin shipping hard drives with sliders produced in Malaysia in the June quarter. We believe we now have the capability to adequately meet anticipated customer demand.

In the three and nine months ended March 30, 2012, we recorded $15 million and $214 million of charges related to the flooding, respectively. Total charges in the three months ended March 30, 2012 included $10 million of fixed asset impairments, $22 million of recovery charges and $4 million in wage continuation during the shutdown period of our facilities, offset by $21 million of insurance recoveries and other cost reimbursements. Total charges in the nine months ended March 30, 2012 included $119 million of fixed asset impairments, $61 million of recovery charges, $28 million of write-downs of damaged inventory and $27 million in wage continuation during the shutdown period of our facilities, offset by $21 million of insurance recoveries and other cost reimbursements. We maintain insurance coverage that provides property and business interruption coverage in the event of losses arising from flooding. We have submitted claims to our insurers and are awaiting a determination of how much of our total losses will be covered by insurance. It is reasonably possible that the final losses that we incur in connection with the flood damage and our business interruption will exceed the limits of our insurance policies.

Third Quarter Overview

In accordance with U.S. generally accepted accounting principles ("U.S. GAAP"), operating results for HGST prior to the date of the Acquisition are not included in our operating results, affecting our discussion of changes in our revenues and expenses for the periods prior to the Acquisition as compared to the periods after the Acquisition.

For the March quarter, we believe that overall hard drive industry shipments totaled approximately 146 million units, down 9% from the prior-year period and up 23% sequentially from the December quarter. We also believe that the industry growth in the March quarter compared to the December quarter was a result of the industry recovering from the Thailand flooding.

The following table sets forth, for the periods presented, selected summary information from our condensed consolidated statements of income by dollars and percentage of net revenue (in millions, except percentages):

	Three Months Ended				Nine Months Ended			
	Mar. 30, 2012		Apr. 1, 2011		Mar. 30, 2012		Apr. 1, 2011	
Net revenue	**$3,035**	**100.0%**	$2,252	100.0%	**$7,724**	**100.0%**	$7,123	100.0%
Gross margin	**977**	**32.2**	410	18.2	**2,166**	**28.0**	1,322	18.6
Total operating expenses	**435**	**14.3**	252	11.2	**1,203**	**15.6**	713	10.0
Operating income	**542**	**17.9**	158	7.0	**963**	**12.5**	609	8.5
Net income	**483**	**15.9**	146	6.5	**867**	**11.2**	568	8.0

The following is a summary of our financial performance for the third quarter of 2012:

- Consolidated net revenue totaled $3.0 billion.
- HGST contributed $614 million to our consolidated net revenue.
- 30% of our hard drive revenue was derived from non-compute and enterprise markets, which include CE products, enterprise applications, and branded products, as compared to 36% in the prior-year period.
- Hard drive unit shipments decreased by 11% from the prior-year period to 44.2 million units.
- Gross margin increased to 32.2%, compared to 18.2% for the prior-year period.
- Operating income, including a net $15 million of charges related to the Thailand flooding and $33 million of Acquisition-related expenses, was $542 million, an increase of $384 million from the prior-year period.
- We generated $1.2 billion in cash flow from operations in the third quarter of fiscal 2012, and we finished the quarter with $3.4 billion in cash and cash equivalents.

For the June quarter, we expect overall hard drive industry shipments to be approximately 155 to 160 million units. We believe there is sufficient capacity in the industry to support demand. As our recovery from the Thailand flooding is essentially complete, we believe our pricing in the June quarter will be reflective of current market conditions. We believe our revenue in the June quarter, which will include a full-quarter of HGST revenue, will significantly increase from the March quarter.

Results of Operations

Net Revenue

(in millions, except percentages and average selling price)	Three Months Ended Mar. 30, 2012	Three Months Ended Apr. 1, 2011	Percentage Change	Nine Months Ended Mar. 30, 2012	Nine Months Ended Apr. 1, 2011	Percentage Change
Net revenue	**$3,035**	$2,252	35%	**$7,724**	$7,123	8%
Average selling price (per unit)*	**$ 68**	$ 45	51%	**$ 59**	$ 46	28%
Revenues by Geography (%)						
Americas	**21%**	22%		**21%**	23%	
Europe, Middle East and Africa	**18**	24		**20**	24	
Asia	**61**	54		**59**	53	
Revenues by Channel (%)						
OEM	**64%**	47%		**59%**	47%	
Distributors	**28**	33		**27**	33	
Retailers	**8**	20		**14**	20	
Unit Shipments*						
Compute	**34.0**	36.3		**96.5**	111.7	
Non-compute	**6.6**	11.2		**26.3**	34.2	
Enterprise	**3.6**	2.3		**7.7**	6.9	
Total units shipped	**44.2**	49.8	(11)%	**130.5**	152.8	(15)%

* Based on sales of hard drive units only.

For the quarter ended March 30, 2012, net revenue was $3.0 billion, an increase of 35% from the prior-year period. Our newly acquired operations from HGST contributed $614 million in net revenue. Total hard drive shipments decreased to 44.2 million units for the quarter ended March 30, 2012 as compared to 49.8 million units in the prior-year period. For the nine months ended March 30, 2012, net revenue was $7.7 billion, an increase of 8% from the prior-year period. Total hard drive shipments decreased to 130.5 million units for the nine months ended March 30, 2012, as compared to 152.8 million units for the prior-year period. These increases in net revenue resulted primarily from an increase in average selling price ("ASP") and the contribution of the newly acquired operations of HGST, partially offset by a decrease in shipments. For the quarter ended March 30, 2012, ASP increased by $23, from $45 to $68. For the nine months ended March 30, 2012, ASP increased by $13, from $46 to $59. These increases in ASP for the three and nine months ended March 30, 2012 were directly related to the severe supply constraints across the hard drive industry brought about by the Thailand floods.

Changes in revenue by geography and channel generally reflect normal fluctuations in market demand and competitive dynamics. However, during the three and nine months ended March 30, 2012, changes in revenue by geography and channel reflected our efforts to allocate products to our customers by balancing their immediate needs with their prevailing inventory positions in order to maximize the availability of hard drive products to the end customer within the shortest time horizon. For the three and nine months ended March 30, 2012, no customer accounted for 10% or more of our net revenue.

In accordance with standard industry practice, we have sales incentive and marketing programs that provide customers with price protection and other incentives or reimbursements that are recorded as a reduction to gross revenue. For both the three and nine months ended March 30, 2012, these programs represented 5% of gross revenues, compared to 12% and 11% in the comparative prior-year period. These amounts generally vary according to several factors, including industry conditions, seasonal demand, competitor actions, channel mix and overall availability of product. However, for the December and March quarters, sales incentive and marketing programs were significantly reduced due to the severe supply constraints across the hard drive industry brought about by the Thailand floods.

Gross Margin

(in millions, except percentages)	Three Months Ended Mar. 30, 2012	Three Months Ended Apr. 1, 2011	Percentage Change	Nine Months Ended Mar. 30, 2012	Nine Months Ended Apr. 1, 2011	Percentage Change
Net revenue	**$3,035**	$2,252	35%	**$7,724**	$7,123	8%
Gross margin	**977**	410	138%	**2,166**	1,322	64%
Gross margin %	**32.2%**	18.2%		**28.0%**	18.6%	

For the three months ended March 30, 2012, gross margin as a percentage of revenue increased to 32.2% as compared to 18.2% for the prior-year period. For the nine months ended March 30, 2012, gross margin as a percentage of revenue increased to 28.0% as compared to 18.6% for the prior-year period. These increases were primarily a result of higher ASPs, partially offset by increased costs per unit due to lower capacity utilization, increased use of air freight as opposed to less expensive sea freight, a higher mix of externally procured heads and higher costs for other components, in each case as a result of the impact of the Thailand flooding on our production and supply chain partners. In addition, the Company had an offset to gross margin of $91 million for costs recognized upon the sale of inventory that was written-up to fair value and $9 million for amortization of intangibles related to the Acquisition. In the fourth quarter of fiscal 2012, we estimate intangible asset amortization of $40 million to be included within cost of revenue.

Operating Expenses

(in millions, except percentages)	Three Months Ended Mar. 30, 2012	Three Months Ended Apr. 1, 2011	Percentage Change	Nine Months Ended Mar. 30, 2012	Nine Months Ended Apr. 1, 2011	Percentage Change
R&D expense	**$ 265**	$ 179	48%	**$ 649**	$ 515	26%
SG&A expense	**155**	73	112%	**340**	198	72%
Charges related to flooding, net	**15**	—	—	**214**	—	—
Total operating expenses	**$ 435**	$ 252		**$1,203**	$ 713	

Research and development ("R&D") expense was $265 million for the three months ended March 30, 2012, an increase of $86 million from the prior-year period. For the nine months ended March 30, 2012, R&D expense was $649 million, an increase of $134 million from the prior-year period. These increases were primarily due to the continued investment in product development to support new programs and increases in variable incentive compensation, as well as the inclusion of HGST's R&D activities since the Closing Date. As a percentage of net revenue, R&D expense increased to 8.7% and 8.4% in the three and nine months ended March 30, 2012, respectively, compared to 7.9% and 7.2% in the prior-year periods.

Selling, general and administrative ("SG&A") expense was $155 million for the three months ended March 30, 2012, an increase of $82 million over the prior-year period. For the nine months ended March 30, 2012, SG&A expense was $340 million, an increase of $142 million over the prior-year period. These increases were primarily due to incremental acquisition-related expenses of $23 million and $44 million in the three and nine months ended March 30, 2012, respectively, and increases in variable incentive compensation, as well as the inclusion of SG&A expense from HGST since the Closing Date. SG&A expense as a percentage of net revenue increased to 5.1% and 4.4% in the three and nine months ended March 30, 2012, respectively, compared to 3.2% and 2.8% in the comparative prior-year periods. In the fourth quarter of fiscal 2012, we estimate intangible asset amortization of $10 million to be included within selling, general and administrative expense.

During the three months ended March 30, 2012, we recorded $15 million of charges related to the flooding, including $10 million of fixed asset impairments, $22 million of recovery charges and $4 million in wage continuation during the shutdown period of our facilities, offset by $21 million of insurance recoveries and other cost reimbursements. During the nine months ended March 30, 2012, we recorded $214 million of charges related to the flooding, including $119 million of fixed asset impairments, $61 million of recovery charges, $28 million of write-downs of damaged inventory and $27 million in wage continuation during the shutdown period of our facilities, offset by $21 million of insurance recoveries and other cost reimbursements.

Other Income (Expense)

Interest income for the three and nine months ended March 30, 2012 increased $1 million and $3 million, respectively, as compared to the prior-year periods primarily due to higher average daily invested cash balances for the periods. Interest and other expense for the three and nine months ended March 30, 2012 increased $6 million and $11 million, respectively, as compared to the prior-year periods. These increases were primarily due to interest on an increased debt balance and $1 million and $7 million of debt commitment fees incurred prior to the closing of the Acquisition in the three and nine months ended March 30, 2012, respectively.

Income Tax Provision

Our income tax provision for the three months ended March 30, 2012 was $55 million as compared to $13 million in the prior-year period. Our income tax provision for the nine months ended March 30, 2012 was $88 million as compared to $41 million in the prior-year period. The differences between the effective tax rate and the U.S. Federal statutory rate are primarily due to tax holidays in Malaysia, the Philippines, Singapore and Thailand that expire at various dates through 2023 and the current year generation of income tax credits.

In the three months ended March 30, 2012, we recorded a net increase of $45 million in our liability for unrecognized tax benefits. This includes $41 million related to the Acquisition. As of March 30, 2012, we had a recorded liability for unrecognized tax benefits of approximately $277 million. Interest and penalties recognized on such amounts were not material.

The Internal Revenue Service ("IRS") has completed its field examination of the federal income tax returns for fiscal years 2006 and 2007 for us and calendar years 2005 and 2006 for Komag, Incorporated ("Komag"), which was acquired by us on September 5, 2007. In September 2011, we received a final Revenue Agent Report ("RAR") and Closing Agreement with respect to the years under examination for Komag. This agreement resulted in an immaterial benefit to our income tax provision. We have also received RARs from the IRS that seek adjustments to income before income taxes of approximately $970 million in connection with unresolved issues related primarily to transfer pricing and certain other intercompany transactions. We disagree with the proposed adjustments. In May 2011, we filed a protest with the IRS Appeals Office regarding the proposed adjustments. Meetings with the Appeals Office began in February 2012. In January 2012, the IRS commenced an examination of our fiscal years 2008 and 2009 and Komag's fiscal year ended September 5, 2007.

We believe that adequate provision has been made for any adjustments that may result from tax audits. However, the outcome of tax audits cannot be predicted with certainty. If any issues addressed in our tax audits are resolved in a manner not consistent with management's expectations, we could be required to adjust our provision for income taxes in the period such resolution occurs. As of March 30, 2012, it is not possible to estimate the amount of change, if any, in the unrecognized tax benefits that is reasonably possible within the next twelve months. Any significant change in the amount of our unrecognized tax benefits would most likely result from additional information or settlements relating to the examination of our tax returns.

Arbitration Award

As disclosed above in Part I, Item 1, Note 5 in the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q, on November 18, 2011, a sole arbitrator ruled against us in an arbitration in Minnesota. The arbitration involves claims brought by Seagate Technology LLC against us and a now former employee, alleging misappropriation of confidential information and trade secrets. The arbitrator issued an interim award against us in the amount of $525 million plus pre-award interest. On January 23, 2012, the arbitrator issued a final award adding pre-award interest in the amount of $105.4 million, for a total award of $630.4 million. On January 23, 2012, we filed a petition in the District Court of Hennepin County, Minnesota to have the final arbitration award vacated. A hearing on the petition to vacate was held on March 1, 2012. Interest (as simple interest, not compounding) on the final award ($630.4 million) also accrues at the Minnesota statutory rate of 10% per year while we pursue our motion to vacate the award, and if necessary, an appeal if the motion to vacate the award is unsuccessful. We intend to pursue vigorously our motion to vacate the award and, if necessary, to appeal the award if it is confirmed by the District Court of Hennepin County Minnesota. The Company does not believe it is probable that the arbitrator's award will be sustained and accordingly has not recorded any cost or liability for the arbitrator's award in excess of the amount previously accrued by the Company ($25 million). We cannot make any assurances that we will be successful in our efforts to vacate the award or to overturn the award on appeal. If we are unsuccessful in these efforts, payment of the award, including interest, would adversely affect our financial condition, results of operations and cash flows. We will also be required to record a liability for the award if we should determine it is probable we will be required to pay the award.

Liquidity and Capital Resources

We ended the third quarter of fiscal 2012 with total cash and cash equivalents of $3.4 billion. The following table summarizes our statements of cash flows (in millions):

	Nine Months Ended	
	Mar. 30, 2012	**Apr. 1, 2011**
Net cash flow provided by (used in):		
Operating activities	**$ 1,938**	$1,208
Investing activities	**(3,934)**	(625)
Financing activities	**1,889**	(87)
Effect of exchange rate changes on cash	**(6)**	—
Net increase (decrease) in cash and cash equivalents	**$ (113)**	$ 496

Our investment policy is to manage our investment portfolio to preserve principal and liquidity while maximizing return through the full investment of available funds. We believe our current cash, cash equivalents and cash generated from operations will be sufficient to meet our working capital and capital expenditure needs for the next 12 months. Our ability to sustain our working capital position is subject to a number of risks that we discuss in Part II, Item 1A of this Quarterly Report on Form 10-Q.

We had cash and cash equivalents of $3.4 billion at March 30, 2012 and $3.5 billion at July 1, 2011, of which $2.1 billion and $3.0 billion was held outside of the United States at March 30, 2012 and July 1, 2011, respectively. Substantially all of the amounts held outside of the United States are intended to be indefinitely reinvested in foreign operations. Our current plans do not anticipate that we will need funds generated from foreign operations to fund our domestic operations. In the event funds from foreign operations are needed in the United States, any repatriation could result in the accrual and payment of additional U.S. income tax.

Operating Activities

Net cash provided by operating activities was $1.9 billion and $1.2 billion during the nine months ended March 30, 2012 and the nine months ended April 1, 2011, respectively. Cash flow from operating activities consists of net income, adjusted for non-cash charges, plus or minus working capital changes. This represents our principal source of cash. Net cash provided by working capital changes was $363 million for the nine months ended March 30, 2012 as compared to $130 million for the prior-year period.

Our working capital requirements primarily depend on the effective management of our cash conversion cycle, which measures how quickly we can convert our products into cash through sales. The cash conversion cycles were as follows:

	Three Months Ended	
	Mar. 30, 2012	Apr. 1, 2011
Days sales outstanding	**71**	47
Days in inventory	**57**	28
Days payables outstanding	**(123)**	(73)
Cash conversion cycle	**5**	2

For the three months ended March 30, 2012, our days sales outstanding (“DSOs”) increased by 24 days, days in inventory (“DIOs”) increased by 29 days, and days payable outstanding (“DPOs”) increased by 50 days compared to the prior year period. These increases were primarily due to the impact of including HGST’s accounts receivable, inventory and accounts payable balances as of March 30, 2012, but only including HGST’s revenue and cost of sales from the date of Acquisition. From time to time, we modify the timing of payments to our vendors. We make modifications primarily to manage our vendor relationships and to manage our cash flows, including our cash balances. Generally, we make the payment modifications through negotiations with our vendors or by granting to, or receiving from, our vendors payment term accommodations.

Investing Activities

Cash used in investing activities for the nine months ended March 30, 2012 was $3.9 billion as compared to $625 million for the prior-year period and consisted of $3.5 billion, net of cash acquired, used for the Acquisition and capital expenditures of $393 million. Cash used in investing activities for the nine months ended April 1, 2011 consisted of $625 million of capital expenditures.

For fiscal 2012, we expect capital expenditures to be approximately $750 million, which includes capital expenditures we expect to restore our capacity to pre-flood levels and enhance our supply chain infrastructure.

Our cash equivalents at March 30, 2012 were invested in highly liquid money market funds that are invested in U.S. Treasury securities, U.S. Treasury bills and U.S. Government agency securities. During the nine months ended March 30, 2012, we settled $1 million of auction-rate securities, reducing the carrying value of these investments to $14 million.

Financing Activities

Net cash provided by financing activities for the nine months ended March 30, 2012 was $1.9 billion as compared to $87 million used in financing activities in the prior-year period. Net cash provided by financing activities for the nine months ended March 30, 2012 consisted of the $2.8 billion of proceeds borrowed under the Credit Facility in connection with the Acquisition, net of issuance costs, and a net $49 million provided by employee stock plans, offset by $935 million used to repay outstanding debt of the Company as well as debt assumed in the Acquisition. Net cash used in financing activities for the nine months ended April 1, 2011 consisted of $75 million used to repay debt and $50 million used to repurchase shares of our common stock, offset by a net $38 million provided by employee stock plans.

Off-Balance Sheet Arrangements

Other than facility lease commitments incurred in the normal course of business and certain indemnification provisions (see "Contractual Obligations and Commitments" below), we do not have any off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not included in our unaudited condensed consolidated financial statements. Additionally, we do not have an interest in, or relationships with, any special-purpose entities.

Contractual Obligations and Commitments

Acquisition — As a result of the Acquisition, the Company assumed contractual obligations and commitments from HGST. The following is a summary of the significant contractual cash obligations and commercial commitments assumed as a result of the Acquisition as of March 30, 2012 (in millions):

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Capital leases	$ 4	$ 1	$ 3	$ —	$ —
Operating leases	57	26	23	8	—
Purchase obligations	981	970	6	3	2
Total	$1,042	$ 997	$ 32	$ 11	$ 2

Long-Term Debt — On March 8, 2012, in connection with the Acquisition, WDI and WDT entered into the Credit Facility that provides for $2.8 billion of unsecured loan facilities, consisting of a $2.3 billion term loan facility and a $500 million revolving credit facility. The $2.3 billion term loan facility and $500 million available under the revolving credit facility were borrowed on the Closing Date and used to partially fund the Acquisition and repay our existing debt and debt assumed in the Acquisition. As of March 30, 2012, all $500 million remained outstanding under the revolving credit facility. As of March 30, 2012, the outstanding balance of the term loan facility was $2.2 billion. We are required to make principal payments on the term loan facility totaling $58 million through the remainder of 2012, $230 million a year for 2013 through 2016, and the remaining $1.3 billion balance (subject to adjustment to reflect prepayments or an increase to its term loan facility) in 2017, with the term loan facility balance due and payable in full on March 8, 2017 (the "Maturity Date"). The outstanding amount of revolving credit loans are also required to be repaid on the Maturity Date. We intend to repay the revolving credit facility within one year; therefore, the outstanding balance of $500 million under the revolving credit facility is classified as a current liability on our condensed consolidated balance sheets. See Part I, Item 1, Note 4 in the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

The Credit Facility requires us to comply with a leverage ratio and an interest coverage ratio calculated on a consolidated basis for us and our subsidiaries. In addition, the Credit Facility contains customary covenants, including covenants that limit or restrict, subject to certain exceptions, our ability to incur liens, incur indebtedness, make certain restricted payments, merge, consolidate or dispose of substantially all of our assets, enter into certain speculative hedging arrangements and make any material change in the nature of our business. Upon the occurrence of an event of default under the Credit Facility, the administrative agent at the request, or with the consent, of the Required Lenders (as defined in the Credit Facility) may cease making loans, terminate the Credit Facility and declare all amounts outstanding to be immediately due and payable, require the cash collateralization of letters of credit and/or exercise all other rights and remedies available to it, the lenders and the letter of credit issuer. The Credit Facility specifies a number of events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults, cross-defaults to other material indebtedness, bankruptcy and insolvency defaults, material judgment defaults and a change of control default. As of March 30, 2012, we were in compliance with all covenants under the Credit Facility.

On March 8, 2012, the Company repaid the entire outstanding principal amount of $231 million on its previous term loan facility originally scheduled to mature on February 11, 2013, plus accrued and unpaid interest, as well as $585 million of assumed debt from the acquisition of HGST.

Purchase Orders — In the normal course of business, we enter into purchase orders with suppliers for the purchase of hard drive components used to manufacture our products. These purchase orders generally cover forecasted component supplies needed for production during the next quarter, are recorded as a liability upon receipt of the components, and generally may be changed or canceled at any time prior to shipment of the components. We also enter into purchase orders with suppliers for capital equipment that are recorded as a liability upon receipt of the equipment. Our ability to change or cancel a capital equipment purchase order without penalty depends on the nature of the equipment being ordered. In some cases, we may be obligated to pay for certain costs related to changes to, or cancellation of, a purchase order, such as costs incurred for raw materials or work in process of components or capital equipment.

We have entered into long-term purchase agreements with various component suppliers, which contain minimum quantity requirements. However, the dollar amount of the purchases may depend on the specific products ordered, achievement of pre-defined quantity or quality specifications or future price negotiations. We have also entered into long-term purchase agreements with various component suppliers that carry fixed volumes and pricing which obligate us to make certain future purchases, contingent on certain conditions of performance, quality and technology of the vendor's components.

We enter into, from time to time, other long-term purchase agreements for components with certain vendors. Generally, future purchases under these agreements are not fixed and determinable as they depend on our overall unit volume requirements and are contingent upon the prices, technology and quality of the supplier's products remaining competitive.

On November 15, 2011, we entered into an agreement with SAE Magnetics (H.K.) Ltd., a subsidiary of TDK ("SAE"), for the supply of heads, which includes quarterly minimum volumes for multiple quarters. The term of the agreement commenced in the third quarter of fiscal 2012. We have had an ongoing supply relationship for heads with SAE over periods spanning several years prior to this agreement.

See Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations — "Contractual Obligations and Commitments" in our Annual Report on Form 10-K for the year ended July 1, 2011, for further discussion of our purchase orders and purchase agreements and the associated dollar amounts. See Part II, Item 1A of this Quarterly Report on Form 10-Q for a discussion of the risks associated with these commitments.

Foreign Exchange Contracts — We purchase short-term, foreign exchange contracts to hedge the impact of foreign currency fluctuations on certain underlying assets, revenue, liabilities and commitments for operating expenses and product costs denominated in foreign currencies. See Part I, Item 3, of this Quarterly Report on Form 10-Q under the heading "Disclosure About Foreign Currency Risk," for a description of our current foreign exchange contract commitments and Part I, Item 1, Note 8 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

Indemnifications — In the ordinary course of business, we may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of our breach of agreements, products or services to be provided by us, or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with our directors and certain of our officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors or officers. We maintain director and officer insurance, which may cover certain liabilities arising from our obligation to indemnify our directors and officers in certain circumstances.

It is not possible to determine the maximum potential amount under these indemnification agreements due to the limited history of prior indemnification claims and the unique facts and circumstances involved in each particular agreement. Such indemnification agreements may not be subject to maximum loss clauses. Historically, we have not incurred material costs as a result of obligations under these agreements.

Unrecognized Tax Benefits — As of March 30, 2012, the cash portion of our total recorded liability for unrecognized tax benefits was $167 million, which included $12 million related to the HGST acquisition. We estimate the timing of the future payments of these liabilities to be within the next one to five years. See Part I, Item 1, Note 6 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q for information regarding our total tax liability for unrecognized tax benefits.

Stock Repurchase Program — Our Board of Directors previously authorized us to repurchase $750 million of our common stock in open market transactions under a stock repurchase program through March 31, 2013. Since the inception of this program in 2005 through March 30, 2012, we have repurchased 20 million shares of our common stock for a total cost of $334 million. We did not repurchase any shares under this program during the nine months ended March 30, 2012. Subsequent to March 30, 2012 through May 8, 2012, the Company repurchased 7.8 million shares for a total cost of $305 million.

Critical Accounting Policies and Estimates

We have prepared the accompanying unaudited condensed consolidated financial statements in accordance with U.S. GAAP. The preparation of the financial statements requires the use of judgments and estimates that affect the reported amounts of revenues, expenses, assets, liabilities and shareholders' equity. We have adopted accounting policies and practices that are generally accepted in the industry in which we operate. We believe the following are our most critical accounting policies that affect significant areas and involve judgment and estimates made by us. If these estimates differ significantly from actual results, the impact to the consolidated financial statements may be material.

Revenue and Accounts Receivable

In accordance with standard industry practice, we provide distributors and retailers (collectively referred to as "resellers") with limited price protection for inventories held by resellers at the time of published list price reductions, and we provide resellers and OEMs with other sales incentive programs. At the time we recognize revenue to resellers and OEMs, we record a reduction of revenue for estimated price protection until the resellers sell such inventory to their customers and we also record a reduction of revenue for the other programs in effect. We base these adjustments on several factors including anticipated price decreases during the reseller holding period, resellers' sell-through and inventory levels, estimated amounts to be reimbursed to qualifying customers, historical pricing information and customer claim processing. If customer demand for hard drives or market conditions differs from our expectations, our operating results could be materially affected, as exemplified by the impact of the Thailand flooding on our operating results in the December quarter. We also have programs under which we reimburse qualified distributors and retailers for certain marketing expenditures, which are recorded as a reduction of revenue. These amounts generally vary according to several factors including industry conditions, seasonal demand, competitor actions, channel mix and overall availability of product. Generally, total sales incentive and marketing programs range from 9% to 12% of gross revenues per quarter. However, for the December and March quarters, sales incentive and marketing programs were 5% of gross revenues due to the severe supply constraints across the hard drive industry brought about by the Thailand floods. Changes in future customer demand and market conditions may require us to adjust our incentive programs as a percentage of gross revenue from the current range. Adjustments to revenues due to changes in accruals for these programs related to revenues reported in prior periods have averaged 0.3% of quarterly gross revenue since the first quarter of fiscal 2011. Customer sales incentive and marketing programs are recorded as a reduction of revenue.

We record an allowance for doubtful accounts by analyzing specific customer accounts and assessing the risk of loss based on insolvency, disputes or other collection issues. In addition, we routinely analyze the different receivable aging categories and establish reserves based on a combination of past due receivables and expected future losses based primarily on our historical levels of bad debt losses. If the financial condition of a significant customer deteriorates resulting in its inability to pay its accounts when due, or if our overall loss history changes significantly, an adjustment in our allowance for doubtful accounts would be required, which could materially affect operating results.

We establish provisions against revenue and cost of revenue for sales returns in the same period that the related revenue is recognized. We base these provisions on existing product return notifications. If actual sales returns exceed expectations, an increase in the sales return accrual would be required, which could materially affect operating results.

Warranty

We record an accrual for estimated warranty costs when revenue is recognized. We generally warrant our products for a period of one to five years. Our warranty provision considers estimated product failure rates and trends, estimated repair or replacement costs and estimated costs for customer compensatory claims related to product quality issues, if any. We use a statistical warranty tracking model to help prepare our estimates and assist us in exercising judgment in determining the underlying estimates. Our statistical tracking model captures specific detail on hard drive reliability, such as factory test data, historical field return rates, and costs to repair by product type. Our judgment is subject to a greater degree of subjectivity with respect to newly introduced products because of limited field experience with those products upon which to base our warranty estimates. We review our warranty accrual quarterly for products shipped in prior periods and which are still under warranty. Any changes in the estimates underlying the accrual may result in adjustments that impact current period gross margin and income. Such changes are generally a result of differences between forecasted and actual return rate experience and costs to repair. If actual product return trends, costs to repair returned products or costs of customer compensatory claims differ significantly from our estimates, our future results of operations could be materially affected. For a summary of historical changes in estimates related to pre-existing warranty provisions, refer to Part I, Item 1, Note 2 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

Inventory

We value inventories at the lower of cost (first-in, first-out and weighted-average methods) or net realizable value. We use the first-in, first-out ("FIFO") method to value the cost of the majority of our inventories, while we use the weighted-average method to value precious metal inventories. Weighted-average cost is calculated based upon the cost of precious metals at the time they are received by us. We have determined that it is not practicable to assign specific costs to individual units of precious metals and, as such, we relieve our precious metals inventory based on the weighted-average cost of the inventory at the time the inventory is used in production. The weighted-average method of valuing precious metals does not materially differ from a FIFO method. We record inventory write-downs for the valuation of inventory at the lower of cost or net realizable value by analyzing market conditions and estimates of future sales prices as compared to inventory costs and inventory balances.

We evaluate inventory balances for excess quantities and obsolescence on a regular basis by analyzing estimated demand, inventory on hand, sales levels and other information, and reduce inventory balances to net realizable value for excess and obsolete inventory based on this analysis. Unanticipated changes in technology or customer demand could result in a decrease in demand for one or more of our products, which may require a write down of inventory that could materially affect operating results.

Litigation and Other Contingencies

When we become aware of a claim or potential claim, we assess the likelihood of any loss or exposure. We disclose information regarding each material claim where the likelihood of a loss contingency is probable or reasonably possible. If a loss contingency is probable and the amount of the loss can be reasonably estimated, we record an accrual for the loss. In such cases, there may be an exposure to potential loss in excess of the amount accrued. Where a loss is not probable but is reasonably possible or where a loss in excess of the amount accrued is reasonably possible, we disclose an estimate of the amount of the loss or range of possible losses for the claim if a reasonable estimate can be made, unless the amount of such reasonably possible losses is not material to our financial position, results of operations or cash flows. The ability to predict the ultimate outcome of such matters involves judgments, estimates and inherent uncertainties. The actual outcome of such matters could differ materially from management's estimates. Refer to Part I, Item 1, Note 5 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

Income Taxes

We account for income taxes under the asset and liability method, which provides that deferred tax assets and liabilities be recognized for temporary differences between the financial reporting basis and the tax basis of our assets and liabilities and expected benefits of utilizing net operating loss and tax credit carryforwards. We record a valuation allowance when it is more likely than not that the deferred tax assets will not be realized. Each quarter, we evaluate the need for a valuation allowance for our deferred tax assets and we adjust the valuation allowance so that we record net deferred tax assets only to the extent that we conclude it is more likely than not that these deferred tax assets will be realized.

We recognize liabilities for uncertain tax positions based on a two-step process. To the extent a tax position does not meet a more-likely-than-not level of certainty, no benefit is recognized in the financial statements. If a position meets the more-likely-than-not level of certainty, it is recognized in the financial statements at the largest amount that has a greater than 50% likelihood of being realized upon ultimate settlement. Interest and penalties related to unrecognized tax benefits are recognized on liabilities recorded for uncertain tax positions and are recorded in our provision for income taxes. The actual liability for unrealized tax benefits in any such contingency may be materially different from our estimates, which could result in the need to record additional liabilities for unrecognized tax benefits or potentially adjust previously-recorded liabilities for unrealized tax benefits and materially affect our operating results.

Stock-based Compensation

We account for all stock-based compensation at fair value. Stock-based compensation cost is measured at the grant date based on the value of the award and is recognized as expense over the vesting period. The fair values of all stock options and stock appreciation rights granted are estimated using a binomial model, and the fair values of all Employee Stock Purchase Plan purchase rights are estimated using the Black-Scholes-Merton option-pricing model. Both the binomial and the Black-Scholes-Merton models require the input of highly subjective assumptions. We are required to use judgment in estimating the amount of stock-based awards that are expected to be forfeited. If actual forfeitures differ significantly from the original estimate, stock-based compensation expense and our results of operations could be materially affected.

Recent Accounting Pronouncements

For a description of recently issued and adopted accounting pronouncements, including the respective dates of adoption and expected effects on our results of operations and financial condition, refer to Part I, Item I, Note 13 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q, which is incorporated by reference in response to this item.

Item 3. *QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK*

Disclosure About Foreign Currency Risk

Although the majority of our transactions are in U.S. dollars, some transactions are based in various foreign currencies. We purchase short-term, foreign exchange contracts to hedge the impact of foreign currency exchange fluctuations on certain underlying assets, revenue, liabilities and commitments for operating expenses and product costs denominated in foreign currencies. The purpose of entering into these hedge transactions is to minimize the impact of foreign currency fluctuations on our results of operations. The contract maturity dates do not exceed 12 months. We do not purchase foreign exchange contracts for trading or speculative purposes. Currently, we focus on hedging our foreign currency risk related to the Thai Baht, Malaysian Ringgit, Japanese Yen, Singapore Dollar, Philippine Peso, Euro and British Pound Sterling. Thai Baht contracts are designated as either cash flow or fair value hedges. Malaysian Ringgit, Japanese Yen and Singapore Dollar contracts are designated as cash flow hedges. Singapore Dollar, Philippine Peso, Euro and British Pound Sterling contracts are designated as fair value hedges. See Part I, Item 1, Note 8 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q.

As of March 30, 2012, we had outstanding the following purchased foreign exchange contracts (in millions, except weighted average contract rate):

	Contract Amount	Weighted Average Contract Rate*	Unrealized Gain
Foreign exchange contracts:			
Japanese Yen cash flow hedges	$ 66	80.58	—
Malaysian Ringgit cash flow hedges	$ 318	3.09	$ 1
Singapore Dollar cash flow hedges	$ 4	1.25	—
Thai Baht cash flow hedges	$ 532	31.04	$ 1
British Pound Sterling fair value hedges	$ 2	0.63	—
Euro fair value hedges	$ 7	0.75	—
Philippine Peso fair value hedges	$ 3	42.62	—
Singapore Dollar fair value hedges	$ 22	1.27	—
Thai Baht fair value hedges	$ 298	31.10	—

* Expressed in units of foreign currency per U.S. dollar.

During the three and nine months ended March 30, 2012, total net realized transaction and foreign exchange contract currency gains and losses were not material to the condensed consolidated financial statements.

Disclosure About Other Market Risks

Variable Interest Rate Risk

Borrowings under the Credit Facility bear interest at a rate equal to, at the option of the applicable Borrower, either (a) a LIBOR rate determined by reference to the British Bankers Association LIBOR Rate for the interest period relevant to such borrowing, subject to certain exceptions (the “Eurodollar Rate”) or (b) a base rate determined by reference to the higher of (i) the federal funds rate plus 0.50%, (ii) the prime rate as announced by Bank of America, N.A. and (iii) the Eurodollar Rate plus 1.00% (the “Base Rate”), in each case plus an applicable margin. The applicable margin for borrowings under the Credit Facility ranges from 1.50% to 2.50% with respect to borrowings at the Eurodollar Rate and 0.50% to 1.50% with respect to borrowings at the Base Rate. The applicable margins for borrowings under the Credit Facility are determined based upon a leverage ratio of the Company and its subsidiaries calculated on a consolidated basis. If the federal funds rate, prime rate or LIBOR rate increase, our interest payments could also increase. A one percent increase in the variable rate of interest on the term loan facility would increase interest expense by approximately $27 million annually.

Item 4. ***CONTROLS AND PROCEDURES***

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

As a result of our acquisition of HGST on March 8, 2012, we have adopted certain existing controls of HGST; however, there has been no change in our internal control over financial reporting during the third fiscal quarter ended March 30, 2012, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. ***LEGAL PROCEEDINGS***

For a description of our legal proceedings, refer to Part I, Item 1, Note 5 of the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q, which is incorporated by reference in response to this item.

Item 1A. ***RISK FACTORS***

We have updated a number of the risk factors affecting our business since those presented in our Annual Report on Form 10-K, Part I, Item 1A, for the fiscal year ended July 1, 2011. Except for the first four risk factors, there have been no material changes in our assessment of our risk factors from those set forth in our Annual Report on Form 10-K for the fiscal year ended July 1, 2011. For convenience, all of our risk factors are included below.

The 2011 severe flooding in Thailand, which inundated our Thailand manufacturing facilities and resulted in the temporary suspension of all production in those facilities, has affected, and will continue to affect, our near-term business, results of operations and financial condition.

As previously disclosed, the 2011 severe flooding in Thailand resulted in the temporary suspension of production in all of our Thailand manufacturing facilities. While production has resumed in our Thailand facilities, material risks and uncertainties as a result of flooding remain, including the following:

- *Under-Absorption of Assets*. Our hard disk drive production capacity has reached a point where we can adequately meet anticipated customer demand; however, industry demand has not returned to pre-flood levels. In addition, we lost market share as a result of the flooding due to the impact on our manufacturing capabilities relative to that of our competitors and due to certain of our competitors entering into long-term purchase agreements with customers. If industry demand does not return to pre-flood levels, or if we are not able to regain market share, our costs will be impacted negatively by significant under-absorption of our assets and infrastructure and our business and results of operations will be adversely affected.
- *Component Costs*. Due to component supply constraints as a result of the flooding, the cost of certain component materials has increased and may continue to increase. In addition, during the flooding we entered into certain volume commitment agreements with certain of our component suppliers, which has resulted and may continue to result in the cost of certain components increasing over pre-flood levels. An increase in the cost of component materials that cannot be recovered through increased pricing could adversely affect our operating results.
- *Restored Equipment*. The equipment we use is highly sophisticated and complex. We have attempted to repair or refurbish certain equipment damaged in the flooding; however, the remaining useful life of, and costs associated with maintaining, such equipment is uncertain. If repaired or refurbished equipment does not last as long as planned, we may be required to increase capital expenditures to replace such equipment, which could adversely affect our financial condition and results of operations.

- *Insurance*. We maintain insurance coverage that provides property and business interruption coverage in the event of losses arising from flooding. The claim process is in its early stages and we are unable to predict how much of our losses will be covered by insurance. It is reasonably possible that the final losses that we incur in connection with the flood damage and our business interruption will exceed the limits of our insurance policies. We also cannot estimate the timing of the proceeds we will ultimately receive under our insurance policies, and there may be a substantial delay between our incurrence of losses and our recovery under our insurance policies.
- *New Product Development*. The flooding of our Thailand facilities and suspension of operations delayed or adversely impacted our development and introduction of new products and technologies. If our competitors are able to gain an advantage in implementing new technologies and introducing new products, it may reduce our sales and adversely affect our results of operations.

The nature of our business and our reliance on intellectual property and other proprietary information subjects us to the risk of significant litigation.

The data storage industry has been characterized by significant litigation. This includes litigation relating to patent and other intellectual property rights, product liability claims and other types of litigation. Litigation can be expensive, lengthy and disruptive to normal business operations. Moreover, the results of litigation are inherently uncertain and may result in adverse rulings or decisions. We may enter into settlements or be subject to judgments that may, individually or in the aggregate, have a material adverse effect on our business, financial condition or operating results. As disclosed above in Part I, Item 1, Note 5 in the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q, on November 18, 2011, a sole arbitrator ruled against us in an arbitration in Minnesota. The arbitration involves claims brought by Seagate Technology LLC against us and a now former employee, alleging misappropriation of confidential information and trade secrets. The arbitrator issued an interim award against us in the amount of $525 million plus pre-award interest. On January 23, 2012, the arbitrator issued a final award adding pre-award interest in the amount of $105.4 million, for a total award of $630.4 million. On January 23, 2012, we filed a petition in the District Court of Hennepin County, Minnesota to have the final arbitration award vacated, and a hearing on the petition was held on March 1, 2012. Interest (as simple interest, not compounding) on the final award ($630.4 million) also accrues at the Minnesota statutory rate of 10% per year while we pursue our motion to vacate the award, and if necessary, an appeal if the motion to vacate the award is unsuccessful. We intend to pursue vigorously our motion to vacate the award and, if necessary, to appeal the award if it is confirmed by the District Court of Hennepin County Minnesota. We do not believe it is probable that the arbitrator’s award will be sustained and accordingly have not recorded any liability for the arbitrator’s award in excess of the amount we have previously accrued ($25 million). We cannot make any assurances that we will be successful in our efforts to vacate the award or to overturn the award on appeal. If we are unsuccessful in these efforts, payment of the award, including interest, would adversely affect our financial condition, results of operations and cash flows. We will also be required to record a liability for the award if we should determine it is probable we will be required to pay the award.

We evaluate notices of alleged patent infringement and notices of patents from patent holders that we receive from time to time. If claims or actions are asserted against us, we may be required to obtain a license or cross-license, modify our existing technology or design a new non-infringing technology. Such licenses or design modifications can be extremely costly. In addition, we may decide to settle a claim or action against us, which settlement could be costly. We may also be liable for any past infringement. If there is an adverse ruling against us in an infringement lawsuit, an injunction could be issued barring production or sale of any infringing product. It could also result in a damage award equal to a reasonable royalty or lost profits or, if there is a finding of willful infringement, treble damages. Any of these results would increase our costs and harm our operating results.

In connection with obtaining the regulatory approvals required to complete our acquisition of HGST, we agreed to divest certain assets to Toshiba, and the successful completion of the divestiture is subject to risks and uncertainties, and our business will be adversely affected in the event we fail to successfully complete the divestiture on a timely basis or at all.

In connection with obtaining the regulatory approvals required to complete our acquisition of HGST, we agreed, subject to review by regulatory agencies in certain jurisdictions, to divest certain assets to Toshiba that will expand Toshiba's capacity to manufacture 3.5-inch hard drives for the desktop, consumer electronics and near-line (business critical) applications. This divestiture transaction has received all required regulatory approvals and must be completed within the time periods agreed upon with the jurisdictions whose approval of the Acquisition was conditioned on the divestiture, subject to any extensions that are obtained. There is no guarantee that we will complete the divestiture to Toshiba on a timely basis or at all. If we are not able to complete the divestiture on a timely basis or at all, the jurisdictions that conditioned their approval of the HGST acquisition on the divestiture could impose certain obligations on us, including a requirement that we divest the assets subject to the Toshiba divestiture (or other assets) to another purchaser, which could adversely affect our business, financial condition and results of operations.

If we fail to realize the anticipated benefits from our acquisition of HGST on a timely basis, or at all, our business and financial condition may be adversely affected.

In connection with obtaining the regulatory approvals required to complete the acquisition of HGST, we agreed to certain conditions required by the Chinese Ministry of Commerce ("MOFCOM"), including adopting measures to keep HGST as an independent competitor until MOFCOM agrees otherwise (with the minimum period being two years). We are working closely with MOFCOM to finalize an operations plan that is expected to outline in more detail the conditions of the competitive requirement. Compliance with these measures will limit or restrict our ability to integrate all or certain portions of HGST's business with our business, cause delays or uncertainties in making decisions about the combined business, and result in significant costs or require changes in business practices, each of which could negatively impact our business, financial condition and results of operations. In the event we fail to comply with these measures, the time during which we are required to comply with the condition could be extended and we could be subject to other conditions or penalties that could adversely affect the business.

In addition to the requirement to maintain HGST as an independent competitor, we may also fail to realize the anticipated benefits from our acquisition of HGST on a timely basis, or at all, for a variety of other reasons, including the following:

- difficulties entering new markets or manufacturing in new geographies where we have no or limited direct prior experience;
- failure to identify or assess the magnitude of certain liabilities we are assuming in the acquisition, which could result in unexpected litigation or regulatory exposure, unfavorable accounting treatment, unexpected increases in taxes due, a loss of anticipated tax benefits or other adverse effects on our business, operating results or financial condition;
- failure to realize the anticipated increase in our revenues due to the acquisition if customers adjust their purchasing decisions and allocate more market share to our competitors;
- failure to successfully manage relationships with our supplier and customer base;
- difficulties, when allowed, integrating and harmonizing business systems;
- difficulties in modifying HGST's existing accounting and internal control systems to comply with Section 404 of the Sarbanes-Oxley Act of 2002, which could adversely impact the effectiveness of internal control over financial reporting for the combined company; and
- the loss of key employees.

If we are not able to successfully manage these issues, the anticipated benefits and efficiencies of the HGST acquisition may not be realized fully or at all, or may take longer to realize than expected, and our ability to compete, our revenue and gross margins and our results of operations may be adversely affected.

The acquisition of HGST may result in significant restructuring charges that could adversely affect the financial results of the combined company.

The financial results of the combined company may be adversely affected by cash expenses and non-cash accounting charges incurred in connection with the combination. The amount and timing of these possible charges are not yet known. The price of our common stock following the acquisition could decline to the extent the combined company's financial results are materially affected by these charges.

The financing of the HGST acquisition may have an adverse impact on our liquidity, limit our flexibility in responding to other business opportunities and increase our vulnerability to adverse economic and industry conditions.

Our acquisition of HGST was financed by a combination of the issuance of additional shares of our common stock, the use of a significant amount of our cash on hand and the incurrence of a significant amount of indebtedness. The use of cash on hand and indebtedness to finance the acquisition reduced our liquidity and could cause us to place more reliance on cash flow from operations to pay principal and interest on our debt, thereby reducing the availability of our cash flow for operations and development activities. The credit agreement we entered into with respect to the indebtedness we incurred to finance the acquisition contains restrictive covenants, including financial covenants requiring us to maintain specified financial ratios. Our ability to meet these restrictive covenants can be affected by events beyond our control. The indebtedness and these restrictive covenants will also have the effect, among other things, of impairing our ability to obtain additional financing, if needed, limiting our flexibility in the conduct of our business and making us more vulnerable to economic downturns and adverse competitive and industry conditions. In addition, a breach of the restrictive covenants could result in an event of default under the credit agreement, which, if not cured or waived, could result in the indebtedness becoming immediately due and payable and could have a material adverse effect on our business, financial condition or operating results.

Adverse global economic conditions and credit market uncertainty could harm our business, results of operations and financial condition.

Adverse global economic conditions and uncertain conditions in the credit market have had, and in the future could have, a significant adverse effect on our company and on the storage industry as a whole. Some of the risks and uncertainties we face as a result of these global economic and credit market conditions include the following:

- *Volatile Demand.* Negative or uncertain global economic conditions could cause many of our direct and indirect customers to delay or reduce their purchases of our products and systems containing our products. In addition, many of our customers rely on credit financing to purchase our products. If negative conditions in the global credit markets prevent our customers' access to credit, product orders may decrease, which could result in lower revenue. Likewise, if our suppliers, sub-suppliers and sub-contractors (collectively referred to as "suppliers") face challenges in obtaining credit, in selling their products or otherwise in operating their businesses, they may be unable to offer the materials we use to manufacture our products. These actions could result in reductions in our revenue and increased operating costs, which could adversely affect our business, results of operations and financial condition.
- *Restructuring Activities.* If demand slows significantly as a result of a deterioration in economic conditions or otherwise, we may need to execute restructuring activities to realign our cost structure with softening demand. The occurrence of restructuring activities could result in impairment charges and other expenses, which could adversely impact our results of operations or financial condition.
- *Credit Volatility and Loss of Receivables.* We extend credit and payment terms to some of our customers. In addition to ongoing credit evaluations of our customers' financial condition, we traditionally seek to mitigate our credit risk by purchasing credit insurance on certain of our accounts receivable balances. As a result of the continued uncertainty and volatility in global economic conditions, however, we may find it increasingly difficult to be able to insure these accounts receivable. We could suffer significant losses if a customer whose accounts receivable we have not insured, or have underinsured, fails and is unable to pay us. Additionally, negative or uncertain global economic conditions increase the risk that if a customer whose accounts receivable we have insured fails, the financial condition of the insurance carrier for such customer account may have also deteriorated such that it cannot cover our loss. A significant loss of an accounts receivable that we cannot recover through credit insurance would have a negative impact on our financial results.
- *Impairment Charges.* Negative or uncertain global economic conditions could result in circumstances, such as a sustained decline in our stock price and market capitalization or a decrease in our forecasted cash flows such that they are insufficient, indicating that the carrying value of our long-lived assets or goodwill may be impaired. If we are required to record a significant charge to earnings in our consolidated financial statements because an impairment of our long-lived assets or goodwill is determined, our results of operations will be adversely affected.

We participate in a highly competitive industry that is subject to the risk of declining average selling prices ("ASPs"), volatile gross margins and significant shifts in market share, all of which could adversely affect our operating results.

Demand for our hard drives depends in large part on the demand for systems manufactured by our customers and on storage upgrades to existing systems. The demand for systems has been volatile in the past and often has had an exaggerated effect on the demand for hard drives in any given period. As a result, the hard drive market has experienced periods of excess capacity, which can lead to liquidation of excess inventories and more intense price competition. If more intense price competition occurs, we may be forced to lower prices sooner and more than expected, which could result in lower ASPs, revenue and gross margins. Our ASPs and gross margins also tend to decline when there is a shift in the mix of product sales, and sales of lower priced products increase relative to those of higher priced products. In addition, rapid technological changes often reduce the volume and profitability of sales of existing products and increase the risk of inventory obsolescence. These factors, along with others, may result in significant shifts in market share among the industry's major participants.

Our failure to accurately forecast market and customer demand for our products, or to quickly adjust to forecast changes, could adversely affect our business and financial results or operating efficiencies.

The data storage industry faces difficulties in accurately forecasting market and customer demand for its products. The variety and volume of products we manufacture is based in part on these forecasts. Accurately forecasting demand has become increasingly difficult for us, our customers and our suppliers in light of the volatility in global economic conditions, a recent shift from air to ocean freight in response to increased transportation costs, which requires additional lead times, and industry consolidation, which has resulted in less availability of historical market data for certain product segments. In addition, because hard drives are designed to be largely interchangeable with competitors' products, our demand forecasts may be impacted significantly by the strategic actions of our competitors. As forecasting demand becomes more difficult, the risk that our forecasts are not in line with demand increases. If our forecasts exceed actual market demand, then we could experience periods of product oversupply and price decreases, which could impact our financial performance. If market demand increases significantly beyond our forecasts or beyond our ability to add manufacturing capacity, then we may not be able to satisfy customer product needs, which could result in a loss of market share if our competitors are able to meet customer demands.

We experience significant sales seasonality and cyclicality, which could cause our operating results to fluctuate.

Sales of computer systems, storage subsystems and consumer electronics tend to be seasonal and cyclical, and therefore we expect to continue to experience seasonality and cyclicality in our business as we respond to variations in our customers' demand for hard drives. In the desktop, mobile, CE and retail markets, seasonality is partially attributable to the increase in sales of PCs and CE devices during the back-to-school and winter holiday seasons. As such, we anticipate that sales of our products will continue to be lower during the second half of our fiscal year. However, prior to the flooding in Thailand, we began to experience a muting of typical seasonal demand patterns partially driven by the increased adoption of sea freight in the PC supply chain, which requires additional lead times, and the increased importance of emerging markets, which may have different seasonal demand patterns. While this muting of typical season demand patterns has been impacted by the flooding in Thailand, we expect this pattern to continue once the effects of the flooding subside. In the enterprise market our sales are seasonal because of the capital budgeting and purchasing cycles of our end users. However, changes in seasonal and cyclical patterns have made it, and could continue to make it, more difficult for us to forecast demand, especially in the current macroeconomic environment. Changes in the product or channel mix of our business can also impact seasonal and cyclical patterns, adding complexity in forecasting demand. Seasonality and cyclicality also may lead to higher volatility in our stock price. It is difficult for us to evaluate the degree to which seasonality and cyclicality may affect our stock price or business in future periods because of the rate and unpredictability of product transitions and new product introductions and macroeconomic conditions.

Our customers' demand for storage may not continue to grow at current industry estimates, which may lower the prices our customers are willing to pay for our products or put us at a disadvantage to competing technologies.

Our customers' demand for storage may not continue to grow at current industry estimates as a result of:

- *Mobile Devices.* There has been a recent rapid growth in CE devices that do not contain a hard drive such as tablet computers and smartphones. While tablet computers and smartphones provide many of the same capabilities as PCs, the extent to which they will displace or materially affect the demand for PCs is uncertain. If device-makers are successful in achieving customer acceptance of these devices as a replacement for traditional computing applications that contain hard drives, or if we are not successful in adapting our product offerings to include alternative storage solutions that address these devices, then demand for our products may decrease.

- *Cloud Computing.* Consumers traditionally have stored their data on their PC, often supplemented with personal external storage devices. Most businesses also include similar local storage as a primary or secondary storage location. This storage is typically provided by hard disk drives. Recently, cloud computing has emerged whereby applications and data are hosted, accessed and processed through a third-party provider over a broadband Internet connection, potentially reducing or eliminating the need for, among other things, significant storage inside the accessing computer. This trend could cause the market for disk drives in computers to decline over time, which could harm our business to the extent this decline is not offset by the sale of our products to customers who provide cloud computing services.

Demand for our products also could be negatively impacted by developments in the regulation and enforcement of digital rights management, the emergence of processes such as data deduplication and storage virtualization, economic conditions, and the rate of increase in areal density exceeding the increase in our customers' demand for storage. These factors could lead to our customers' storage needs being satisfied at lower prices with lower capacity hard drives or solid-state storage products that we do not offer, thereby decreasing our revenue or putting us at a disadvantage to competing storage technologies. As a result, even with increasing aggregate demand for storage, if we fail to anticipate or timely respond to these developments in the demand for storage, our ASPs could decline, which could adversely affect our operating results.

Selling to the retail market is an important part of our business, and if we fail to maintain and grow our market share or gain market acceptance of our branded products, our operating results could suffer.

Selling branded products is an important part of our business, and as our branded products revenue increases as a portion of our overall revenue, our success in the retail market becomes increasingly important to our operating results. Our success in the retail market depends in large part on our ability to maintain our brand image and corporate reputation and to expand into and gain market acceptance of our products in multiple channels, including the e-tail channel. Adverse publicity, whether or not justified, or allegations of product quality issues, even if false or unfounded, could tarnish our reputation and cause our customers to choose products offered by our competitors. In addition, the proliferation of new methods of mass communication facilitated by the Internet makes it easier for false or unfounded allegations to adversely affect our brand image and reputation. If customers no longer maintain a preference for WD®- or HGST™-brand products, our operating results may be adversely affected.

Sales in the distribution channel are important to our business, and if we fail to respond to demand changes in distribution markets or if distribution markets for hard drives weaken, our operating results could suffer.

Our distribution customers typically sell to small computer manufacturers, dealers, systems integrators and other resellers. We face significant competition in this channel as a result of limited product qualification programs and a significant focus on price and availability of product. In addition, the PC market is experiencing a shift to notebook and other mobile devices and, as a result, more computing devices are being delivered to the market as complete systems, which could weaken the distribution market. If we fail to respond to changes in demand in the distribution market, our operating results could suffer. Additionally, if the distribution market weakens as a result of a slowing PC growth rate, technology transitions or a significant change in consumer buying preference, or if we experience significant price declines due to demand changes in the distribution channel, then our operating results would be adversely affected.

Loss of market share with or by a key customer, or consolidation among our customer base, could harm our operating results.

During the quarter ended March 30, 2012, a large percentage of our revenue, 53%, came from sales to our top 10 customers. These customers have a variety of suppliers to choose from and therefore can make substantial demands on us, including demands on product pricing and on contractual terms, which often results in the allocation of risk to us as the supplier. Our ability to maintain strong relationships with our principal customers is essential to our future performance. If we lose a key customer, if any of our key customers reduce their orders of our products or require us to reduce our prices before we are able to reduce costs, if a customer is acquired by one of our competitors or if a key customer suffers financial hardship, our operating results would likely be harmed.

Additionally, if there is consolidation among our customer base, our customers may be able to command increased leverage in negotiating prices and other terms of sale, which could adversely affect our profitability. In addition, if, as a result of increased leverage, customer pressures require us to reduce our pricing such that our gross margins are diminished, we could decide not to sell our products to a particular customer, which could result in a decrease in our revenue. Consolidation among our customer base may also lead to reduced demand for our products, replacement of our products by the combined entity with those of our competitors and cancellations of orders, each of which could harm our operating results.

Our entry into additional markets increases the complexity of our business, and if we are unable to successfully adapt our business processes as required by these new markets, we will be at a competitive disadvantage and our ability to grow will be adversely affected.

As we expand our product line to sell into additional markets, the overall complexity of our business increases at an accelerated rate and we become subject to different market dynamics. The new markets into which we are expanding, or may expand, may have different characteristics from the markets in which we currently exist. These different characteristics may include, among other things, demand volume requirements, demand seasonality, product generation development rates, customer concentrations, warranty and product return policies and performance and compatibility requirements. Our failure to make the necessary adaptations to our business model to address these different characteristics, complexities and new market dynamics could adversely affect our operating results.

Expansion into new hard drive markets may cause our capital expenditures to increase, and if we do not successfully expand into new markets, our business may suffer.

To remain a significant supplier of hard drives, we will need to offer a broad range of hard drive products to our customers. We currently offer a variety of 3.5-inch or 2.5-inch hard drives for the desktop, mobile, enterprise, CE and external storage markets. However, demand for hard drives may shift to products in form factors or with interfaces that our competitors offer but which we do not. Expansion into other hard drive markets and resulting increases in manufacturing capacity requirements may require us to make substantial additional investments in part because our operations are largely vertically integrated now that we manufacture heads and magnetic media for use in many of the hard drives we manufacture. If we fail to successfully expand into new hard drive markets with products that we do not currently offer, we may lose business to our competitors who offer these products.

Our vertical integration of head and magnetic media manufacturing makes us dependent on our ability to timely and cost-effectively develop heads and magnetic media with leading technology and overall quality, and creates additional capital expenditure costs and asset utilization risks to our business.

Under our business plan, we are developing and manufacturing a substantial portion of the heads and magnetic media used in the hard drive products we manufacture. Consequently, we are more dependent upon our own development and execution efforts and less able to take advantage of head and magnetic media technologies developed by other manufacturers. Technology transition for head and magnetic media designs is critical to increasing our volume production of heads and magnetic media. There can be no assurance, however, that we will be successful in timely and cost-effectively developing and manufacturing heads or magnetic media for products using future technologies. We also may not effectively transition our head or magnetic media design and technology to achieve acceptable manufacturing yields using the technologies necessary to satisfy our customers' product needs, or we may encounter quality problems with the heads or magnetic media we manufacture. If we are unable to timely and cost-effectively develop heads and magnetic media with leading technology and overall quality, our ability to sell our products may be significantly diminished, which could materially and adversely affect our business and financial results.

In addition, as a result of our vertical integration of head and magnetic media manufacturing, we make more capital investments and carry a higher percentage of fixed costs than we would if we were not vertically integrated. If our overall level of production decreases for any reason, and we are unable to reduce our fixed costs to match sales, our head or magnetic media manufacturing assets may face under-utilization that may impact our operating results. We are therefore subject to additional risks related to overall asset utilization, including the need to operate at high levels of utilization to drive competitive costs and the need for assured supply of components that we do not manufacture ourselves. If we do not adequately address the challenges related to our head or magnetic media manufacturing operations, our ongoing operations could be disrupted, resulting in a decrease in our revenue or profit margins and negatively impacting our operating results.

We make significant investments in research and development to improve our technology and develop new technologies, and unsuccessful investments could materially adversely affect our business, financial condition and results of operations.

Over the past several years, our business strategy has been to derive a competitive advantage by moving from being a follower of new technologies to being a leader in the innovation and development of new technologies. This strategy requires us to make significant investments in research and development and, in attempting to remain competitive, we may increase our capital expenditures and expenses above our historical run-rate model. There can be no assurance that these investments will result in viable technologies or products, or if these investments do result in viable technologies or products, that they will be profitable or accepted by the market. Significant investments in unsuccessful research and development efforts could materially adversely affect our business, financial condition and results of operations. In addition, increased investments in technology could cause our cost structure to fall out of alignment with demand for our products, which would have a negative impact on our financial results.

Current or future competitors may gain a technology advantage or develop an advantageous cost structure that we cannot match.

It may be possible for our current or future competitors to gain an advantage in product technology, manufacturing technology, or process technology, which may allow them to offer products or services that have a significant advantage over the products and services that we offer. Advantages could be in capacity, performance, reliability, serviceability, or other attributes. A competitive cost structure for our products, including critical components, labor and overhead, is also critical to the success of our business. We may be at a competitive disadvantage to any companies that are able to gain a technological or cost structure advantage.

Further industry consolidation could provide competitive advantages to our competitors.

The hard drive industry has experienced consolidation over the past several years, including the acquisition of the hard disk drive business of Samsung Electronics Co., Ltd. by Seagate Technology plc in December 2011. Consolidation by our competitors may enhance their capacity, abilities and resources and lower their cost structure, causing us to be at a competitive disadvantage.

Some of our competitors with diversified business units outside the hard drive industry may over extended periods of time sell hard drives at prices that we cannot profitably match.

Some of our competitors earn a significant portion of their revenue from business units outside the hard drive industry. Because they do not depend solely on sales of hard drives to achieve profitability, they may sell hard drives at lower prices and operate their hard drive business unit at a loss over an extended period of time while still remaining profitable overall. In addition, if these competitors can increase sales of non-hard drive products to the same customers, they may benefit from selling their hard drives at lower prices. Our operating results may be adversely affected if we cannot successfully compete with the pricing by these companies.

If we fail to qualify our products with our customers or if product life cycles lengthen, it may have a significant adverse impact on our sales and margins.

We regularly engage in new product qualification with our customers. Once a product is accepted for qualification testing, failures or delays in the qualification process can result in delayed or reduced product sales, reduced product margins caused by having to continue to offer a more costly current generation product, or lost sales to that customer until the next generation of products is introduced. The effect of missing a product qualification opportunity is magnified by the limited number of high volume OEMs, which continue to consolidate their share of the storage markets. Likewise, if product life cycles lengthen, we may have a significantly longer period to wait before we have an opportunity to qualify a new product with a customer, which could reduce our profits because we expect declining gross margins on our current generation products as a result of competitive pressures.

We are subject to risks related to product defects, which could result in product recalls or epidemic failures and could subject us to warranty claims in excess of our warranty provisions or which are greater than anticipated.

We warrant the majority of our products for periods of one to five years. We test our hard drives in our manufacturing facilities through a variety of means. However, there can be no assurance that our testing will reveal defects in our products, which may not become apparent until after the products have been sold into the market. Accordingly, there is a risk that product defects will occur, which could require a product recall. Product recalls can be expensive to implement and, if a product recall occurs during the product's warranty period, we may be required to replace the defective product. Moreover, there is a risk that product defects may trigger an epidemic failure clause in a customer agreement. If an epidemic failure occurs, we may be required to replace or refund the value of the defective product and to cover certain other costs associated with the consequences of the epidemic failure. In addition, a product recall or epidemic failure may damage our reputation or customer relationships, and may cause us to lose market share with our customers, including our OEM and ODM customers.

Our standard warranties contain limits on damages and exclusions of liability for consequential damages and for misuse, improper installation, alteration, accident or mishandling while in the possession of someone other than us. We record an accrual for estimated warranty costs at the time revenue is recognized. We may incur additional operating expenses if our warranty provision does not reflect the actual cost of resolving issues related to defects in our products, whether as a result of a product recall, epidemic failure or otherwise. If these additional expenses are significant, it could adversely affect our business, financial condition and operating results.

Dependence on a limited number of qualified suppliers of components and manufacturing equipment could lead to delays, lost revenue or increased costs.

Our future operating results may depend substantially on our suppliers' ability to timely qualify their components in our programs, and their ability to supply us with these components in sufficient volumes to meet our production requirements. A number of the components that we use are available from only a single or limited number of qualified suppliers, and may be used across multiple product lines. As such, the success of our products depends on our ability to gain access to and integrate parts from reliable component suppliers. To do so, we must maintain effective relationships with our supply base to source our component needs, develop compatible technology, and maintain continuity of supply at reasonable costs. If we fail to maintain effective relationships with our supply base, or if we fail to integrate components from our suppliers effectively, this may adversely affect our ability to develop and deliver the best products to our customers and our profitability could suffer.

Certain equipment and consumables we use in our manufacturing or testing processes are available only from a limited number of suppliers. Some of this equipment and consumables use materials that at times could be in short supply. If these materials are not available, or are not available in the quantities we require for our manufacturing and testing processes, our ability to manufacture our products could be impacted, and we could suffer significant loss of revenue.

Each of the following could also significantly harm our operating results:

- an unwillingness of a supplier to supply such components or equipment to us;
- consolidation of key suppliers;
- failure of a key supplier's business process;
- a key supplier's or sub-supplier's inability to access credit necessary to operate its business; or
- failure of a key supplier to remain in business, to remain an independent merchant supplier, or to adjust to market conditions.

Shortages of commodity materials or commodity components, price volatility, or use by other industries of materials and components used in the hard drive industry, may negatively impact our operating results.

Increases in the cost for certain commodity materials or commodity components may increase our costs of manufacturing and transporting hard drives and key components. Shortages of commodity components such as DRAM and NAND flash, or commodity materials such as glass substrates, stainless steel, aluminum, nickel, neodymium, ruthenium, platinum or cerium, may increase our costs and may result in lower operating margins if we are unable to find ways to mitigate these increased costs. We or our suppliers acquire certain precious metals and rare earth metals like ruthenium, platinum, neodymium and cerium, critical to the manufacture of components in our products from a number of countries, including the People's Republic of China. The government of China or any other nation may impose regulations, quotas or embargoes upon these metals that would restrict the worldwide supply of such metals and/or increase their cost, both of which could negatively impact our operating results until alternative suppliers are sourced. Furthermore, if other high volume industries increase their demand for materials or components used in our products, our costs may further increase, which could have an adverse effect on our operating margins. In addition, shortages in other commodity components and materials used in our customers' products could result in a decrease in demand for our products, which would negatively impact our operating results. The volatility in the cost of oil also affects our costs and may result in lower operating margins if we are unable to pass these increased costs on to our customers.

Contractual commitments with component suppliers may result in us paying increased charges and cash advances for such components or may cause us to have inadequate or excess component inventory.

To reduce the risk of component shortages, we attempt to provide significant lead times when buying components, which may subject us to cancellation charges if we cancel orders as a result of technology transitions or changes in our component needs. In addition, we may from time to time enter into contractual commitments with component suppliers in an effort to increase and stabilize the supply of those components and enable us to purchase such components at favorable prices. Some of these commitments may require us to buy a substantial number of components from the supplier or make significant cash advances to the supplier; however, these commitments may not result in a satisfactory increase or stabilization of the supply of such components. Furthermore, as a result of uncertain global economic conditions, our ability to forecast our requirements for these components has become increasingly difficult, therefore increasing the risk that our contractual commitments may not meet our actual supply requirements, which could cause us to have inadequate or excess component inventory and adversely affect our operating results and increase our operating costs.

Failure by certain suppliers to effectively and efficiently develop and manufacture components, technology or production equipment for our products may adversely affect our operations.

We rely on suppliers for various component parts that we integrate into our hard drives but do not manufacture ourselves, such as semiconductors, motors, flex circuits and suspensions. Likewise, we rely on suppliers for certain technology and equipment necessary for advanced development technology for future products. Some of these components, and most of this technology and production equipment, must be specifically designed to be compatible for use in our products or for developing and manufacturing our future products, and are only available from a limited number of suppliers, some of with whom we are sole sourced. We are therefore dependent on these suppliers to be able and willing to dedicate adequate engineering resources to develop components that can be successfully integrated with our products, and technology and production equipment that can be used to develop and manufacture our next-generation products efficiently. The failure of these suppliers to effectively and efficiently develop and manufacture components that can be integrated into our products or technology and production equipment that can be used to develop or manufacture next generation products may cause us to experience inability or delay in our manufacturing and shipment of hard drive products, our expansion into new technology and markets, or our ability to remain competitive with alternative storage technologies, therefore adversely affecting our business and financial results.

Changes in product life cycles could adversely affect our financial results.

If product life cycles lengthen, we may need to develop new technologies or programs to reduce our costs on any particular product to maintain competitive pricing for that product. If product life cycles shorten, it may result in an increase in our overall expenses and a decrease in our gross margins, both of which could adversely affect our operating results. In addition, shortening of product life cycles also makes it more difficult to recover the cost of product development before the product becomes obsolete. Our failure to recover the cost of product development in the future could adversely affect our operating results.

A fundamental change in recording technology could result in significant increases in our operating expenses and could put us at a competitive disadvantage.

Historically, when the industry experiences a fundamental change in technology, any manufacturer that fails to successfully and timely adjust its designs and processes to accommodate the new technology fails to remain competitive. There are some revolutionary technologies, such as current-perpendicular-to-plane giant magnetoresistance, shingle magnetic recording, energy assisted magnetic recording, patterned magnetic media and advanced signal processing, that if implemented by a competitor on a commercially viable basis ahead of the industry, could put us at a competitive disadvantage. As a result of these technology shifts, we could incur substantial costs in developing new technologies, such as heads, magnetic media, and tools to remain competitive. If we fail to successfully implement these new technologies, or if we are significantly slower than our competitors at implementing new technologies, we may not be able to offer products with capacities that our customers desire.

The difficulty of introducing hard drives with higher levels of areal density and the challenges of reducing other costs may impact our ability to achieve historical levels of cost reduction.

Storage capacity of the hard drive, as manufactured by us, is determined by the number of disks and each disk’s areal density. Areal density is a measure of the amount of magnetic bits that can be stored on the recording surface of the disk. Generally, the higher the areal density, the more information can be stored on a single platter. Higher areal densities require existing head and magnetic media technology to be improved or new technologies developed to accommodate more data on a single disk. Historically, we have been able to achieve a large percentage of cost reduction through increases in areal density. Increases in areal density mean that the average drive we sell has fewer heads and disks for the same capacity and, therefore, may result in a lower component cost. However, increasing areal density has become more difficult in the hard drive industry. If we are not able to increase areal density at the same rate as our competitors or at a rate that is expected by our customers, we may be required to include more components in our drives to meet demand without corresponding incremental revenue, which could negatively impact our operating margins and make achieving historical levels of cost reduction difficult or unlikely. Additionally, increases in areal density may require us to make further capital expenditures on items such as new testing equipment needed as a result of an increased number of gigabytes per platter. Our inability to achieve cost reductions could adversely affect our operating results.

If we do not properly manage technology transitions and new product development, our competitiveness and operating results may be negatively affected.

The storage markets in which we offer our products continuously undergo technology transitions which we must anticipate and adapt our products to address in a timely manner. If we fail to implement these new technologies successfully, or if we are slower than our competitors at implementing new technologies, we may not be able to competitively offer products that our customers desire, which could harm our operating results.

In addition, the success of our new product introductions depends on a number of other factors, including

- difficulties faced in manufacturing ramp;
- implementing at an acceptable cost product features expected by our customers;
- market acceptance/qualification;
- effective management of inventory levels in line with anticipated product demand; and
- quality problems or other defects in the early stages of new product introduction that were not anticipated in the design of those products.

Our business may suffer if we fail to successfully anticipate and manage these issues associated with our product development.

If we fail to develop and introduce new hard drives that are competitive against alternative storage technologies, our business may suffer.

Our success depends in part on our ability to develop and introduce new products in a timely manner in order to keep pace with competing technologies. Alternative storage technologies like solid-state storage technology have successfully served digital entertainment markets for products such as digital cameras, MP3 players, USB flash drives, mobile phones and tablet devices that cannot be economically serviced using hard drive technology. Advances in semiconductor technology have resulted in solid-state storage emerging as a technology that is competitive with hard drives for high performance needs in advanced digital computing markets such as enterprise servers and storage. Solid-state storage is produced by large semiconductor companies who can then sell their storage products at lower prices while still remaining profitable overall. This can help them improve their market share at the expense of the competition. In addition, these semiconductor companies may choose to supply companies like us with semiconductor media at prices that make it difficult, if not impossible, for us to compete with them on a profitable basis. As a result, there can be no assurance that we will be successful in anticipating and developing new products for the desktop, mobile, enterprise, CE and external storage markets in response to solid-state storage, as well as other competing technologies. If our hard drive technology fails to offer higher capacity, performance and reliability with lower cost-per-gigabyte than solid-state storage for the desktop, mobile, enterprise, CE and external storage markets, we will be at a competitive disadvantage to companies using semiconductor technology to serve these markets and our business will suffer.

Our manufacturing operations, and those of certain of our suppliers and customers, are concentrated in large, purpose-built facilities, which subjects us to substantial risk of damage or loss if operations at any of these facilities are disrupted.

As a result of our cost structure and strategy of vertical integration, we conduct our manufacturing operations at large, high volume, purpose-built facilities in California and in Asia. The manufacturing facilities of many of our customers, our suppliers and our customers' suppliers are also concentrated in certain geographic locations in Asia and elsewhere. A localized health risk affecting our employees at these facilities or the staff of our or our customers' other suppliers, such as the spread of the Influenza A (H1N1) or a new pandemic influenza, could impair the total volume of hard drives that we are able to manufacture and/or sell, which would result in substantial harm to our operating results. Similarly, a fire, flood, earthquake, tsunami or other disaster, condition or event such as political instability, civil unrest or a power outage that adversely affects any of these facilities, including access to or from these facilities by employees or logistics operations, would significantly affect our ability to manufacture and/or sell hard drives, which would result in a substantial loss of sales and revenue and a substantial harm to our operating results. For example, prior to the 2011 flooding in Thailand, all of our internal slider capacity and 60% of our hard drive manufacturing capacity was in Thailand. As a result of the flooding in Thailand, our facilities were inundated and temporarily shut down. During that period, our ability to manufacture hard drives was significantly constrained, which adversely affected our business, financial condition and results of operations. While we have taken certain steps to diversify our manufacturing footprint, a significant event that impacts any of our manufacturing sites, or the sites of our customers or suppliers, could adversely affect our ability to manufacture hard drives, and our business, financial condition and results of operations could suffer.

Manufacturing and marketing our products globally subjects us to numerous risks.

We are subject to risks associated with our global manufacturing operations and global marketing efforts, including:

- obtaining requisite governmental permits and approvals;
- currency exchange rate fluctuations or restrictions;
- political instability and civil unrest;
- limited transportation availability, delays, and extended time required for shipping, which risks may be compounded in periods of price declines;
- higher freight rates;
- labor challenges, including difficulties finding and retaining talent or responding to labor disputes or disruptions;
- trade restrictions or higher tariffs;
- copyright levies or similar fees or taxes imposed in European and other countries;
- exchange, currency and tax controls and reallocations;
- increasing labor and overhead costs; and
- loss or non-renewal of favorable tax treatment under agreements or treaties with foreign tax authorities.

Terrorist attacks may adversely affect our business and operating results.

The continued threat of terrorist activity and other acts of war or hostility have created uncertainty in the financial and insurance markets and have significantly increased the political, economic and social instability in some of the geographic areas in which we operate. Additionally, it is uncertain what impact the reactions to such acts by various governmental agencies and security regulators worldwide will have on shipping costs. Acts of terrorism, either domestically or abroad, could create further uncertainties and instability. To the extent this results in disruption or delays of our manufacturing capabilities or shipments of our products, our business, operating results and financial condition could be adversely affected.

Sudden disruptions to the availability of freight lanes could have an impact on our operations.

We generally ship our products to our customers, and receive shipments from our suppliers, via air, ocean or land freight. The sudden unavailability or disruption of cargo operations or freight lanes, such as due to labor difficulties or disputes, severe weather patterns or other natural disasters, or political instability or civil unrest, could impact our operating results by impairing our ability to timely and efficiently deliver our products.

We are vulnerable to system failures or attacks, which could harm our business.

We are heavily dependent on our technology infrastructure, among other functions, to operate our factories, sell our products, fulfill orders, manage inventory and bill, collect and make payments. Our systems are vulnerable to damage or interruption from natural disasters, power loss, telecommunication failures, cyber-attacks such as computer viruses, computer denial-of-service attacks and other events. Our business is also subject to break-ins, sabotage and intentional acts of vandalism by third parties as well as employees. Despite any precautions we may take, such problems could result in, among other consequences, loss or theft of our, our customers' or our business partners' intellectual property, proprietary business information or personally identifiable information; damage to our reputation; interruptions in our business; and remediation costs, each of which could harm our business, operating results and financial condition.

If we fail to identify, manage, complete and integrate acquisitions, investment opportunities or other significant transactions, it may adversely affect our future results.

As part of our growth strategy, we may pursue acquisitions of, investment opportunities in or other significant transactions with companies that are complementary to our business. In order to pursue this strategy successfully, we must identify attractive acquisition or investment opportunities, successfully complete the transaction, some of which may be large and complex, and manage post-closing issues such as integration of the acquired company or employees. We may not be able to identify or complete appealing acquisition or investment opportunities given the intense competition for these transactions. Even if we identify and complete suitable corporate transactions, we may not be able to successfully address any integration challenges in a timely manner, or at all. If we fail to successfully integrate an acquisition, we may not realize all or any of the anticipated benefits of the acquisition, and our future results of operations could be adversely affected. Please see the risk factors above for specific risks and uncertainties regarding our acquisition of HGST.

If we are unable to retain or hire key staff and skilled employees our business results may suffer.

Our success depends upon the continued contributions of our key staff and skilled employees, many of whom would be extremely difficult to replace. Global competition for skilled employees in the data storage industry is intense and, as we attempt to move to a position of technology leadership in the storage industry, our business success becomes increasingly dependent on our ability to retain our key staff and skilled employees as well as attract, integrate and retain new skilled employees. Volatility or lack of positive performance in our stock price and the overall markets may adversely affect our ability to retain key staff or skilled employees who have received equity compensation. Additionally, because a substantial portion of our key employees' compensation is placed "at risk" and linked to the performance of our business, when our operating results are negatively impacted by global economic conditions, we are at a competitive disadvantage for retaining and hiring key staff and skilled employees versus other companies that pay a relatively higher fixed salary. If we are unable to retain our existing key staff or skilled employees, or hire and integrate new key staff or skilled employees, or if we fail to implement succession plans for our key staff, our operating results would likely be harmed.

Our reliance on intellectual property and other proprietary information subjects us to the risk that these key ingredients of our business could be copied by competitors.

Our success depends, in significant part, on the proprietary nature of our technology, including non-patentable intellectual property such as our process technology. If a competitor is able to reproduce or otherwise capitalize on our technology despite the safeguards we have in place, it may be difficult, expensive or impossible for us to obtain necessary legal protection. Also, the laws of some foreign countries may not protect our intellectual property to the same extent as do U.S. laws. In addition to patent protection of intellectual property rights, we consider elements of our product designs and processes to be proprietary and confidential. We rely upon employee, consultant and vendor non-disclosure agreements and contractual provisions and a system of internal safeguards to protect our proprietary information. However, any of our registered or unregistered intellectual property rights may be challenged or exploited by others in the industry, which might harm our operating results.

The costs of compliance with state, federal and international legal and regulatory requirements, such as environmental, labor, trade and tax regulations, and customers' standards of corporate citizenship could cause an increase in our operating costs.

We may be or become subject to various state, federal and international laws and regulations governing our environmental, labor, trade and tax practices. These laws and regulations, particularly those applicable to our international operations, are or may be complex, extensive and subject to change. We will need to ensure that we and our component suppliers timely comply with such laws and regulations, which may result in an increase in our operating costs. For example, the European Union ("EU") has enacted the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment ("RoHS") directive, which prohibits the use of certain substances in electronic equipment, and the Waste Electrical and Electronic Equipment ("WEEE") directive, which obligates parties that place electrical and electronic equipment onto the market in the EU to put a clearly identifiable mark on the equipment, register with and report to EU member countries regarding distribution of the equipment, and provide a mechanism to take back and properly dispose of the equipment. Similar legislation may be enacted in other locations where we manufacture or sell our products. In addition, climate change and financial reform legislation in the United States is a significant topic of discussion and has generated and may continue to generate federal or other regulatory responses in the near future. If we or our component suppliers fail to timely comply with applicable legislation, our customers may refuse to purchase our products or we may face increased operating costs as a result of taxes, fines or penalties, which would have a materially adverse effect on our business, financial condition and operating results.

In connection with our compliance with such environmental laws and regulations, as well as our compliance with industry environmental initiatives, the standards of business conduct required by some of our customers, and our commitment to sound corporate citizenship in all aspects of our business, we could incur substantial compliance and operating costs and be subject to disruptions to our operations and logistics. In addition, if we were found to be in violation of these laws or noncompliant with these initiatives or standards of conduct, we could be subject to governmental fines, liability to our customers and damage to our reputation and corporate brand which could cause our financial condition or operating results to suffer.

Violation of applicable laws, including labor or environmental laws, and certain other practices by our suppliers could harm our business.

We expect our suppliers to operate in compliance with applicable laws and regulations, including labor and environmental laws, and to otherwise meet our required supplier standards of conduct. While our internal operating guidelines promote ethical business practices, we do not control our suppliers or their labor or environmental practices. The violation of labor, environmental or other laws by any of our suppliers, or divergence of a supplier's business practices from those generally accepted as ethical in the United States, could harm our business by:

- interrupting or otherwise disrupting the shipment of our product components;
- damaging our reputation;
- forcing us to find alternate component sources;
- reducing demand for our products (for example, through a consumer boycott); or
- exposing us to potential liability for our supplier's wrongdoings.

Fluctuations in currency exchange rates as a result of our international operations may negatively affect our operating results.

Because we manufacture and sell our products abroad, our revenue, margins, operating costs and cash flows are impacted by fluctuations in foreign currency exchange rates. If the U.S. dollar exhibits sustained weakness against most foreign currencies, the U.S. dollar equivalents of unhedged manufacturing costs could increase because a significant portion of our production costs are foreign-currency denominated. Conversely, there would not be an offsetting impact to revenues since revenues are substantially U.S. dollar denominated. Additionally, we negotiate and procure some of our component requirements in U.S. dollars from non-U.S. based vendors. If the U.S. dollar continues to weaken against other foreign currencies, some of our component suppliers may increase the price they charge for their components in order to maintain an equivalent profit margin. If this occurs, it would have a negative impact on our operating results.

Prices for our products are substantially U.S. dollar denominated, even when sold to customers that are located outside the United States. Therefore, as a substantial portion of our sales are from countries outside the United States, fluctuations in currency exchanges rates, most notably the strengthening of the U.S. dollar against other foreign currencies, contribute to variations in sales of products in impacted jurisdictions and could adversely impact demand and revenue growth. In addition, currency variations can adversely affect margins on sales of our products in countries outside the United States.

We have attempted to manage the impact of foreign currency exchange rate changes by, among other things, entering into short-term, foreign exchange contracts. However, these contracts do not cover our full exposure and can be canceled by the counterparty if currency controls are put in place.

Increases in our customers' credit risk could result in credit losses and an increase in our operating costs.

Some of our OEM customers have adopted a subcontractor model that requires us to contract directly with companies, such as ODMs, that provide manufacturing and fulfillment services to our OEM customers. Because these subcontractors are generally not as well capitalized as our direct OEM customers, this subcontractor model exposes us to increased credit risks. Our agreements with our OEM customers may not permit us to increase our product prices to alleviate this increased credit risk. Additionally, as we attempt to expand our OEM and distribution channel sales into emerging economies such as Brazil, Russia, India and China, the customers with the most success in these regions may have relatively short operating histories, making it more difficult for us to accurately assess the associated credit risks. Our acquisition of HGST has also resulted in an increase to our customer credit risk given that we service many of the same customers. Any credit losses we may suffer as a result of these increased risks, or as a result of credit losses from any significant customer, would increase our operating costs, which may negatively impact our operating results.

Our operating results fluctuate, sometimes significantly, from period to period due to many factors, which may result in a significant decline in our stock price.

Our quarterly operating results may be subject to significant fluctuations as a result of a number of other factors including:

- the timing of orders from and shipment of products to major customers;
- our product mix;
- changes in the prices of our products;
- manufacturing delays or interruptions;
- acceptance by customers of competing products in lieu of our products;
- variations in the cost of and lead times for components for our products;
- limited availability of components that we obtain from a single or a limited number of suppliers;
- seasonal and other fluctuations in demand for PCs often due to technological advances; and
- availability and rates of transportation.

We often ship a high percentage of our total quarterly sales in the third month of the quarter, which makes it difficult for us to forecast our financial results before the end of the quarter. As a result of the above or other factors, our forecast of operating results for the quarter may differ materially from our actual financial results. If our results of operations fail to meet the expectations of analysts or investors, it could cause an immediate and significant decline in our stock price.

We have made and continue to make a number of estimates and assumptions relating to our consolidated financial reporting, and actual results may differ significantly from our estimates and assumptions.

We have made and continue to make a number of estimates and assumptions relating to our consolidated financial reporting. The highly technical nature of our products and the rapidly changing market conditions with which we deal means that actual results may differ significantly from our estimates and assumptions. These changes have impacted our financial results in the past and may continue to do so in the future. Key estimates and assumptions for us include:

- price protection adjustments and other sales promotions and allowances on products sold to retailers, resellers and distributors;
- inventory adjustments for write-down of inventories to lower of cost or market value (net realizable value);
- reserves for doubtful accounts;
- accruals for product returns;
- accruals for warranty costs related to product defects;
- accruals for litigation and other contingencies;
- liabilities for unrecognized tax benefits; and
- expensing of stock-based compensation.

The market price of our common stock is volatile.

The market price of our common stock has been, and may continue to be, extremely volatile. Factors that may significantly affect the market price of our common stock include the following:

- actual or anticipated fluctuations in our operating results, including those resulting from the seasonality of our business;

- announcements of technological innovations by us or our competitors, which may decrease the volume and profitability of sales of our existing products and increase the risk of inventory obsolescence;
- new products introduced by us or our competitors;
- periods of severe pricing pressures due to oversupply or price erosion resulting from competitive pressures or industry consolidation;
- developments with respect to patents or proprietary rights;
- conditions and trends in the hard drive, computer, data and content management, storage and communication industries;
- contraction in our operating results or growth rates that are lower than our previous high growth-rate periods;
- changes in financial estimates by securities analysts relating specifically to us or the hard drive industry in general; and
- macroeconomic conditions that affect the market generally.

In addition, general economic conditions may cause the stock market to experience extreme price and volume fluctuations from time to time that particularly affect the stock prices of many high technology companies. These fluctuations often appear to be unrelated to the operating performance of the companies.

Securities class action lawsuits are often brought against companies after periods of volatility in the market price of their securities. A number of such suits have been filed against us in the past, and should any new lawsuits be filed, such matters could result in substantial costs and a diversion of resources and management's attention.

Current economic conditions have caused us difficulty in adequately protecting our increased cash and cash equivalents from financial institution failures.

The uncertain global economic conditions and volatile investment markets have caused us to hold more cash and cash equivalents than we would hold under normal circumstances. Since there has been an overall increase in demand for low-risk, U.S. government-backed securities with a limited supply in the financial marketplace, we face increased difficulty in adequately protecting our increased cash and cash equivalents from possible sudden and unforeseeable failures by banks and other financial institutions. A failure of any of these financial institutions in which deposits exceed FDIC limits could have an adverse impact on our financial position.

If our internal controls are found to be ineffective, our financial results or our stock price may be adversely affected.

Our most recent evaluation resulted in our conclusion that as of July 1, 2011, in compliance with Section 404 of the Sarbanes-Oxley Act of 2002, our internal control over financial reporting was effective. As a result of our acquisition of HGST on March 8, 2012, our internal control over financial reporting, subsequent to the date of acquisition, includes certain existing controls adopted from HGST. If our internal control over financial reporting is found to be ineffective or if we identify a material weakness in our financial reporting in future periods, investors may lose confidence in the reliability of our financial statements, which may adversely affect our financial results or our stock price.

From time to time we may become subject to income tax audits or similar proceedings, and as a result we may incur additional costs and expenses or owe additional taxes, interest and penalties that may negatively impact our operating results.

We are subject to income taxes in the United States and certain foreign jurisdictions, and our determination of our tax liability is subject to review by applicable domestic and foreign tax authorities. For example, as we have previously disclosed, we are under examination by the Internal Revenue Service for certain fiscal years and in connection with that examination, we received Revenue Agent Reports seeking certain adjustments to income as disclosed in Part I, Item 1, Note 6 in the Notes to Condensed Consolidated Financial Statements included in this Quarterly Report on Form 10-Q. Although we believe our tax positions are properly supported, the final timing and resolution of the notice of proposed adjustment and the audits are subject to significant uncertainty and could result in our having to pay amounts to the applicable tax authority in order to resolve examination of our tax positions, which could result in an increase or decrease of our current estimate of unrecognized tax benefits and may negatively impact our financial position, results of operations, net income or cash flows.

Item 6. ***EXHIBITS***

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

Exhibit No.	Description
2.1	Stock Purchase Agreement, dated March 7, 2011, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd., and Viviti Technologies Ltd. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q (File No. 1-08703), as filed with the Securities and Exchange Commission on May 2, 2011)
2.2	First Amendment to Stock Purchase Agreement, dated May 21, 2011, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. (Incorporated by reference to the Company's Annual Report on Form 10-K (File No. 1-08703), as filed with the Securities and Exchange Commission on August 12, 2011)
2.3	Second Amendment to Stock Purchase Agreement, dated November 23, 2011, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. (Incorporated by reference to the Company's Quarterly Report on Form 10-Q (File No. 1-08703), as filed with the Securities and Exchange Commission on January 27, 2012)
2.4	Third Amendment to Stock Purchase Agreement, dated January 30, 2012, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. †
2.5	Fourth Amendment to Stock Purchase Agreement, dated February 15, 2012, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. †
2.6	Fifth Amendment to Stock Purchase Agreement, dated March 6, 2012, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. †
2.7	Sixth Amendment to Stock Purchase Agreement, dated March 6, 2012, among Western Digital Corporation, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. †
3.1	Amended and Restated Certificate of Incorporation of Western Digital Corporation, as amended to date (Incorporated by reference to the Company's Quarterly Report on Form 10-Q (File No. 1-08703), as filed with the Securities and Exchange Commission on February 8, 2006)
3.2	Amended and Restated Bylaws of Western Digital Corporation, as amended effective as of November 5, 2007 (Incorporated by reference to the Company's Current Report on Form 8-K (File No. 1-08703), as filed with the Securities and Exchange Commission on November 8, 2007)
10.1	Western Digital Corporation Summary of Compensation Arrangements for Named Executive Officers and Directors†*
10.2	Employment Agreement, dated as of March 7, 2011, between Western Digital Corporation and Stephen D. Milligan†*
10.3	Western Digital Corporation Executive Severance Plan, amended and restated as of February 16, 2012†*

Exhibit No.	Description
10.4	Investor Rights Agreement, dated as of March 8, 2012, between Western Digital Corporation and Hitachi, Ltd.†
10.5	First Amendment to Commitment Letter, dated March 2, 2012, among Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporation, Western Digital Corporation, Western Digital Technologies, Inc. and Western Digital Ireland, Ltd.†
10.6	Credit Agreement, dated as of March 8, 2012, among Western Digital Technologies, Inc. and Western Digital Ireland, Ltd., as Borrowers; Western Digital Corporation, as Holdings; Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer; lenders party thereto; Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Sole Lead Arranger and Sole Bookrunner; and The Bank of Nova Scotia, Union Bank, N.A., HSBC Bank USA, National Association, and JPMorgan Chase Bank, N.A., as Co-Syndication Agents†
31.1	Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†
31.2	Certification of Principal Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002†
32.1	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002†
32.2	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002†

Exhibit No.	Description
101.INS	XBRL Instance Document**
101.SCH	XBRL Taxonomy Extension Schema Document**
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document**
101.LAB	XBRL Taxonomy Extension Label Linkbase Document**
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document**
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document**

† Filed with this report.

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

** Furnished herewith. In accordance with Rule 406T of Regulation S-T, the information in these exhibits shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to liability under that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, except as expressly set forth by specific reference in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this Quarterly Report on Form 10-Q to be signed on its behalf by the undersigned thereunto duly authorized.

WESTERN DIGITAL CORPORATION
Registrant

/s/ WOLFGANG U. NICKL
Wolfgang U. Nickl
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

/s/ JOSEPH R. CARRILLO
Joseph R. Carrillo
Vice President and Chief Accounting Officer
(Principal Accounting Officer)

Date: May 9, 2012

Item 6. ***EXHIBITS***

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

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

** Furnished herewith. In accordance with Rule 406T of Regulation S-T, the information in these exhibits shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to liability under that section, and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, except as expressly set forth by specific reference in such filing.

THIRD AMENDMENT TO STOCK PURCHASE AGREEMENT

This Third Amendment to the Stock Purchase Agreement (this "Amendment") is made this 30th day of January, 2012, by and among Western Digital Corporation, a Delaware corporation (the "Buyer Parent"), Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly owned subsidiary of the Buyer Parent (the "Buyer"), Hitachi, Ltd., a company incorporated under the laws of Japan (the "Seller"), and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore and a wholly owned subsidiary of the Seller (the "Company", and collectively with the Seller, Buyer and Buyer Parent, the "Parties", and each, a "Party"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stock Purchase Agreement (as defined below).

WHEREAS, the Parties entered into a Stock Purchase Agreement on March 7, 2011, as amended by a First Amendment to Stock Purchase Agreement, dated May 27, 2011, and as further amended by a Second Amendment to Stock Purchase Agreement, dated November 23, 2011 (together, the "Stock Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Stock Purchase Agreement as reflected herein.

NOW, therefore, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Exhibit B of the Stock Purchase Agreement**. Exhibit B of the Stock Purchase Agreement, Form of IP License Agreement, is hereby deleted in its entirety and replaced by the Form of IP License Agreement attached hereto as Exhibit A.

2. **Effect on the Stock Purchase Agreement**. This Amendment shall not constitute a waiver, amendment or modification of any provision of the Stock Purchase Agreement not expressly referred to herein. Except as expressly amended or modified herein, the provisions of the Stock Purchase Agreement are and shall remain in full force and effect and are hereby ratified and confirmed. On and after the date hereof, each reference in the Stock Purchase Agreement to "this Agreement", "herein", "hereof", "hereunder" or words of similar import shall mean and be a reference to the Stock Purchase Agreement as amended hereby, although it shall not alter the dates as of which any provision of the Stock Purchase Agreement speaks. For example, phrases such as "as of the date hereof" and "as of the date of this Agreement" shall continue to refer to March 7, 2011, the date that the Stock Purchase Agreement was originally executed. To the extent that a provision of this Amendment conflicts with or differs from a provision of the Stock Purchase Agreement, such provision of this Amendment shall prevail and govern for all purposes and in all respects.

3. **Miscellaneous**. Sections 12.4, 12.5, 12.7 and 12.13 of the Stock Purchase Agreement are incorporated herein by reference.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Third Amendment to Stock Purchase Agreement as of the date first written above.

"BUYER PARENT"

WESTERN DIGITAL CORPORATION

By: /s/ John F. Coyne
Name: John F. Coyne
Title: President & CEO

"BUYER"

WESTERN DIGITAL IRELAND, LTD.

By: /s/ Michael Ray
Name: Michael Ray
Title: Vice President

"SELLER"

HITACHI, LTD

By: /s/ Toyoki Furuta
Name: Toyoki Furuta
Title: General Manager,
Business Development Office

"COMPANY"

VIVITI TECHNOLOGIES LTD.

By: /s/ Christopher Dewees
Name: Christopher Dewees
Title: SVP & General Counsel

EXHIBIT A

Amended and Restated Form of IP License Agreement

[See Attached]

EXHIBIT B

FORM OF

LICENSE AGREEMENT

This License Agreement ("**Agreement**"), effective as of the Closing Date (as defined below), is entered into by and between Western Digital Corporation ("**Buyer Parent**"), a Delaware company with its principal place of business at 3355 Michelson Drive, Suite 100 Irvine, California 92612, USA, and Hitachi, Ltd. ("**HITACHI**"), a Japanese company with its principal place of business at 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8280, Japan. Each of the signatories to this Agreement is referred to as a "**Party**," and jointly as the "**Parties**."

RECITALS

WHEREAS, Buyer Parent, Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly-owned subsidiary of the Buyer Parent (the "**Buyer**"), HITACHI, and Hitachi Global Storage Technologies Holdings Pte. Ltd., a company incorporated under the laws of the Republic of Singapore ("**HGST**") and a wholly owned subsidiary of HITACHI, have entered into that certain Stock Purchase Agreement dated as of March 7, 2011 (the "**Purchase Agreement**");

WHEREAS, pursuant to the Purchase Agreement, Buyer Parent desires to enter into a patent cross-license with HITACHI for certain technologies and enter into a mutual release of claims pursuant to the terms and conditions of this Agreement; and

WHEREAS, pursuant to the Purchase Agreement, HITACHI desires to enter into a patent cross-license with Buyer Parent for certain technologies and enter into a mutual release of claims pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set out below, the Parties agree as follows:

TERMS OF AGREEMENT

1. DEFINITIONS

1.1 "External Drive" means an enclosure that encases one or more HDDs or SSDs and related peripheral hardware, or Software or Firmware components (other than RAID).

1.2 "Existing Terms" means terms and conditions in written agreements existing as of the Closing Date between HGST or any of its Subsidiaries, on the one hand, and HITACHI or any HITACHI Sublicensed Subsidiary, on the other hand, with respect to license limitations, restrictions on use (with respect to any intellectual property rights, Works or materials not owned by HITACHI or a HITACHI Sublicensed Subsidiary), restrictions on disclosure, royalties or other consideration, and/or license duration.

1.3 "Have Made" means to have any products or other items subject to the licenses granted herein made by a third-party manufacturer for the use, lease, sale or other transfer by a Party or its Subsidiaries; provided, however, that (i) the specifications for such products or other items were solely or jointly created by or at the direction of such Party or its Subsidiaries, and (ii) such product or other item is not an off-the-shelf product of a third-party manufacturer.

1.4 "HDD" means any device designed to magnetically record and/or read digital information on or from a rotating disk ("Rotating Magnetic Storage") that contains one or more spindle motors, one or more magnetic heads, and one or more actuators, all of which are incorporated in a single enclosure, and related peripheral hardware, or Software or Firmware components. For the avoidance of doubt "HDD" (a) includes any device that incorporates both Rotating Magnetic Storage and other digital storage media, such as semiconductor-based memory, but only in the case that the memory capacity of Rotating Magnetic Storage supersedes that of other digital storage media, and (b) excludes External Drive, RAID (as defined below), Information Versatile Disk for Removable Usage (iVDR), and optical disk products.

1.5 “Buyer Parent SSD Patents” means all Patents related to SSD (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term, (ii) under which Buyer Parent or any of its Subsidiaries has now or during the Term obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by HITACHI or HITACHI Sublicensed Subsidiaries making, using, importing, exporting, leasing, selling, offering to sell, or otherwise disposing of SSD.

1.6 “Storage Software Products” means the Hitachi BackupTM software product and the LifestudioTM software product.

1.7 “Storage Software Patents” means all Patents related to the Storage Software Products (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term, (ii) under which Hitachi or any HITACHI Sublicensed Subsidiary has now or during the Term obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by Buyer Parent or its Subsidiaries making, using, importing, exporting, selling, leasing, offering to sell, or otherwise disposing of the version of either Storage Software Product that is generally commercially available as of the Closing Date.

1.8 “HGST RAID Patents” means all Patents related to RAID (i) issued or issuing on patent applications entitled to a first effective filing date on or before the first anniversary of the Closing Date (ii) under which Buyer Parent or any of its Subsidiaries has now or hereafter obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, (iii) whose named inventors are or were employees or contractors of HGST or any of its Subsidiaries on or prior to the Closing Date or that were assigned or exclusively licensed to HGST or any of its Subsidiaries on or prior to the Closing Date, and (iv) that would be, but for this Agreement, directly or indirectly infringed by HITACHI or HITACHI Sublicensed Subsidiaries making, using, importing, exporting, leasing, selling, offering to sell, or otherwise disposing of RAID.

1.9 “Buyer Parent RAID Patents” means all Patents related to RAID (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term (ii) under which Buyer Parent or any of its Subsidiaries has now or hereafter obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by HITACHI or HITACHI Sublicensed Subsidiaries making, using, importing, exporting, leasing, selling, offering to sell, or otherwise disposing of RAID. For clarity, the Buyer Patent RAID Patents include, but are not limited to, the HGST RAID Patents.

1.10 “Closing Date” has the meaning set forth in the Purchase Agreement.

1.11 “HITACHI External Drive Patents” means all Patents related to External Drive (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term, (ii) under which HITACHI or any HITACHI Sublicensed Subsidiary has now or during the Term obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by Buyer Parent or its Subsidiaries making, using, importing, exporting, selling, leasing, offering to sell, or otherwise disposing of External Drive.

1.12 “HITACHI HDD Patents” means all Patents related to HDD (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term, (ii) under which HITACHI or any HITACHI Sublicensed Subsidiary has now or hereafter obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by Buyer Parent or its Subsidiaries making, using, importing, exporting, leasing, selling, offering to sell, or otherwise disposing of HDD.

1.13 “HITACHI Exclusions” means (i) any Works (e.g., Software) that as of the Closing Date are made generally commercially available by HITACHI or any of the HITACHI Sublicensed Subsidiaries, and (ii) any proprietary information of HITACHI or any of the HITACHI Sublicensed Subsidiaries that has been disclosed to HGST or any of its Subsidiaries in its role as a supplier or potential supplier of products to HITACHI or a HITACHI Sublicensed Subsidiary.

1.14 “HITACHI Licensed Copyrights” means copyrights owned by HITACHI or any of the HITACHI Sublicensed Subsidiaries as of the Closing Date in any Works that were provided to HGST by HITACHI or any HITACHI Sublicensed Subsidiary prior to, and are used by HGST or any of its Subsidiaries as of, the Closing Date; provided, however, that “HITACHI Licensed Copyrights” do not include any copyrights embodied or used in any HITACHI Exclusions.

1.15 “HITACHI Licensed Trade Secrets” means trade secrets owned by HITACHI or any of the HITACHI Licensed Subsidiaries as of the Closing Date that were provided to HGST by HITACHI or any HITACHI Sublicensed Subsidiary prior to, and are used by HGST or any of its Subsidiaries as of, the Closing Date; provided, however, that “HITACHI Licensed Trade Secrets” do not include any trade secrets embodied or used in HITACHI Exclusions.

1.16 “HITACHI RAID Patents” means all Patents related to RAID (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term, (ii) under which HITACHI or any HITACHI Sublicensed Subsidiary has now or during the Term obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by Buyer Parent or its Subsidiaries making, using, importing, exporting, selling, leasing, offering to sell, or otherwise disposing of RAID.

1.17 “HITACHI SSD Patents” means all Patents related to SSD (i) issued or issuing on patent applications entitled to a first effective filing date on or before the end of the Term, and (ii) under which HITACHI or any HITACHI Sublicensed Subsidiary has now or during the Term obtains the right to grant licenses within the scope granted herein without the payment of royalties or other consideration to any third party, and (iii) that would be, but for this Agreement, directly or indirectly infringed by Buyer Parent or its Subsidiaries making, using, importing, exporting, selling, leasing, offering to sell, or otherwise disposing of SSD.

1.18 “HITACHI Sublicensed Subsidiary” means any HITACHI Subsidiary to which the rights, licenses, releases, covenants and privileges are extended in accordance with Section 2.4.

1.19 “Non-HDD Business” means any entity (or internal business division or organization of an entity) that is principally engaged in a business other than the design, sale, or manufacture of HDDs.

1.20 “Patents” means all classes and types of patents, including utility patents, utility models, design patents, invention certificates, including divisionals, continuations, continuations-in-part, reexaminations, reissues, extensions and renewals, in all jurisdictions of the world.

1.21 “RAID” means a device comprised of an assembly of storage media components and related peripheral hardware, or Software or Firmware components contained within one or more enclosures, combined with associated Software or Firmware, for the purpose of data storage and retrieval, designed to protect digital information from a single component failure or to enhance performance by dividing data among multiple storage media components. For the avoidance of doubt, “RAID” excludes storage media components incorporated therein.

1.22 “Software or Firmware” means a set of instructions, that either (i) directly provides instructions to the computer hardware, or, (ii) indirectly serves as an input to another piece of software.

1.23 “SSD” means a product, component, subcomponent or subassembly thereof, and related peripheral hardware, or Software or Firmware components, designed, in whole or in part, to electrically write, read and/or erase digital information from storage media or memory (including, without limitation, NOR-flash, NAND-flash, or MRAM semiconductor microchips), which utilizes an HDD-type interface (or an interface also employed for HDDs), including without limitation, PATA, SATA, SAS, PCI Express, SCI, Fibre Channel, USB 3.0 and InfiniBand. For the avoidance of doubt, “SSD” excludes HDD and RAID.

1.24 “Subsidiary” of either party shall mean a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, directly, or indirectly, by such party. For the purposes of this Agreement, HGST and its Subsidiaries will be Subsidiaries of Buyer Parent (subject to meeting the requirements of the preceding sentence) and are not Subsidiaries of HITACHI.

1.25 “Term” means the period from the Closing Date through the fifth anniversary of the Closing Date.

1.26 “HDD Component” means any component, subcomponent, subassembly, Software or Firmware which is specifically designed for HDD, whether or not sold as a stand-alone unit or integrated within an HDD.

1.27 “Works” means works of authorship and other copyrightable materials and subject matter, including Software to the extent within the subject matter of copyright.

1.28 “3.5” HDD” means an HDD in the 3.5” form factor having an enclosure with a width of 101.6mm and a depth of 146mm that is designed and sold for use in, and used in, consumer electronics and desktop personal computer products only. For clarity, the term “3.5” HDD” does not include (a) HDDs in any form factor designed for use in, sold for use in or used in servers or other applications other than consumer electronics or desktop personal computers or (b) HDD Components.

2. LICENSES, RELEASES, AND COVENANTS GRANTED TO HITACHI

2.1 SSD License to HITACHI. Buyer Parent, on behalf of itself and its Subsidiaries, hereby grants to HITACHI a non-exclusive, irrevocable, fully paid-up, world-wide term license, without the right to grant a sublicense (other than pursuant to Section 2.4), under the Buyer Parent SSD Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of SSD.

2.2 RAID License to HITACHI. Buyer Parent, on behalf of itself and its Subsidiaries, hereby grants to HITACHI a non-exclusive, irrevocable, fully paid-up, world-wide, license, without the right to grant a sublicense (other than pursuant to Section 2.4), under the Buyer Parent RAID Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of RAID.

2.3 Past Release to HITACHI. Buyer Parent, on behalf of itself and its Subsidiaries, hereby irrevocably releases and forever discharges HITACHI and the HITACHI Sublicensed Subsidiaries from any and all claims, losses, demands, causes of action, liabilities, and rights of action of any kind, at law or in equity, whether known or unknown, suspected and unsuspected, disclosed and undisclosed, liquidated or unliquidated, for any act of direct or indirect infringement, before the Closing Date, of any Buyer Parent SSD Patent or Buyer Parent RAID Patent by HITACHI or any HITACHI Sublicensed Subsidiary making, using, importing, exporting, selling, leasing, offering to sell, or otherwise disposing of SSD (in the case of Buyer Parent SSD Patents) or RAID (in the case of Buyer Parent RAID Patents). For the avoidance of doubt, the foregoing release is intended to and does apply to all activities of HITACHI and the HITACHI Sublicensed Subsidiaries that fall within the scope of the licenses granted by Buyer Parent set forth in this Agreement that were carried out before the Closing Date.

2.4 Extension to HITACHI's Subsidiaries. HITACHI shall have a right to extend to its Subsidiaries the rights, releases, licenses, covenants and any other privileges granted to HITACHI hereunder, if such Subsidiary agrees to abide by the terms and conditions of this Agreement and include its Patents in HITACHI HDD Patents, HITACHI External Drive Patents, HITACHI RAID Patents, and HITACHI SSD Patents as if it were named in the place of HITACHI hereunder, subject to the termination provision in Section 4.2.

2.5 Covenant Not To Sue HITACHI Regarding RAID. Buyer Parent and its Subsidiaries shall reserve the right to sue the sellers and/or manufacturers of HDD incorporated into RAID sold to HITACHI or HITACHI Sublicensed Subsidiaries for infringement of Buyer Parent Patents related to HDD by making, using, selling, offering to sell, leasing, importing or otherwise disposing of such HDD incorporated into RAID; provided however, that Buyer Parent, on behalf of itself and its Subsidiaries, covenants not to sue HITACHI, HITACHI Sublicensed Subsidiaries, or their customers (to the extent the RAID was purchased from HITACHI or HITACHI Sublicensed Subsidiaries) for infringement of Buyer Parent Patents related to HDD by using, leasing, importing, exporting, selling, offering to sell such HDD incorporated into RAID.

3. LICENSES, RELEASE AND COVENANTS GRANTED TO BUYER PARENT

3.1 HDD/HDD Component License to Buyer Parent. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries a non-exclusive, irrevocable, fully paid-up, world-wide, license, without the right to grant a sublicense (other than pursuant to Section 3.11), under the HITACHI HDD Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of HDD and HDD Components.

3.2 SSD License to Buyer Parent. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries a non-exclusive, irrevocable, fully paid-up, world-wide term license, without the right to grant a sublicense under HITACHI SSD Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of SSD.

3.3 RAID License to Buyer Parent. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries a non-exclusive, irrevocable, fully paid-up, world-wide term license, without the right to grant a sublicense , under HITACHI RAID Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of RAID.

3.4 External Drive License to Buyer Parent. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries a non-exclusive, irrevocable, fully paid-up, world-wide term license, without the right to grant a sublicense , under HITACHI External Drive Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of External Drive.

3.5 Storage Software License. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries a non-exclusive, irrevocable, fully paid-up, world-wide, term license, without the right to grant a sublicense , under the Storage Software Patents, to make, Have Made, use, import, export, sell, lease, offer to sell, or otherwise dispose of the Storage Software Products, including future versions thereof.

3.6 HITACHI Licensed Copyrights License. Subject, in the case of any particular HITACHI Licensed Work, to any applicable Existing Terms, HITACHI, on behalf of itself and the HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries a nonexclusive, irrevocable, fully paid-up, world-wide, perpetual license under the HITACHI Licensed Copyrights to reproduce, distribute, display, perform, and make derivative works of any Works covered by the HITACHI Licensed Copyrights ("**HITACHI Licensed Works**"), in each case, in the ordinary course of the business of Buyer Parent and its Subsidiaries (such license, the "**HITACHI Licensed Copyrights License**"). Buyer Parent and its Subsidiaries may grant sublicenses under the HITACHI Licensed Copyrights License to third parties (a) as provided in Section 3.11 and (b) in connection with the development, manufacture, distribution, provision, sale and use of any products or services of Buyer Parent and its Subsidiaries, in each case, solely in such fields, provided that any disclosure to such third parties of HITACHI Licensed Trade Secrets embodied in HITACHI Licensed Works (and any use of such HITACHI Licensed Trade Secrets by such third parties) shall be only as permitted by Section 3.8.

3.7 HITACHI Licensed Trade Secrets License. Subject to the terms and conditions of this Agreement and, in the case of any particular HITACHI Licensed Trade Secret, to any applicable Existing Terms, HITACHI, on behalf of itself and the HITACHI Sublicensed Subsidiaries, hereby grants to Buyer Parent and its Subsidiaries, a nonexclusive, irrevocable, fully paid-up, worldwide, perpetual license under the HITACHI Licensed Trade Secrets to use the HITACHI Licensed Trade Secrets, in each case, in the ordinary course of the business of Buyer Parent and its Subsidiaries (the "**HITACHI Licensed Trade Secrets License**"). The HITACHI Licensed Trade Secrets shall be deemed Confidential Information of HITACHI and the HITACHI Trade Secret License shall be subject to the terms and conditions of Section 3.8. Notwithstanding the preceding sentence, Buyer Parent and its Subsidiaries may disclose the HITACHI Licensed Trade Secrets to and allow use of the HITACHI Licensed Trade Secrets by third parties as (a) provided in Section 3.11 and (b) reasonably necessary in connection with the development, manufacture, distribution, provision, sale, and use of the products and services of Buyer Parent and its Subsidiaries, in each case, solely in such fields, provided that such third parties are bound in writing by confidentiality terms at least as protective as those set forth in Section 3.8. Except as expressly set forth in the preceding sentence or as expressly permitted by Section 3.8, Buyer Parent and its Subsidiaries shall not (and shall have no right to) disclose or allow the use of any HITACHI Licensed Trade Secret.

3.8 Confidentiality. Buyer Parent and its Subsidiaries shall maintain the HITACHI Licensed Trade Secrets with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but no less than reasonable care under the circumstances. Buyer Parent and its Subsidiaries shall not disclose any HITACHI Licensed Trade Secrets to third parties except where (i) such disclosure is required by law or order of a court of competent jurisdiction, provided that, in such event, Buyer Parent shall provide HITACHI prompt, advance notice of such requirement to allow intervention (and shall cooperate with HITACHI) to contest or minimize the scope of the disclosure (including through application for a protective order), (ii) the HITACHI Licensed Trade Secret disclosed was in the public domain prior to the disclosure to Buyer Parent or its Subsidiaries, (iii) the HITACHI Licensed Trade Secret disclosed becomes part of the public domain by publication or otherwise except by breach of this Agreement, or (iv) Buyer Parent can establish by competent proof the HITACHI Licensed Trade Secret disclosed was received from a third party without restrictions on confidentiality. Buyer Parent shall be responsible to HITACHI for the acts and omissions of any Subsidiary, employee or agent with respect to such confidentiality obligations. To the extent a particular HITACHI Licensed Trade Secret is subject to confidentiality obligations under a written agreement existing as of the Closing Date between HGST or any of its Subsidiaries, on the one hand, and HITACHI or any HITACHI Sublicensed Subsidiary, on the other hand, the obligations set forth in this Section 3.8 will not extend in duration beyond the expiration of the confidentiality obligations set forth in such written agreement.

3.9 Past Release to Buyer Parent. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, hereby irrevocably releases and forever discharges Buyer Parent and its Subsidiaries from any and all claims, losses, demands, causes of action, liabilities, and rights of action of any kind, at law or in equity, whether known or unknown, suspected and unsuspected, disclosed and undisclosed, liquidated or unliquidated, for any act of direct or indirect infringement, before the Closing Date, of any HITACHI HDD Patent, HITACHI SSD Patent, HITACHI External Drive Patent, HITACHI RAID Patent or Storage Software Patent by Buyer Parent or its Subsidiaries making, using, importing, exporting, selling, leasing, offering to sell, or otherwise disposing of HDD (in the case of HITACHI HDD Patents), External Drive (in the case of HITACHI External Drive Patents), SSD (in the case of HITACHI SSD Patents), RAID (in the case of HITACHI RAID patents) or Storage Software Products (in the case of Storage Software Patents). For the avoidance of doubt, the foregoing release is intended to and does apply to all activities of Buyer Parent and its Subsidiaries that fall within the scope of the licenses granted by HITACHI set forth in this Agreement that were carried out before the Closing Date.

3.10 No Licenses to Third Parties. Nothing in this Agreement shall be deemed to grant any license, immunity, release, or other right to any person or entity, other than the Parties and their respective Subsidiaries, as provided herein.

3.11 Divestment Sublicense. Buyer Parent shall have a right to grant to Toshiba Corporation ("**Toshiba**") a sublicense under the rights granted to Buyer Parent pursuant to Sections 3.1, 3.6 and 3.7, effective upon the closing of Toshiba's purchase from Buyer Parent of assets relating to the 3.5" HDD business owned by Viviti Technologies Limited pursuant to the Purchase Agreement in connection with any commitment to, order by, regulation of, or other obligation to a regulatory body, competition authority or similar entity including the commitments under the Case No. Comp M.6203 Western Digital / Viviti Technologies Commitments to the European Commission (collectively, such assets purchased by Toshiba constituting the "**Divested Business**"), subject to the following conditions:

(a) the sublicense granted to Toshiba under the rights granted to Buyer Parent pursuant to Sections 3.1, 3.6 and 3.7 will apply only with respect to developing, making, Having Made, using, importing, exporting, selling, leasing, offering to sell, distributing and otherwise disposing of 3.5" HDDs in the ordinary course of Toshiba's 3.5" HDD business;

(b) the sublicense granted to Toshiba under the rights granted to Buyer Parent pursuant to Sections 3.1, 3.6 and 3.7 will apply only to the operation of the Divested Business, and not to the operation of any businesses or assets (whether or not related to 3.5" HDDs) possessed by Toshiba prior to Toshiba's acquisition of the Divested Business, or acquired or developed by Toshiba independently of Toshiba's acquisition of the Divested Business; and

(c) the sublicense granted to Toshiba will be pursuant to a written agreement, satisfactory in form to Hitachi, obligating Toshiba to observe all applicable terms and conditions of this Agreement with respect to rights granted to Toshiba, and containing confidentiality terms at least as protective of the HITACHI Licensed Trade Secrets, and HITACHI's rights therein, as the terms of Section 3.8 of this Agreement, and further containing terms expressly designating Hitachi as an intended third party beneficiary and providing that Hitachi shall have the right to exercise the same rights and remedies against Toshiba with respect to the sublicense as HITACHI may exercise against Buyer Parent with respect to the applicable provisions of this Agreement. For the avoidance of doubt, the form set forth as Exhibit A is satisfactory to Hitachi as relates to the sublicense pursuant to this Section 3.11.

Notwithstanding anything to the contrary, HITACHI may enforce any rights or seek any remedies arising from any act or omission by Toshiba directly against Toshiba or Buyer Parent; provided, however, that HITACHI will not seek injunctive relief against Buyer Parent, or terminate any rights of Buyer Parent pursuant to this Agreement, due to a breach of the sublicense by Toshiba. If HITACHI is unable to enforce any rights or remedies against Toshiba because of Toshiba's status as a sublicensee under the sublicense agreement (as opposed to a direct licensee of HITACHI), then, Buyer Parent and its Subsidiaries shall reasonably cooperate with HITACHI to enforce such rights or obtain remedies (including, to the extent necessary, Buyer Parent's or its Subsidiaries' joining as a party to any enforcement action or terminating rights granted to Toshiba pursuant to the sublicense agreement). Buyer Parent shall provide a copy of the executed sublicense agreement to HITACHI, and, with respect to those terms relating to the sublicense from HITACHI, shall (i) not amend the sublicense agreement without HITACHI's prior consent, (ii) provide HITACHI with prompt notice of any breach of the sublicense agreement by Toshiba of which Buyer Parent becomes aware, and (iii) not waive any such breach of the sublicense agreement by Toshiba without HITACHI's prior consent.

4. TERMS AND TERMINATIONS

4.1 Termination and Survival. The licenses granted in Sections 2.1, 3.2, 3.3, 3.4 and shall terminate at the end of Term. Further, the license grant in Sections 2.2 and 3.1 shall terminate in part: with respect to Section 2.2, only the license under Buyer Parent RAID Patents that are not HGST RAID Patents shall terminate at the end of the Term; with respect to Section 3.1, only the license under Patents issued or issuing on patent applications entitled to a first effective filing date after the first anniversary of the Closing Date shall terminate at the end of the Term. The remainder of the licenses set forth in Sections 2.2 and 3.1, including their transferability, shall continue and remain in full force and effect until the expiration of the life of the last Patent, as defined herein. In addition, the covenant set forth in Section 2.5 shall terminate (a) at the end of the Term, with respect to Patents issued or issuing on patent applications entitled to a first effective filing date after the first anniversary of the Closing Date and (b) upon the expiration of the life of the last Patent subject to the covenant, as to all other Patents subject to the covenant. The remainder of this Agreement, including the licenses set forth in Sections 3.6 and 3.7 and the provisions of Section 3.8, shall continue and remain in full force for so long as any HITACHI License Copyright or HITACHI Licensed Trade Secret continues to exist and be enforceable.

4.2 Termination of the Rights Granted to Subsidiaries. All rights, licenses and covenants granted to any Subsidiaries of either Party shall automatically terminate in the event that such Subsidiaries no longer fall under the definition of "Subsidiary," as defined herein.

4.3 Termination For Material Breach. If Buyer Parent or any of its Subsidiaries breaches Section 2.5 of this Agreement, and if such material breach is not corrected within sixty (60) days after written notice by HITACHI, the continuing covenants, rights, licenses, and any other privileges granted to Buyer Parent and its Subsidiaries in this Agreement may be terminated by HITACHI forthwith by written notice to Buyer Parent; provided that no such termination shall terminate, modify or limit, in any manner, any of the continuing covenants, rights, licenses, and any other privileges granted to HITACHI and the HITACHI Sublicensed Subsidiaries in this Agreement, all of which shall continue unaffected.

4.4 Termination For Bankruptcy. A Party may terminate this Agreement by giving written notice of termination to the other Party at any time upon or after:

(a) the filing by the other Party of an petition in bankruptcy or insolvency which petition or proceeding is not dismissed within sixty (60) days;

(b) any adjudication that the other Party is bankrupt or insolvent;

(c) the filing by the other Party of any petition or answer seeking reorganization, readjustment or arrangement of its business under any law relating to bankruptcy or insolvency which petition or proceeding is not dismissed within sixty (60) days;

(d) the appointment of a receiver for all or substantially all of the property of the other Party;

(e) the institution of any proceeding for the liquidation winding up of the other Party's business which petition or proceeding is not dismissed within sixty (60) days.

Notwithstanding the foregoing, the occurrence of any of the events provided above shall not be deemed to terminate, modify or limit, in any manner (or permit a Party to terminate, modify or limit, in any manner), any of the continuing covenants, rights, licenses and any other privileges granted to the terminating Party and its Subsidiaries in this Agreement, all of which shall continue unaffected by such event.

4.5 No Release on Termination. No termination in this Agreement pursuant to Section 4.2, 4.3, or 4.4 above shall relieve either Party of any obligation or liability accrued hereunder prior to such termination.

5. REPRESENTATIONS AND WARRANTIES

5.1 Authority. Each Party represents and warrants that it has the corporate power and authority to enter this Agreement, and to carry out the terms and obligations set forth in this Agreement, and that the persons executing this Agreement on its behalf have the authority to act for and bind the Party and/or, in case of Buyer Parent, its Subsidiaries, and in case of HITACHI, HITACHI Sublicensed Subsidiaries.

5.2 Buyer Parent's Right To Grant. Buyer Parent, on behalf of itself and its Subsidiaries, represents and warrants that Buyer Parent (or a Subsidiary of Buyer Parent) owns, and that Buyer Parent has the right to license, the Patents licensed by Buyer Parent; and that it is not a party to any agreements or obligations inconsistent with this Agreement.

5.3 HITACHI's Right To Grant. HITACHI, on behalf of itself and HITACHI Sublicensed Subsidiaries, represents and warrants that HITACHI (or a HITACHI Sublicensed Subsidiary) owns, and that HITACHI has the right to license, the Patents licensed by HITACHI; and that it is not a party to any agreements or obligations inconsistent with this Agreement.

5.4 No Warranty by Buyer Parent. This Agreement does not and shall not be interpreted or construed to include: (a) any warranty or representation on the part of Buyer Parent as to the validity, enforceability, or scope of any Patent licensed by Buyer Parent; (b) any warranty or representation that any specific apparatus or method used by HITACHI in connection with any Patents licensed by Buyer Parent is or will be free from infringement of patents of others or other intangible rights of third parties; (c) any requirement to file any patent application, or secure or maintain any patent; (d) any obligation to bring or prosecute any action for infringement of any Patent licensed by Buyer Parent; (e) any obligation to furnish any technical or support information; (f) any license or right by implication or estoppel; or (g) any warranty of MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE for implementations of Patents licensed by Buyer Parent.

5.5 No Warranty by HITACHI. This Agreement does not and shall not be interpreted or construed to include: (a) any warranty or representation on the part of HITACHI as to the validity, enforceability, or scope of any Patent licensed by HITACHI; (b) any warranty or representation that any specific apparatus or method used by Buyer Parent or its Subsidiaries in connection with any Patent licensed by HITACHI is or will be free from infringement of patents of others or other intangible rights of third parties; (c) any requirement to file any patent application, or secure or maintain any patent; (d) any obligation to bring or prosecute any action for infringement of any Patent licensed by HITACHI; (e) any obligation to furnish any technical or support information; (f) any license or right by implication or estoppel; or (g) any warranty of MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE for implementations of the Patents licensed by HITACHI.

6. NOTICES

All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by Federal Express or other internationally recognized express carrier, registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed to a Party at the addresses set forth below, or at such other address as a Party may substitute by written notice provided to the other Party in such manner. Such notices shall be deemed to have been served when delivered.

If to HITACHI:

IP Business Division
Intellectual Property Group
Hitachi, Ltd.
Atten: General Manager
6-1 Marunouchi 1-chome, Chiyoda-ku
Tokyo 100-8220 Japan
If to Buyer Parent:

7. BUSINESS ACQUISITION, TRANSFER, CHANGE OF CONTROL, ETC.

7.1 Assignment and Change of Control of Buyer Parent HDD Business. Buyer Parent may assign or transfer the rights, licenses, and covenants under Section 3.1 of this Agreement in connection with any sale or other transfer of (i) all or substantially all of Buyer Parent's HDD business, (ii) all or substantially all of Buyer Parent's HDD-related assets in a single transaction or a series of transactions, or (iii) any transaction under which Buyer Parent undergoes a change in control.

7.2 Assignment of Buyer Parent Non-HDD Business. In connection with any sale or other transfer of (a) all or substantially all of Buyer Parent's RAID, External Drive, and/or SSD business, or (b) all or substantially all of Buyer Parent's RAID-, External Drive-and/or SSD-related assets in a single transaction or a series of transactions, Buyer Parent may assign or transfer the rights, licenses and covenants under Sections 3.2, 3.3, 3.4, 3.5 and/or 3.6 corresponding to the sold or transferred business, subject to the following limitations:

(a) The rights, licenses, and covenants under Sections 3.2, 3.3, 3.4, 3.5 and/or 3.6 shall be assignable provided that: the acquiring third party ("**Acquiring 3rd Party**") agrees to grant a royalty-free license to HITACHI and the HITACHI Sublicensed Subsidiaries under the Patents which would fall within the scope of Buyer Parent SSD Patents or Buyer Parent RAID Patents if the Acquiring 3rd Party were named in the place of Buyer Parent in Sections 1.4 and 1.5 hereunder, in each case for the applicable term set forth in Section 4.1;

(b) The rights, licenses, and covenants under Sections 3.2, 3.3, 3.4, 3.5 and/or 3.6 shall not be extended to the business originally run by the Acquiring 3rd Party or any of its Subsidiaries. To the extent that such rights, licenses and covenants continue to extend to the acquired portion of the business, the extension shall be limited to a revenue of such business equal to no more than the revenue of the acquired business in the twelve (12) months preceding such sale or transfer plus twenty percent (20%); and shall also be limited, in each of the successive twelve-month periods following such transfer or sale, to a revenue equal to no more than the immediately preceding twelve-month period plus twenty percent (20%). To the extent that the business exceeds this cap, and the Acquiring 3rd Party desires to obtain further rights and licenses, the Acquiring 3rd Party and HITACHI shall discuss a mutually acceptable resolution; and,

(c) In no event shall the rights, licenses, and covenants under Sections 3.2, 3.3, 3.4, 3.5 and/or 3.6 supersede or relieve any obligation by any party to pay on-going royalties under any existing patent license agreement with respect to business operations of the Acquiring 3rd Party.

(d) The rights, licenses, and covenants under Sections 3.2, 3.3, 3.4, 3.5 and/or 3.6 may not be assigned or transferred by Buyer Parent to any Acquiring 3rd Party if such Acquiring 3rd Party or any of its Subsidiaries has made, in court or otherwise, a written allegation of patent infringement against HITACHI that existed prior to the completion of the assignment or transfer and has not been resolved prior to the completion of the assignment or transfer.

7.3 Impact of Change of Control of Buyer Parent or HGST on Sections 3.2, 3.3, 3.4, 3.5 and 3.6 Licenses. In the event that in a single transaction or in a series of transactions Buyer Parent is acquired by a third party, through a merger, stock sale, asset purchase, or otherwise, HITACHI may, at its option, terminate the rights, licenses, and covenants under Section 3.2, 3.3, 3.4, 3.5 or 3.6 of this Agreement (but not the license under Section 3.1), if and only if the Acquiring 3rd Party or any of its Subsidiaries is a competitor in the RAID business. Buyer Parent shall timely notify HITACHI in writing of the acquisition with the information reasonably required for HITACHI to determine whether or not to terminate those rights, including the framework and schedule of the acquisition. HITACHI shall notify, in turn, Buyer Parent in writing of its election whether or not to terminate the license within ninety (90) days after receipt of the notice. In the event that HITACHI chooses to terminate the license pursuant to the terms of this provision, HITACHI and Buyer Parent shall have a good faith basis upon which to renegotiate the license. Notwithstanding the foregoing, the rights, licenses and covenants in Sections 3.1 and 3.8 shall not be terminated in any event.

7.4 Acquisition of Non-HDD Business by Buyer Parent. In the event that Buyer Parent directly or indirectly acquires a Non-HDD Business pursuant to a merger, asset or stock purchase, or otherwise in a single transaction or a series of transactions during the Term, HITACHI shall have an option not to extend the rights, licenses, releases, and covenants under Section 3 to such Non-HDD Business; provided, however, if HITACHI exercises the option, the Patents owned or controlled by the acquired Non-HDD Business shall not be included in the definitions of Buyer Parent SSD Patents or Buyer Parent RAID Patents. Buyer Parent shall notify HITACHI in writing of the acquisition with information of the acquired Non-HDD Business reasonably required for HITACHI to determine the exercise of the option. HITACHI shall notify, in turn, Buyer Parent in writing of its exercise of the option or not within ninety (90) days after HITACHI received such notice without delay.

7.5 Assignment of RAID Business By HITACHI. HITACHI may assign or transfer the rights, licenses and covenants under Section 2.2 in connection with any sale or other transfer of (i) all or substantially all of HITACHI's RAID business or (ii) substantially all of HITACHI's related RAID assets in a single transaction or a series of transactions.

7.6 Assignment of SSD Business By HITACHI. HITACHI may assign or transfer the rights, licenses and covenants under Section 2.1 in connection with any sale or other transfer of (i) all or substantially all of HITACHI's SSD business or (ii) substantially all of HITACHI's related SSD assets in a single transaction or a series of transactions during the Term.

7.7 Change of Control of HITACHI. In the event that in a single transaction or in a series of transactions HITACHI is acquired by a third party, through a merger, stock sale, asset purchase, or otherwise, this Agreement shall remain effective and shall not be terminated.

7.8 Notice of Assignment/Transfer. In the event of a valid assignment or transfer (i.e., one made pursuant to the terms of Section 7.1, 7.2, 7.5 or 7.6 above) by either Party of this Agreement, the transferring or assigning Party shall, within ninety (90) calendar days, provide the other Party notice, in writing, of such assignment or transfer and shall identify the person to whom it has made such assignment or transfer.

7.9 Effect of Assignment. Any license, covenants and/or any other rights assigned by either Party pursuant to any provision of this Section 7 shall be effective with respect to the assignee (and its business and operations) on a prospective basis only. Accordingly, no such assignment shall relieve, release or discharge any assignee from any liability for damages accruing prior to the effective date of the applicable assignment due to the infringement of any Patent licensed under this Agreement. Should either Party assign or otherwise transfer this Agreement or any of its respective Patents, such transfer shall not operate to terminate, impair or in any way modify the licenses and releases provided by the Parties herein, except as expressly provided for under the terms of this Agreement.

7.10 Assignment of Patents. From and after any assignment or transfer of a Patent by either Party or its Subsidiaries, the assignee shall be bound by the terms and conditions of this Agreement with respect to such Patents.

7.11 Sublicense. Neither party, nor their Subsidiaries, may sublicense any rights under this Agreement unless otherwise provided hereunder.

8. MISCELLANEOUS

8.1 Entire Agreement. This Agreement contains the complete agreement between, and contains all of the promises and undertakings made to each other by, the Parties regarding the subject matter of this Agreement. Any and all prior agreements, representations, negotiations, and undertakings between the Parties, oral or written, express or implied, with respect to the subject matter hereof are hereby superseded and merged by and into this Agreement. This Agreement may not be revised or modified without the mutual written consent of the Parties.

8.2 Severability. If any paragraph, provision or clause of this Agreement shall be found or held to be invalid or unenforceable by a court or other decision-making body of competent jurisdiction, in a judgment from which no further appeal can be taken, the remainder of this Agreement shall remain valid and enforceable, and to the extent required in the pursuit of this Agreement, the Parties shall negotiate in good faith a substitute, valid and enforceable provision that reflects the Parties' intent in entering this Agreement.

8.3 No Other Rights. Nothing contained in this Agreement shall be construed as conferring any rights by implication, estoppel or otherwise, under any non-patent intellectual property right, or any patent, other than the Patents licensed to Buyer Parent and HITACHI. Neither Party is required hereunder to furnish or disclose to the other any technical or other information (including copies of Patents licensed to Buyer Parent and HITACHI.)

8.4 ADR Provision. The Parties agree that, in the event of a dispute arising under this Agreement, the Parties shall agree to attend a non-binding mediation prior to bringing any action in a court of law. The mediation shall be facilitated by a neutral third-party, selected by the parties. A representative from each Party with authority to settle on behalf of that party shall attend the mediation in person. The purpose of the mediation is to resolve the disputed issue(s) without the need for formal legal proceedings.

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8.6 Jurisdiction. The Parties agree that the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery shall be unavailable, any Delaware State court and the Federal court of the United States of America sitting in the State of Delaware) shall have exclusive jurisdiction of interpreting or enforcing this Agreement. The parties expressly waive their right to a trial by jury.

8.7 Counterparts. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

8.8 Bankruptcy Code. The Parties acknowledge and agree that the rights and licenses granted in this Agreement, including but not limited to Section 2.0, are "intellectual property" as defined in Section 101 (35) of the United States Bankruptcy Code, as the same may be amended from time to time (the "Code"), for purposes of Section 365(n) of the Code, and have been licensed in this Agreement in a contemporaneous exchange for value.

8.9 Further Assurances. Each Party hereto shall execute and cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request, to effect, evidence, record or perfect any of the licenses and other rights set forth in this Agreement. The requesting Party shall reimburse the other Party for its reasonable out-of-pocket costs in responding to a request under this Section.

8.10 Disclosure. The terms of this Agreement shall remain confidential and neither Party shall disclose this Agreement or its terms to any individual or entity, except (a) with the prior written consent of the other Party, (b) to the extent disclosure by a Party is required by law or order of a court of competent jurisdiction, provided that, in such event, such Party shall provide the other Party prompt, advance notice of such requirement to allow intervention (and shall cooperate with the other Party) to contest or minimize the scope of the disclosure (including through application for a protective order) or (c) in confidence by a Party to its auditors or legal counsel in connection with the provision of audit or legal services (respectively) to such Party, to the extent required for the provision of such services.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to execute this Agreement on the dates indicated below.

For and on behalf of
Hitachi Ltd., and HITACHI Sublicensed Subsidiaries,

By: _____ Date: _____
Name: Naoya Takahashi
Title: Executive Vice President and Executive Officer

For and on behalf of
Western Digital Corporation, a Delaware corporation, and its Subsidiaries,

By: _____ Date: _____
Name: _____
Title: _____

FOURTH AMENDMENT TO STOCK PURCHASE AGREEMENT

This Fourth Amendment to the Stock Purchase Agreement (this "Amendment") is made this 15th day of February, 2012, by and among Western Digital Corporation, a Delaware corporation (the "Buyer Parent"), Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly owned subsidiary of the Buyer Parent (the "Buyer"), Hitachi, Ltd., a company incorporated under the laws of Japan (the "Seller"), and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore and a wholly owned subsidiary of the Seller (the "Company", and collectively with the Seller, Buyer and Buyer Parent, the "Parties", and each, a "Party"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stock Purchase Agreement (as defined below).

WHEREAS, the Parties entered into a Stock Purchase Agreement on March 7, 2011, as amended by a First Amendment to Stock Purchase Agreement, dated May 27, 2011, as further amended by a Second Amendment to Stock Purchase Agreement, dated November 23, 2011, and as further amended by a Third Amendment to Stock Purchase Agreement, dated January 30, 2012 (together, the "Stock Purchase Agreement"); and

WHEREAS, the Parties desire to amend the Stock Purchase Agreement as reflected herein.

NOW, therefore, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Schedule 7.8 of the Stock Purchase Agreement**. Schedule 7.8 of the Stock Purchase Agreement, Retained Land, is hereby deleted in its entirety and replaced by the Schedule 7.8 attached hereto as Exhibit A.

2. **Effect on the Stock Purchase Agreement**. This Amendment shall not constitute a waiver, amendment or modification of any provision of the Stock Purchase Agreement not expressly referred to herein. Except as expressly amended or modified herein, the provisions of the Stock Purchase Agreement are and shall remain in full force and effect and are hereby ratified and confirmed. On and after the date hereof, each reference in the Stock Purchase Agreement to "this Agreement", "herein", "hereof", "hereunder" or words of similar import shall mean and be a reference to the Stock Purchase Agreement as amended hereby, although it shall not alter the dates as of which any provision of the Stock Purchase Agreement speaks. For example, phrases such as "as of the date hereof" and "as of the date of this Agreement" shall continue to refer to March 7, 2011, the date that the Stock Purchase Agreement was originally executed. To the extent that a provision of this Amendment conflicts with or differs from a provision of the Stock Purchase Agreement, such provision of this Amendment shall prevail and govern for all purposes and in all respects.

3. **Miscellaneous**. Sections 12.4, 12.5, 12.7 and 12.13 of the Stock Purchase Agreement are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Fourth Amendment to Stock Purchase Agreement as of the date first written above.

"BUYER PARENT"

WESTERN DIGITAL CORPORATION

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: SVP, GC & Secretary

"BUYER"

WESTERN DIGITAL IRELAND, LTD.

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: VP

"SELLER"

HITACHI, LTD.

By: /s/ Toyoki Furuta
Name: Toyoki Furuta
Title: General Manager,
Business Development Office

"COMPANY"

VIVITI TECHNOLOGIES LTD.

By: /s/ Christopher Dewees
Name: Christopher Dewees
Title: SVP & General Counsel

FIFTH AMENDMENT TO STOCK PURCHASE AGREEMENT

This Fifth Amendment to the Stock Purchase Agreement (this "Amendment") is made this 6th day of March, 2012, by and among Western Digital Corporation, a Delaware corporation (the "Buyer Parent"), Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly owned subsidiary of the Buyer Parent (the "Buyer"), Hitachi, Ltd., a company incorporated under the laws of Japan (the "Seller"), and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore and a wholly owned subsidiary of the Seller (the "Company", and collectively with the Seller, the Buyer and the Buyer Parent, the "Parties", and each, a "Party"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stock Purchase Agreement (as defined below).

WHEREAS, the Parties entered into a Stock Purchase Agreement on March 7, 2011, as amended by a First Amendment to Stock Purchase Agreement, dated May 27, 2011, as further amended by a Second Amendment to Stock Purchase Agreement, dated November 23, 2011, as further amended by a Third Amendment to Stock Purchase Agreement, dated January 30, 2012, and as further amended by a Fourth Amendment to Stock Purchase Agreement, dated February 15, 2012 (together, the "Stock Purchase Agreement");

WHEREAS, concurrent with the execution of this Amendment, the Buyer Parent, the Seller and the Company have executed and delivered Amendment No. 2 to the Transition Services Agreement; and WHEREAS, the Parties desire to amend the Stock Purchase Agreement and certain other Transaction Documents as reflected herein.

NOW, therefore, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. Section 1.1 of the Stock Purchase Agreement. The definition of "Outstanding Company Debt" set forth in Section 1.1 of the Stock Purchase Agreement is hereby amended and restated in its entirety to read as follows:

> "Outstanding Company Debt" means all short and long-term debt, accounts receivable related borrowings and lines of credit of the Company or any of its Subsidiaries outstanding as of the Closing Date, other than intercompany indebtedness between the Company and any of its Subsidiaries or between any of its Subsidiaries, and other than any debt outstanding under (i) that certain Credit Line Agreement between Hitachi Global Storage Technologies (Shenzhen) Co., Ltd. and Agricultural Bank of China, dated December 22, 2011, and/or (ii) that certain Credit Line Agreement between Hitachi Global Storage Products (Shenzhen) Co., Ltd. and Agricultural Bank of China, dated December 22, 2011."

2. Section 2.3(a) of the Stock Purchase Agreement. Section 2.3(a) of the Stock Purchase Agreement is hereby amended and restated in its entirety to read as follows:

"At the Closing, the Buyer shall make the following payments by wire transfer of immediately available funds for the benefit of the Persons and to the accounts and in the amounts specified on a spreadsheet containing the items listed below in this Section 2.3(a)(the "Consideration Spreadsheet"), to be prepared by the Company not less than three (3) Business Days prior to the Closing:

(i) Unpaid Transaction Expenses. The Buyer shall pay, from the Cash Portion of the Purchase Price, the Transaction Expenses not paid by the Company or any of the Subsidiaries prior to the Closing;

(ii) Unpaid Change of Control Payments. The Buyer shall pay, from the Cash Portion of the Purchase Price, an aggregate amount equal to the Change of Control Payments not paid by the Company or any of the Subsidiaries prior to the Closing to Hitachi Global Storage Technologies Netherlands B.V. ("HGST BV") for further distribution to the applicable Subsidiaries, who will then make subsequent distributions to the applicable employees in accordance with such Subsidiary's normal payroll processes;

(iii) Unpaid Employee Payments. The Buyer shall pay, from the Cash Portion of the Purchase Price, an aggregate amount equal to the Employee Payments not paid by the Company or any of the Subsidiaries prior to the Closing to (A) HGST BV for further distribution to the applicable Subsidiaries, who will then make subsequent distributions to the applicable employees in accordance with such Subsidiary's normal payroll processes and/or (B) the Company in accordance with the Company's normal payroll processes;

(iv) Unpaid Outstanding Company Debt. The Buyer shall pay, from the Cash Portion of the Purchase Price, all Outstanding Company Debt, to the extent not paid by the Company or any of the Subsidiaries prior to the Closing;

(v) Equity Award Payments. The Buyer shall pay, from the Cash Portion of the Purchase Price, an aggregate amount equal to the Equity Award Payments not paid by the Company or any of the Subsidiaries prior to the Closing to (A) HGST BV for further distribution to the applicable Subsidiaries, who will then subsequently make such Equity Award Payments, less applicable withholding Taxes, to the respective Vested Equity Holders in accordance with such Subsidiary's normal payroll process and/or (B) the Company, who will then subsequently make such Equity Award Payments, less applicable withholding Taxes, to the respective Vested Equity Holders in accordance with the Company's normal payroll process;

(vi) Seller. The Buyer shall pay to the Seller from the Cash Portion of the Purchase Price, an amount equal to the sum of (A) the product of (x) the total number of issued and paid-up shares of the Stock owned by the Seller at the Closing and (y) the Per Share Closing Payment less (B) the Stock Portion of the Purchase Price; provided, however, that neither the Company nor any of the Subsidiaries will distribute any unpaid Change of Control Payments, unpaid Employee Payments or Equity Award Payments to the individuals listed on Schedule 1.1(a) prior to the eighth (8th) day following such individual's execution of a waiver and release of claims against the Company, substantially in the form prescribed by the Company attached hereto as Exhibit H (together with the related clarification included in Exhibit H)."

3. Amendments to the Stock Purchase Agreement Related to Secondment.

(a) Section 6.12(e)(i) of the Stock Purchase Agreement.

(1) The number of R&D Secondees defined as "up to 113 employees of the Seller" in Section 6.12(e)(i) of the Stock Purchase Agreement is hereby amended to state "up to 102 employees of the Seller".

(2) Schedule 6.12(e)(i) of the Stock Purchase Agreement (Seller Seconded R&D Employees) is hereby deleted in its entirety and replaced by the Schedule 6.12(e)(i) attached hereto as Exhibit A.

(b) Section 6.12(e)(ii) of the Stock Purchase Agreement.

(1) The Non-R&D/R&D Related Secondees defined as "up to 26 employees of the Seller" in Section 6.12(e)(ii) of the Stock Purchase Agreement is hereby amended to state "up to 31 employees of the Seller and its Related Subsidiaries".

(2) Schedule 6.12(e)(ii) of the Stock Purchase Agreement (Seller Seconded Non-R&D Employees) is hereby deleted in its entirety and replaced by the Schedule 6.12(e)(ii) attached hereto as Exhibit B.

(3) The reference to "either the Seller or HGST Japan" in the proviso of Section 6.12(e)(ii) of the Stock Purchase Agreement is hereby amended to state "either the Seller or its Related Subsidiary, as applicable, or HGST Japan".

(c) Section 6.12(e)(iii) of the Stock Purchase Agreement. Each of the two references to "the Seller" in the second sentence of Section 6.12(e)(iii) is hereby amended to state "the Seller or its Related Subsidiary, as applicable,".

(d) Section 6.12(f) of the Stock Purchase Agreement.

(1) The HGST Japan Secondees defined as "up to 82 employees of HGST Japan to Seller" in Section 6.12(f) of the Stock Purchase Agreement is hereby amended to state "up to 60 employees of HGST Japan to Seller and its Related Subsidiaries, as applicable".

(2) Schedule 6.12(f) of the Stock Purchase Agreement (HGST Japan Secondees) is hereby deleted in its entirety and replaced by the Schedule 6.12(f) attached hereto as Exhibit C.

(3) Each of the two references to "the Seller" in the third sentence of Section 6.12(f) is hereby amended to state "the Seller or its Related Subsidiary, as applicable,".

4. Amendment to Secondment Periods in the Stock Purchase Agreement. Each of the R&D Secondment Period, the Non-R&D/R&D Related Secondment Period and the HGST Japan Secondment Period as defined in Sections 6.12(e)(i), 6.12(e)(ii) and 6.12(f), respectively, of the Stock Purchase Agreement is hereby amended such that the initial period of secondment shall commence on the Closing Date (unless otherwise indicated on Schedule 6.12(e)(i), Schedule 6.12(e)(ii) or Schedule 6.12(f)) and terminate as of the close of business on March 31, 2014.

5. Section 6.12(h)(ii) of the Stock Purchase Agreement. Section 6.12(h)(ii) of the Stock Purchase Agreement is hereby amended to delete the last sentence of such section, which reads: "The Buyer shall use commercially reasonable efforts to provide for remittance of continued payroll deductions to service any participant loan balance maintained by a Continuing Employee under the Seller 401(k) Plan through the end of the calendar quarter following the calendar quarter in which the Closing occurs (or through the date of distribution of such Continuing Employee's account under the Seller 401(k) Plan, if earlier)."

6. Schedule 1.1(a) to the Stock Purchase Agreement.

(a) Item 3 of Schedule 1.1(a) is hereby amended and restated in its entirety to read as follows:

"3. Severance and Change in Control Agreement, dated September 27, 2010, by and between the Company and Steven G. Campbell, as contemplated to be amended pursuant to Schedule 6.1.***"

(b) Item 4 of Schedule 1.1(a) is hereby amended and restated in its entirety to read as follows:

"4. Severance and Change in Control Agreement, dated September 27, 2010, by and between the Company and Michael D. Cordano, as contemplated to be amended pursuant to Schedule 6.1.***"

7. Exhibit A to the Stock Purchase Agreement. Exhibit B (Key HGST Employees) to Exhibit A to the Stock Purchase Agreement, Form of Agreement Not to Compete, is hereby amended and restated in its entirety to read as set forth on Exhibit D hereto.

8. Exhibit B to the Stock Purchase Agreement. Section 1.1 of Exhibit B to the Stock Purchase Agreement, Form of License Agreement, is hereby amended and restated in its entirety to read as follows:

> "**External Drive**" means an enclosure that encases one or more HDDs or SSDs and related peripheral hardware, or Software or Firmware components (other than RAID). For the avoidance of doubt, "External Drive" includes Information Versatile Disk for Removable Usage (iVDR) enclosures that encase one or more HDDs or SSDs and related peripheral hardware, or Software or Firmware components (other than RAID)."

9. Exhibit C to the Stock Purchase Agreement.

(a) Section 2.01 of Exhibit C to the Stock Purchase Agreement, Form of Investor Rights Agreement, is hereby amended and restated in its entirety to read as follows:

> "**Investor Designee Appointment and Nomination Right**. The Investor shall have the right, but not the obligation, to designate two nominees to serve as directors of the Company (each, an "Investor Designee" and, together, the "Investor Designees"). In the event the Investor determines to designate the initial Investor Designees, the Investor shall notify the Company in writing of the names of the initial Investor Designees. Promptly following receipt by the Company of all documentation reasonably requested by the Company in connection with the appointment of the initial Investor Designees, the Company shall increase the size of the Board by two, and fill the resulting vacancies with the initial Investor Designees in accordance with the Company's Bylaws. Thereafter, the Company shall (a) include the Investor Designees in its slate of nominees for election to the Board of Directors at each annual or special meeting of stockholders of the Company following the Closing at which directors are to be elected and at which the seats held by the Investor Designees are subject to election (such annual or special meetings, the "Election Meetings") and (b) recommend that the Company's stockholders vote in favor of the election of the Investor Designees, support the Investor Designees for election in a manner no less favorable than the manner in which the Company supports its other nominees, and otherwise use commercially reasonable efforts to cause the election of the Investor Designees to the Board of Directors at each of the Election Meetings. The foregoing appointment and nomination rights will be subject to the Investor Designees satisfying the Company's Board Qualifications (as defined in Section 2.03); provided that, if an Investor Designee does not meet the Board Qualifications, (i) the Company will not nominate a replacement candidate in place of the rejected Investor Designee (unless the Investor does not nominate a replacement candidate pursuant to its rights in the following clause (ii) within the time period stated in such clause), and (ii) the Investor shall have the right (if exercised as promptly as reasonably practicable and in any event within 30 days) to nominate a replacement candidate in place of the rejected Investor Designee until such time as an Investor Designee that meets the Board Qualifications is put forward by the Investor."

(b) The list attached as Exhibit E hereto is the "Competitor List Letter" as such term is defined in the Form of Investor Rights Agreement attached as Exhibit C to the Stock Purchase Agreement.

10. Exhibit E to the Stock Purchase Agreement. Exhibit E to the Stock Purchase Agreement, Form of R&D Services Agreement, is hereby amended and restated in its entirety to read as set forth on Exhibit F hereto.

11. Exhibit F to the Stock Purchase Agreement. Exhibit F to the Stock Purchase Agreement, Form of Branding Agreement, is hereby amended and restated in its entirety to read as set forth on Exhibit G hereto.

12. Exhibit G to the Stock Purchase Agreement. Exhibit G to the Stock Purchase Agreement, Form of Secondment Agreement, is hereby amended and restated in its entirety to read as set forth on Exhibit H hereto.

13. Exhibit H to the Stock Purchase Agreement. The Stock Purchase Agreement is hereby amended by adding Exhibit H as set forth on Exhibit I hereto.

14. Exhibit I to the Stock Purchase Agreement.

(a) The Stock Purchase Agreement is hereby amended by adding Exhibit I, Form of Reverse Services Agreement, as set forth on Exhibit J hereto.

(b) Section 8.8 of the Stock Purchase Agreement. A new Section 8.8 is hereby added to the Stock Purchase Agreement as follows:

"**Section 8.8 Reverse Services Agreement**. The Seller shall have received the reverse services agreement, in the form attached as Exhibit I, executed by the Company."

15. Effect on the Stock Purchase Agreement. This Amendment shall not constitute a waiver, amendment or modification of any provision of the Stock Purchase Agreement not expressly referred to herein. Except as expressly amended or modified herein, the provisions of the Stock Purchase Agreement are and shall remain in full force and effect and are hereby ratified and confirmed. On and after the date hereof, each reference in the Stock Purchase Agreement to "this Agreement", "herein", "hereof", "hereunder" or words of similar import shall mean and be a reference to the Stock Purchase Agreement as amended hereby, although it shall not alter the dates as of which any provision of the Stock Purchase Agreement speaks. For example, phrases such as "as of the date hereof" and "as of the date of this Agreement" shall continue to refer to March 7, 2011, the date that the Stock Purchase Agreement was originally executed. To the extent that a provision of this Amendment conflicts with or differs from a provision of the Stock Purchase Agreement, such provision of this Amendment shall prevail and govern for all purposes and in all respects.

16. Miscellaneous. Sections 12.4, 12.5, 12.7 and 12.13 of the Stock Purchase Agreement are incorporated herein by reference.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Fifth Amendment to Stock Purchase Agreement as of the date first written above.

"BUYER PARENT"

WESTERN DIGITAL CORPORATION

By: /s/ Michael Ray
Michael Ray
Senior Vice President, General Counsel
and Secretary

"BUYER"

WESTERN DIGITAL IRELAND, LTD.

By: /s/ Michael Ray
Michael Ray
Vice President

"SELLER"

HITACHI, LTD.

By: /s/ Toyoki Furuta
Name: Toyoki Furuta
Title: General Manager
Business Development Office

"COMPANY"

VIVITI TECHNOLOGIES LTD.

By: /s/ Christopher S. Dewees
Name: Christopher S. Dewees
Title: SVP

EXHIBIT F

EXHIBIT E TO THE STOCK PURCHASE AGREEMENT
Form of R&D Services Agreement

[see attached]

Form of R&D Services Agreement

Exhibit E

FORM OF

R&D SERVICES AGREEMENT

This R&D Services Agreement ("**Agreement**") effective as of the Closing Date (as defined below), is entered into by and between Western Digital Corporation, a Delaware company with its principal place of business at 3355 Michelson Drive, Suite 100 Irvine, California 92612 ("**Company**") and Hitachi, Ltd. ("**Hitachi**"), a Japanese company with its principal place of business at 6-6, Marunouchi 1- chome, Chiyoda-ku, Tokyo 100-8280, Japan. Each of the signatories to this Agreement is referred to as a "**Party**," and jointly as the "**Parties**."

RECITALS

WHEREAS, Company, Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly-owned subsidiary of the Company ("**Buyer** "), Hitachi and Viviti Technology Ltd., a company incorporated under the laws of the Republic of Singapore ("**Viviti**") have entered into that certain Stock Purchase Agreement dated as of March 7, 2011 (the "**Purchase Agreement**");

WHEREAS, prior to the Closing Date, Hitachi has performed, from time to time, certain research and development services for the Viviti; and WHEREAS, Company and Hitachi desire that following the Closing Date Hitachi will continue to provide certain research and development services to Company and its Subsidiaries relating to HDD (as defined below), of a nature similar to those provided to Viviti prior to the Closing Date, pursuant to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises and covenants set out herein, the Parties agree as follows:

TERMS OF AGREEMENT

1. DEFINITIONS

1.1 "**Background Intellectual Property Rights**" means Intellectual Property Rights, if any, owned by Hitachi that are (a) embodied in Background Technology, and (b) not Developed Intellectual Property Rights; *provided*, however, that a Patent will be a Background Intellectual Property Right only if Hitachi has the right to grant to Company a license of the scope set forth in Section 4.2 under such Patent without incurring any obligation to pay any royalty or other consideration to any third party.

1.2 "**Background Technology**" means Technology, if any, owned by Hitachi or its Subsidiaries that is (a) embodied in any Deliverable, and (b) not Developed Technology.

1.3 "**Closing Date**" has the meaning set forth in the Purchase Agreement.

1.4 "**Deliverables**" means the deliverables, if any, to be provided by Hitachi as part of the Services performed hereunder, as specifically described in an applicable Project Agreement.

1.5 "**Developed Intellectual Property Rights**" means Intellectual Property Rights to the extent such Intellectual Property Rights (i) are first created by Hitachi in the course of its performance of the Services pursuant to the applicable Project Agreement and within the scope and during the term of such applicable Project Agreement, and (ii) are embodied in Developed Technology. For the avoidance of doubt, "Developed Intellectual Property Rights" includes the right to seek Patent protection for inventions that constitute Developed Intellectual Property, if any, but does not include any Patents or Patent applications of Hitachi or its Subsidiaries.

1.6 "**Developed IP**" means, collectively, Developed Technology and Developed Intellectual Property Rights.

1.7 "**Developed Technology**" means Technology embodied in any Deliverable to the extent such Technology is first developed or created by Hitachi in the course of its performance of the Services pursuant to the applicable Project Agreement and within the scope and during the term of such applicable Project Agreement.

1.8 "**Fully Burdened Cost**" means all of Hitachi's costs and expenses incurred in connection with the performance of the Services, including labor and material costs, expenses, and general and administrative expenses and overhead, all as determined in accordance with generally accepted accounting principles as consistently applied by Hitachi.

1.9 "**HDD**" has the meaning set forth in the License Agreement.

1.10 "**Intellectual Property Rights**" means Patents, copyrights, and rights with respect to trade secrets, whether arising under the laws of the United States, Japan or any other jurisdiction, including, in each case, any rights apply for, register, and enforce any of the foregoing. Notwithstanding the foregoing, "Intellectual Property Rights" does not include any trademark rights or similar rights with respect to indicia of source or origin.

1.11 "**License Agreement**" means that certain License Agreement entered into by and between Company and Hitachi as of the Closing Date.

1.12 "**Patents**" means all classes and types of patents, including utility patents, utility models, design patents, invention certificates, including divisionals, continuations, continuations-in-part, reexaminations, reissues, extensions and renewals, in all jurisdictions of the world.

1.13 "**Project Coordinator(s)**" means the Hitachi representative(s) and Company representative(s) identified as project coordinator(s) in the applicable Project Agreement.

1.14 "**Services**" means the research and development services to be performed by Hitachi hereunder, as specifically described in an applicable Project Agreement.

1.15 "**Software or Firmware**" means a set of instructions, that either (i) directly provides instructions to the computer hardware, or, (ii) indirectly serves as an input to another piece of software.

1.16 "**Subsidiary**" of either Party shall mean a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, directly, or indirectly, by such Party. For the purposes of this Agreement, Viviti and its Subsidiaries will be Subsidiaries of Company (subject to meeting the requirements of the preceding sentence) and are not Subsidiaries of Hitachi.

1.17 "**Technology**" means inventions, know-how, designs, specifications, Software or Firmware and other copyrightable material, technical information, devices, and other developments and technology.

1.18 "**Term**" means the period beginning on the Closing Date and ending eighteen (18) months from the Closing Date.

2. SCOPE OF SERVICES

2.1 **Project Agreements**. Any services and deliverables to be performed or provided by Hitachi hereunder with respect to any Project (as defined below) shall be mutually agreed and described in a written Project Agreement entered into by the Parties hereunder and specifically referencing this Agreement ("**Project Agreements**"). As soon as practicable following the Closing Date, the Parties shall use commercially reasonable efforts to enter into a Project Agreement for each research and development project listed in Schedule 1 ("**Project**"), which such Project Agreements shall describe the applicable Project in reasonable detail, contain terms and conditions applicable to such Project that are materially consistent with the terms and conditions for each such Project as set forth in Schedule 2 hereto, and set forth in sufficient detail (i) the type, scope, and nature of the Services and Deliverables to be performed or provided by Hitachi with respect to such Project, (ii) specific staffing requirements and schedule, if applicable, for such Project, (iii) the Project Coordinators for such Project, and (iv) such other matters as the Parties may mutually agree. In addition, Hitachi will use commercially reasonable efforts to identify in the applicable Project Agreement any Patents owned by Hitachi and claiming Background Technology Hitachi expects to be embodied in Deliverables to be delivered to Company in the course of a Project under which Hitachi does not have the right to grant to company a license of the scope set forth in Section 4.2 without incurring an obligation to pay a royalty or other consideration to a third party. All Project Agreements shall be an integral part of this Agreement and be subject to the terms and conditions set forth herein.

2.2 **Projects**. The Projects currently contemplated by the Parties are described in Schedule 1 hereto. The Parties may mutually agree to add additional Projects directly related to the business of Company during the Term. Unless otherwise expressly agreed in writing by the Parties, all Projects will be directed to HDDs. If the Parties agree in writing to undertake a Project directed in whole or in part to any product or technology other than HDDs, the Parties will discuss and agree in the Project Agreement for such Project any additional or revised terms that will apply to such Project, including without limitation with respect to ownership and licenses of associated Developed IP and/or Background IP.

2.3 **Services**. Hitachi shall use commercially reasonable efforts to perform or cause to be performed for Company the Services, and to deliver to Company the Deliverables, as set forth in the applicable Project Agreements. Hitachi shall perform such Services in a manner that is consistent with its past practice in regards to its performance of similar services for Viviti prior to the Closing Date ("**Past Practice**").

2.4 **Personnel and Project Coordinators**. Hitachi will assign employees and subcontractors with suitable qualifications to perform the Services consistent with Past Practice. Hitachi may replace or change employees and subcontractors as required. The Parties' Project Coordinators will be responsible for exchanging information, coordinating meetings, and arranging all other matters pertinent to the applicable Project. Each Party may change its Project Coordinator by giving written notice to the other Party. The Project Coordinators are not authorized to modify or change any term or condition of this Agreement, including any Project Agreement.

2.5 **Company's Cooperation**. Company acknowledges that its timely provision of reasonable assistance, cooperation, and complete and accurate information and data ("Cooperation") is essential to the performance of the Services, and that Hitachi shall not be responsible for any deficiency in performing the Services if such deficiency results from Company's failure to provide such Cooperation as required hereunder.

2.6 **Quarterly Project Review**. Company shall have the right to review and assess the continuing need for all Projects on a quarterly basis and may terminate one or more active Projects, and the Project Agreements associated therewith, effective upon the beginning of any calendar quarter (i.e., January 1, April 1, July 1, or October 1), provided that Company has provided Hitachi at least forty-five (45) days' advance notice of such termination.

3. PAYMENTS

3.1 **Fees**. Unless otherwise specified in the applicable Project Agreement, all Services shall be provided on a time-and-materials basis at Hitachi's Fully Burdened Cost (such Fully Burdened Costs and any other fees and payments specified in an applicable Project Agreement, the "**Fees**").

3.2 **Expenses**. Company shall reimburse Hitachi for all reasonable travel, lodging, communications, shipping, and other out-of-pocket expenses incurred by Hitachi in connection with providing the Services and Deliverables ("**Expenses**").

3.3 **Payment Terms**. Hitachi will invoice Company on a monthly basis for all Fees and Expenses and other payments due under this Agreement and any Project Agreement and, unless otherwise specified in the applicable Project Agreement, Company shall pay such invoiced amounts within thirty (30) days of the date of the invoice. Customer agrees to pay interest at the rate of one and one-half percent (1.5%) per month (or the maximum rate permitted by applicable law, whichever is less) for all amounts not paid within thirty (30) days from the date of the invoice therefor. All payments shall be made in Japanese Yen by wire transfer in immediately available funds to an account designated by Hitachi.

3.4 **Taxes**. In addition to all Fees, Expenses and other amounts payable under this Agreement and the Project Agreements, Company shall pay or reimburse Hitachi for all federal, state, local or other taxes, including, without limitation, sales, use, excise, withholding, and property taxes, or amounts levied in lieu thereof, based on the Services provided or amounts payable under this Agreement or any Project Agreement. Company shall have no responsibility for taxes imposed on Hitachi's net income.

4. INTELLECTUAL PROPERTY

4.1 **Developed IP**. Subject to Company's compliance with the terms and conditions of this Agreement, including payment of all Fees, Expenses, and other amounts payable hereunder, Hitachi hereby assigns and agrees to assign all of its right, title and interest in and to the Developed IP to Company. Company shall have the sole right to apply for, file, register, or otherwise seek Intellectual Property Rights with respect to Developed IP, including the right to seek Patent protection for inventions that constitute Developed IP, if any. Hitachi will provide (and will use commercially reasonable efforts to cause any inventors of Developed IP in Hitachi's or its Subsidiaries' employ to provide) reasonable information and assistance, at Company's cost and expense, to effect the assignment of rights pursuant to this Section 4.1. With respect to any Developed Technology, Hitachi reserves and Company hereby grants and agrees to grant to Hitachi and its Subsidiaries, under the Developed Intellectual Property Rights, a worldwide, non-exclusive, perpetual and irrevocable license to use such Developed Technology in the ordinary course of its business. With respect to any Patents within the Developed Intellectual Property Rights, Hitachi reserves and Company hereby grants and agrees to grant to Hitachi and its Subsidiaries a worldwide, non-exclusive, perpetual and irrevocable license to make, have made, use, sell, offer for sale, and import any article of manufacture or composition of matter and practice any method or process.

4.2 **Background IP**. To the extent, if any, that any Background Technology is embodied in any Deliverables provided to Company under this Agreement, subject to Company's compliance with the terms and conditions of this Agreement, including payment of all Fees, Expenses, and other amounts payable hereunder, Hitachi hereby grants and agrees to grant to Company and its Subsidiaries, under Hitachi's Background Intellectual Property Rights, a worldwide, non-exclusive, perpetual, and irrevocable license to use such Background Technology, solely as embodied in such Deliverables, in the ordinary course of its business.

4.3 **No Other Rights**. Except as expressly set forth in this Agreement, neither Party grants any rights in or to its Technology or Intellectual Property Rights pursuant to this Agreement. As between the Parties, each Party shall be solely responsible to prepare, file, prosecute, maintain, and enforce its Intellectual Property Rights in its discretion and at its own cost. Except as expressly set forth in this Agreement, there shall be no right, license, authority, covenant not to sue, immunity from suit, or other defense, whether by implication, by reason of exhaustion, estoppel, or otherwise pursuant to or as a result of this Agreement or the activities of the Parties under this Agreement.

5. CONFIDENTIALITY

5.1 "**Confidential Information**" of a Party shall mean Technology of such Party that is (a) identified as Confidential Information in an applicable Project Agreement, and (b) marked as "proprietary" or "confidential" at the time of disclosure, or, if disclosed in a form not susceptible to marking, described and designated as "proprietary" or "confidential" in a writing provided to the Recipient within thirty (30) days of such disclosure.

5.2 **Non-Disclosure**. For the term of each Project Agreement, and for a period of five (5) years from the end of such Project Agreement, the receiving Party agrees to limit disclosure of the disclosing Party's Confidential Information disclosed in connection with such Project Agreement to those of the receiving Party's employees who have a need to know it, and the receiving Party agrees to use the same care and discretion to avoid disclosure, publication or dissemination outside of those employees as the receiving Party does with similar information of its own which it does not desire to publish, disclose or disseminate. In addition, the receiving Party shall not use, and shall not permit its employees to use, any Confidential Information of the disclosing Party except in connection with the performance of its obligations pursuant to this Agreement and the applicable Project Agreement, except as otherwise permitted hereunder (including pursuant to any license grant set forth herein) or in such Project Agreement. Notwithstanding the foregoing, the receiving Party's use of Residuals of the disclosing Party's confidential information for any purpose shall not constitute a breach of this Section 5.2. As used herein, "Residuals" shall mean that portion of any trade secret or other Technology subject to any obligation of confidentiality between the Parties, which is in intangible form and which is retained in the unaided memory of any of a Party's employees who have had authorized access to such trade secrets or other Technology pursuant to this Agreement.

5.3 **Exceptions**. The receiving Party may disclose Confidential Information if the disclosure is required by law, but the receiving Party must give the disclosing Party reasonable prior notice to allow the disclosing Party an opportunity to obtain a protective order. The obligations of Section 5.2 above will not apply to information to the extent it is: (a) already rightfully in the possession of the receiving Party or its Subsidiaries without an obligation of confidence; (b) independently developed by the receiving Party or its Subsidiaries; (c) publicly available when received by the receiving Party, or becomes publicly available through no fault of the receiving Party or its Subsidiaries; or (d) disclosed by the disclosing Party without obligation of confidence.

6. TERM AND TERMINATION

6.1 **Term**. This Agreement, including any Project Agreement, shall be effective during the Term, unless terminated earlier in accordance with the provisions hereof and except to the extent any Project Agreement expressly sets forth a different term.

6.2 **Termination for Breach**.

(a) If any material breach of this Agreement occurs, and such breach is not cured within thirty (30) days after written notice from the non-breaching Party, the non-breaching Party shall have the right to terminate this Agreement by giving the breaching Party five (5) days' written notice.

(b) If any material breach of any Project Agreement occurs, and such breach is not cured within thirty (30) days after written notice from the non-breaching Party, the non-breaching Party shall have the right to terminate that Project Agreement by giving five (5) days' written notice.

6.3 **Termination for Bankruptcy**. A Party may terminate this Agreement by giving written notice of termination to the other Party at any time upon or after:

(a) the filing by the other Party of an petition in bankruptcy or insolvency which petition or proceeding is not dismissed within sixty (60) days;

(b) any adjudication that the other Party is bankrupt or insolvent;

(c) the filing by the other Party of any petition or answer seeking reorganization, readjustment or arrangement of its business under any law relating to bankruptcy or insolvency which petition or proceeding is not dismissed within sixty (60) days;

(d) the appointment of a receiver for all or substantially all of the property of the other Party;

(e) the institution of any proceeding for the liquidation winding up of the other Party's business which petition or proceeding is not dismissed within sixty (60) days.

6.4 **Effect of Termination of Agreement**. Upon any termination of this Agreement all Project Agreements shall simultaneously terminate. No termination in this Agreement shall relieve either Party of any obligation or liability accrued hereunder prior to such termination. Upon the expiration or earlier termination of this Agreement, the Parties will immediately cease performing work under all Project Agreements. Upon the expiration or earlier termination of any Project Agreement, the Parties will immediately cease performing work under the expired or terminated Project Agreement.

6.5 **Survival**. Notwithstanding anything to the contrary in this Agreement, Sections 1, 3, 4, 5 (as provided therein), 6.4, 6.5, 7.2, 7.3, and 10 shall, to the extent applicable, survive any expiration or termination of this Agreement.

7. REPRESENTATIONS AND WARRANTIES; LIABILITY LIMITATION

7.1 **Authority**. Each Party represents and warrants that it has the corporate power and authority to enter this Agreement, and to carry out the terms and obligations set forth in this Agreement, and that the persons executing this Agreement on its behalf have the authority to act for and bind the Party.

7.2 **No Other Warranty**. EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 7, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

7.3 **Limitation of Liability**. Except as expressly set forth herein, neither Party shall be liable for any indirect, incidental, consequential, special or punitive damages arising out of or relating to this Agreement, irrespective of whether such Party has been advised of the possibility of any such damages. The foregoing limitation of liability shall not apply with respect to any liability arising out of or relating to any breach of Section 5 or any infringement, misappropriation or other violation of any Intellectual Property Rights of a Party.

8. NOTICES

All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by Federal Express or other internationally recognized express carrier, registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed to a Party at the addresses set forth below, or at such other address as a Party may substitute by written notice provided to the other Party in such manner. Such notices shall be deemed to have been served when delivered.

If to Hitachi:

Hitachi, Ltd.
Business Development Office
6-6 Marunouchi 1-chome
Chiyoda-ku, Tokyo 100-8280, Japan
Attention: General Manager
Facsimile: 81-3-4564-6260

If to Company:

Western Digital Corporation
3355 Michelson Drive, Suite 100
Irvine, California 92612
Attention: General Counsel
Facsimile: (949)672-9612
E-mail: Michael.Ray@wdc.com

9. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the Parties. Nothing in this Agreement shall confer any rights upon any person other than the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement or its rights hereunder to any third party without the written consent of the other Party; provided, that each Party may assign this Agreement and its rights hereunder to one or more of its direct or indirect Subsidiaries without the consent of the other Party so long as the assignee assumes the obligations hereunder of the assigning party in a writing reasonably acceptable to the other Party. Any attempted assignment of this Agreement in violation of this Section 9 shall be void and of no effect.

10. MISCELLANEOUS

10.1 **Entire Agreement**. Except for the Purchase Agreement, the License Agreement, other agreements entered into pursuant to the Purchase Agreement, and, where applicable, the Inventor Award Integration Agreement dated December 10, 2010 by and between Hitachi and Hitachi Global Storage Technologies Netherlands B.V. (the “IAIA”) (a) this Agreement, together with any Project Agreements, contains the complete agreement between, and contains all of the promises and undertakings made to each other by, the Parties regarding the subject matter of this Agreement, and (b) except as set forth in the Transition Services Agreement (as defined in the Purchase Agreement), any and all prior agreements, representations, negotiations, and undertakings between the Parties, oral or written, express or implied, with respect to the subject matter hereof, are hereby superseded and merged by and into this Agreement, effective as of the Closing Date. This Agreement may not be revised or modified without the mutual written consent of the Parties.

10.2 **Application of IAIA**. Notwithstanding anything to the contrary set forth in the IAIA:

(a) all Patents claiming inventions that constitute Developed IP will be deemed "New ERA Patents" for purposes of the IAIA (despite the fact that such Patents do not arise out of research pursuant to the ERA);

(b) any employee or agent of Hitachi who is named as an inventor in any such Patent shall be deemed a "Hitachi Inventor" with respect to such Patent for purposes of the IAIA;

(c) Section 4 of the IAIA shall apply to (i) except as set forth in Section 10.2(d), the incentive payments made by Hitachi to any such employee or agent of Hitachi with respect to such Patents (with such payments deemed "HGST Base Awards" (as defined in the IAIA), despite the fact that such payments are not being made to an employee of HGST), and (ii) Company's reimbursement of Hitachi for all such payments shall be made as if all applicable references in the IAIA to "HGST" were references to Company; *provided, however*, that the Parties agree that, in consideration of the larger size of Company's business after the Closing Date, the incentive payments made in each case to any such employee and agent of Hitachi pursuant to this Agreement and in accordance with the IAIA during the Term shall be double (i.e., two-hundred percent (200%) of) the relevant HGST Base Awards set forth in Section 4 of the IAIA and Appendix C thereof. The Parties acknowledge and agree that the foregoing obligations to make incentive payments to employees and agents of Hitachi and to be reimbursed by Company shall survive any expiration, termination or renegotiation of the IAIA;

(d) Without limitation to the incentive payments reimbursable by Company pursuant to Section 10.2(c), the Parties acknowledge and agree that, for all Patents claiming inventions that constitute Developed IP during the Term of this Agreement, (i) such Patents shall be treated as "New ERA Patents" (as defined in the IAIA) (despite the fact that such Patents do not arise out of research pursuant to the Entrusted Research Agreement dated September 25, 2003 (the "ERA")) and such inventions shall be treated as if they resulted from entrusted R&D activities based on the ERA for which licensing/assignment awards are payable by Hitachi or Hitachi Global Storage Technologies, Inc. ("HGST "), as applicable, to Hitachi's inventors pursuant to (x) the Memorandum, dated as of May 24, 2005, between Seller and HGST and (y) the Memorandum, dated as of March 16, 2005, between Seller and HGST ((x) and (y), collectively, the "Memoranda"), including all appendices thereto and related materials, and (ii) Company shall reimburse Hitachi for any such licensing/assignment awards paid by Hitachi to any employee or agent of Hitachi who is named as an inventor in any such Patent pursuant to the Memoranda (including all appendices thereto and related materials). The Parties acknowledge and agree that the foregoing obligations to make incentive payments to employees and agents of Hitachi and reimbursed by Company shall survive any expiration, termination or renegotiation of the Memoranda and/or IAIA unless otherwise agreed to by the Parties pursuant to Section 10.2(e);

(e) At any time prior to March 31, 2013, upon the request of either Party, Hitachi and Company shall discuss in good faith the treatment of inventor awards, licensing/assignment awards and other compensation payable to any employee or agent of Hitachi who is named as an inventor in any Patent that constitutes Developed IP under this Agreement, including, if proposed by either Party, the payment by the Company of a one-time lump-sum payment to Hitachi in consideration for the termination of Company's further obligation to Hitachi to pay (i) inventor awards or other compensation to inventors employed by Hitachi (including patent filings, patent issues, internal uses of patents and patent licensing and assignment) under Section 10.2(c), and (ii) licensing/assignment awards to inventors employed by Hitachi under Section 10.2(d), in each case for Patents with an effective filing date prior to March 31, 2013; *provided* that (x) Company shall continue to make the escalated incentive payments set forth in Section 10.2(c) to applicable employees and agents of Hitachi who are named as an inventor in any Patents with an effective filing date on or after April 1, 2013 unless otherwise expressly agreed to by the Parties, and (y) Company shall continue to make the licensing/assignment awards to inventors employed by Hitachi under Section 10.2(d) for Patents with an effective filing date on or after April 1, 2013 unless, on a case-by-case basis with respect to each such Patent, the Parties agree to a lump-sum payment in consideration for the termination of Company's obligation to reimburse Hitachi for such licensing/assignment awards under Section 10.2(d) for Patents with an effective filing date on or after April 1, 2013, in which case such lump-sum payment shall be paid by Hitachi and reimbursed by Company to the applicable employee or agent of Hitachi at the time the Patent File Award pursuant to the IAIA and this Agreement is made for such Patent.

10.3 **Severability**. If any paragraph, provision or clause of this Agreement shall be found or held to be invalid or unenforceable by a court or other decision-making body of competent jurisdiction, in a judgment from which no further appeal can be taken, the remainder of this Agreement shall remain valid and enforceable, and to the extent required in the pursuit of this Agreement, the Parties shall negotiate in good faith a substitute, valid and enforceable provision that reflects the Parties' intent in entering this Agreement.

10.4 **ADR Provision**. The Parties agree that, in the event of a dispute arising under this Agreement, the Parties shall agree to attend a non-binding mediation prior to bringing any action in a court of law. The mediation shall be facilitated by a neutral third-party, selected by the Parties. A representative from each Party with authority to settle on behalf of that party shall attend the mediation in person. The purpose of the mediation is to resolve the disputed issue(s) without the need for formal legal proceedings.

10.5 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware as applied to contracts entered into and fully performed in such state.

10.6 **Jurisdiction**. The Parties agree that the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery shall be unavailable, any Delaware State court and the Federal court of the United States of America sitting in the State of Delaware) shall have exclusive jurisdiction of interpreting or enforcing this Agreement, provided, however, that, notwithstanding the foregoing, either Party may (i) seek injunctive or other preliminary relief, (ii) enforce its Intellectual Property Rights, and (iii) seek recognition and enforcement of any order or judgment, in any court of competent jurisdiction. The parties expressly waive their right to a trial by jury.

10.7 **Counterparts**. This Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

10.8 **Further Assurances**. Each Party hereto shall execute and cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request, to effect, evidence, record or perfect any of the licenses and other rights set forth in this Agreement. The requesting Party shall reimburse the other Party for its reasonable out-of-pocket costs in responding to a request under this Section.

10.9 **Export Compliance**. Company understands and acknowledges that Hitachi is subject to regulation by agencies of the U.S. government, including the U.S. Department of Commerce, and similar regulations in other jurisdictions, which prohibit export or diversion of certain products and technology to certain countries. Company understands and acknowledges that the Deliverables and other Developed IP are subject in all respects to such United States and other jurisdictions' laws and regulations as shall from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States, including the Export Administration Act of 1979, as amended, any successor legislation, and the Export Administration Regulations ("EAR") issued by the Department of Commerce, International Trade Administration, Bureau of Industry and Security ("BIS"). Company warrants that it will comply in all respects with the export and re-export restrictions applicable to the Deliverables and other Developed IP and further agrees that it will not export, re-export or transship, directly or indirectly, any Deliverables and other Developed IP without the proper authorization from BIS under the EAR, or proper authorization from competent authorities in other jurisdictions, explicitly permitting the export, re-export or transshipment.

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IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to execute this Agreement as of the Closing Date.

For and on behalf of
Hitachi, Ltd.

By: _____
Name: _____
Title: _____

For and on behalf of
Western Digital Corporation

By: _____
Name: Michael C. Ray
Title: Senior Vice President, General Counsel and Secretary

EXHIBIT G

EXHIBIT F TO THE STOCK PURCHASE AGREEMENT
Form of Branding Agreement

[see attached]

Form of Branding Agreement

Exhibit F

Form of

BRANDING AGREEMENT

This Branding Agreement ("**Branding Agreement**") effective as of the Closing Date (as defined below), is entered into by and between Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore with its principal place of business at 4 Kaki Bukit Avenue 1, #03-08, Singapore 417939 ("**Company**") and Hitachi, Ltd., a Japanese company with its principal place of business at 6-6, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8280, Japan ("**Hitachi**"). Each of the signatories to this Branding Agreement is referred to as a "**Party**," and jointly as the "**Parties**."

RECITALS

WHEREAS, Western Digital Corporation, a Delaware company with its principal place of business at 3355 Michelson Drive, Suite 100, Irvine, California 92612, USA ("**Buyer Parent"**), Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly-owned subsidiary of the Buyer Parent ("**Buyer**"), Hitachi, and Company have entered into that certain Stock Purchase Agreement dated as of March 7, 2011 (the "**Purchase Agreement**");

WHEREAS, Company and Hitachi desire that Company may, on a transitional basis and under Hitachi's authorization, continue to use certain branding of Hitachi with respect to Company's products in accordance with the terms and conditions set forth below in order to provide for an orderly transition to new branding;

NOW, THEREFORE, in consideration of the mutual promises and covenants set out herein, the Parties agree as follows:

TERMS OF AGREEMENT

1. DEFINITIONS

1.1 Any capitalized term used but not defined herein, including without limitation the following terms, has the meaning set forth in the Transaction Documents:

(a) Closing Date

(b) External Drive

(c) HDD

(d) HDD Components

(e) HDD Products

(f) Losses

(g) RAID

(h) SSD

(i) Storage Software Products.

1.2 "**Company Current Products**" means those Products of Company or its Subsidiaries in active production as of the Closing Date.

1.3 "**Company Inventory Units**" means any units of Products produced, packaged, or in inventory as of the Closing Date (regardless of whether such Products may be Company Current Products as of the Closing Date) provided that any such units of Products are branded with the Licensed Hitachi Marks as of the Closing Date.

1.4 "**Company Non-Current Products**" means Products previously manufactured and sold by Company or its Subsidiaries under the Licensed Hitachi Marks and that are not in active production by Company or its Subsidiaries at the Closing Date.

1.5 "**Company Product(s)**" means Company Current Products, Company Non-Current Products, and Remanufactured Products and Repair Parts.

1.6 "**Company Reseller**" means an organization or person that is authorized by Company directly, or indirectly through another Company Reseller, to sell or lease Company Products.

1.7 "**Electronic Label**" means any label, sticker, decal or the like affixed to an Internal Product bearing a machine-readable code which identifies with specificity an Internal Product, and which may include other information regarding the Internal Product.

1.8 "**EOL**" or "**End-of-Life**" means, with respect to a particular Product, the date on which Company, in its sole discretion, chooses to no longer offer such Product for sale on a general commercial basis.

1.9 "**Hitachi Marks**" has the meaning set forth in Section 5.1.

1.10 "**Internal Product**" means an HDD Product sold for use in an HDD Included Products or SSD product sold for use in an SSD Included Product.

1.11 "**In-Warranty Products**" has the meaning set forth in Section 2.1(b).

1.12 "**Licensed Articles**" has the meaning set forth in Section 2.1(a).

1.13 "**Licensed Hitachi Marks**" shall mean the Hitachi trademarks and/or service marks set forth in Schedule 2.1

1.14 "**Licensed Hitachi Trade Dress**" has the meaning set forth in Section 2.2.

1.15 “**Licensed Marks**” means the Licensed Hitachi Marks and Licensed Hitachi Trade Dress.

1.16 “**Licensed Materials**” means packaging; labels; sales, instruction and service materials; marketing materials; product documentation regardless of form or media in which presented, and installation software.

1.17 “**Licensed Products**” means the Licensed Current Products, Warranty Licensed Products, Remanufactured Products, and internal components as more fully described in Sections 2.1(a) through (e), and the Licensed Trade Dress Products.

1.18 “**Licensed Trade Dress Products**” has the meaning set forth in Section 2.2.

1.19 “**Material Quality Breach**” has the meaning set forth in Section 4.4.

1.20 “**New Trademark**” means any mark developed by Company for any product developed, manufactured, or produced by Company subsequent to the Closing Date that is not part of or encompassed by Company Products.

1.21 “**Products**” means HDD Products, SSD products, RAID products, External Drive products, and Storage Software Products.

1.22 “**Qualification**” means technical evaluation or testing by an OEM customer which must be passed by a supplier with respect to a particular product in order to qualify the product for purchasing by such customer for use in an HDD Included Product or SSD Included Product. As used in this Branding Agreement, the term “Qualification” includes evaluation and testing with respect to technical and engineering requirements and excludes any marketing, promotion, advertising or retail display requirements.

1.23 “**Remanufactured Products**” means Company Non-Current Products and Company Current Products sold under or that bear the Licensed Hitachi Marks, whether produced or sold before or after Closing, that are remanufactured or repaired by Company after the Closing Date.

1.24 “**Repair Parts**” means (a) replacement products for (i) Company Non-Current Products or (ii) Company Current Products; and (b) replacement parts which, to the extent available prior to the Closing Date, bore the Licensed Hitachi Marks prior to the Closing Date and which are used for the repair or remanufacture of Company Non-Current Products or Company Current Products.

1.25 “**SSD Included Product**” means products that include an SSD among their components but are a combination of such SSD with at least one other device distinct from such SSD and provide a material function that is not provided by a single SSD. Examples of SSD Included Products are storage systems (including RAID), External Drives, JBODs, enterprise systems, servers, server blades, desktop computers, portable computers (including notebook and handheld computers), personal digital assistants, digital video recorders, digital cameras, game consoles, mobile phones and global positioning systems that include an SSD among their components.

1.26 "**Subsidiary**" of either Party means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body are at the time beneficially owned, directly, or indirectly, by such party. For the purposes of this Agreement, Company and its Subsidiaries are not Subsidiaries of Hitachi.

1.27 "**Terminated Products**" has the meaning set forth in Section 8.2(b).

2. GRANT OF LICENSES AND CONSENTS

2.1 Hitachi hereby grants to Company and Company hereby accepts non-exclusive, royalty free licenses to use the Licensed Hitachi Marks under the following terms and conditions:

(a) on or in connection with Company Current Products, Company Inventory Units, and Licensed Materials relating thereto ("**Licensed Articles**"), Company may use the Licensed Hitachi Marks for a period of one hundred eighty (180) days after the Closing Date ("**Cut-Over Date**") (subject to Section 6.2), provided the Licensed Articles, subsequent to the Closing Date, are manufactured by or for Company pursuant to the quality control requirements set forth in Section 4 and are marketed by Company itself or through Company Resellers;

(b) on or in connection with Repair Parts for Company Current Products or Company Non-Current Products under warranty after the Closing Date ("**In-Warranty Products**") and Licensed Materials relating thereto (collectively, "**Warranty Licensed Products**"), Company may use the Licensed Hitachi Marks for a period of time equal to and coterminous with the warranty period for such In-Warranty Products provided that the Licensed Hitachi Marks were used in connection with such Repair Parts prior to the Closing Date (to the extent such Repair Parts were available before the Closing Date);

(c) on or in connection with Remanufactured Products used to replace particular Products and Licensed Materials relating thereto, Company may use the Licensed Hitachi Marks until the seven (7) year anniversary of the EOL of the particular Product or until such Product is no longer supported by Company or until the seven (7) year anniversary of the Cut-Over Date, whichever occurs first, provided such products are manufactured by or for Company pursuant to the quality control requirements set forth in Article 4 and are marketed by Company itself or through Company Resellers;

(d) notwithstanding Section 2.1(a) above, in any Electronic Label used to identify any Company Current Product that is an Internal Product, Remanufactured Product that is an Internal Product or Repair Part for an Internal Product for so long as continued use of the applicable Licensed Hitachi Mark(s) in such Electronic Label is necessary in order to avoid triggering a Qualification requirement (as dictated by the applicable agreement with the customer of such Company Product) that would not arise if the applicable Hitachi Mark(s) were retained in the Electronic Label, but only until the Company alters such Company Current Product, Remanufactured Product or Repair Part identified by the Label in a manner that triggers a Qualification requirement, provided that the Licensed Hitachi Marks are not more visible to individuals than are the Labels used in units of Company Current Products manufactured prior to the Closing Date;

(e) on or in connection with internal components of any Company Current Product that is an Internal Product, including but not limited to HDD heads and mask works used in the making of HDD Components, for so long as continued use of the applicable Licensed Hitachi Mark(s) on or in connection with such internal components is necessary in order to avoid triggering a Qualification requirement (as dictated by the applicable agreement with the customer of such Company Current Product) that would not arise if use of the applicable Hitachi Mark(s) were retained on or in connection with such internal components, but only until the Company alters the internal components, or the Company Current Product in which such internal components are used, in a manner that triggers a Qualification requirement, provided that the Licensed Hitachi Marks are not generally visible other than to those individuals installing, administering, or maintaining the any Company Current Product.

2.2 Hitachi hereby grants to Company and Company hereby accepts a non-exclusive, royalty free license to use the Hitachi trade dress as depicted in Schedule 2.2 (the "**Licensed Hitachi Trade Dress**") on or in connection with consumer boxes, commercial packaging, labeling, product information provided on diskettes and/or CDs, and installation software (collectively "**Packaging**") for any Company Products sold with Packaging bearing the Licensed Hitachi Trade Dress as of the Closing Date (collectively, the "**Licensed Trade Dress Products**") for one hundred eighty (180) days after the Closing Date, provided that the Licensed Trade Dress Products are manufactured by or for Company, or, with respect to such software, Company has a right to distribute such software, and are marketed by Company itself or through Company Resellers.

2.3 The licenses granted in this Article 2 shall not apply to any services (including but not limited to repair or maintenance services) offered by or under authorization of Company.

3. COMPANY'S USE OF THE LICENSED MARKS

3.1 The grant of licenses set forth in Article 2 hereof shall include and incorporate as if fully set forth therein the following terms and conditions which shall control and define the use of the Licensed Marks on or in connection with the Licensed Products:

(a) All use of the Licensed Marks by Company shall be limited to the specific Licensed Products set forth in the license grant and shall meet all quality control requirements of Hitachi as specified in Article 4.

(b) Company shall use the Licensed Marks only in the form and manner and with such proprietary legends and notices as used by Company or its Subsidiaries prior to the Closing Date for the Licensed Products.

(c) Subject to Section 2.1(d) and (e), Company shall place the symbols "☐", "tm", or ®, as is appropriate according to the laws in each applicable country or territory next to the Licensed Hitachi Marks. In the case of Licensed Materials, such symbols must appear in connection with the Licensed Hitachi Marks at least once on or in each separate piece of Licensed Material.

(d) Subject to Section 2.1(d) and (e), Company shall use the following legend at least once in each separate piece of Licensed Material on which any of the Licensed Hitachi Marks appear: "[Licensed Hitachi Mark] is a [registered] trademark of Hitachi, Ltd. and is used under license."

(e) Subject to Section 2.1(d) and (e), on all Licensed Trade Dress Products bearing the Licensed Hitachi Trade Dress, Company shall include the © symbol and the legend "© Hitachi, Ltd."

(f) Except as authorized pursuant to this Branding Agreement, Company shall not at any time use, or authorize the use of, any Hitachi Mark, or any trademark, trade name, service mark, domain name or corporate name consisting of or incorporating any Hitachi Mark, or any mark phonetically equivalent or confusingly similar to any Hitachi Mark.

(g) Company shall not adopt or use on or in connection with any product or service it produces, manufactures, advertises, distributes, sells, or offers for sale, a New Trademark, or any service mark, trade name, domain name or other designation, that is a phonetic equivalent or a colorable imitation of any of the Licensed Hitachi Marks or that is otherwise confusingly similar to any of the Licensed Hitachi Marks, nor shall Company adopt or use any trade dress that copies or is a colorable imitation of the Licensed Hitachi Trade Dress or that is otherwise confusingly similar to the Licensed Hitachi Trade Dress. If any application for registration of a mark or other designation is filed by or on behalf of Company after the Closing Date and such mark is confusingly similar or disparaging to or dilutes any of the Licensed Hitachi Marks anywhere in the world, Company shall abandon all use of such mark and any application to register or registration thereof.

(h) Without limitation to Section 3.1(g), Company shall not at any time use or display (including, without limitation, on or in connection with any product or service it produces, manufactures, advertises, distributes, sells, or offers for sale, or as a corporate name) any Licensed Hitachi Mark contiguous to, connected to, or otherwise arranged in combination with any HGST Mark (or any mark confusing similar to or including any HGST Mark), such that the Licensed Hitachi Mark is not visually distinct from, or is grouped with or part of a composite mark including, any HGST Mark (or any mark confusing similar to or including any HGST Mark), or in any other manner that suggests or implies an association between Hitachi, any of Hitachi's Subsidiaries and/or any Licensed Hitachi Mark, on the one hand, and any HGST Mark (or any mark confusing similar to or including any HGST Mark), on the other hand.

(i) With respect to its use of the Licensed Marks, Company shall comply with all applicable laws and regulations pertaining to the use and designation of trademarks and trade dress in the each country or territory in which the Licensed Marks may be used by Company.

3.2 Company shall not pledge or otherwise encumber any of the Licensed Marks and shall not use any of the Licensed Marks as security or collateral for any loans or indebtedness.

4. QUALITY CONTROL

4.1 Company agrees that the nature and quality of the Licensed Products when such products are sold or distributed in connection with the Licensed Marks shall be commensurate with standards previously achieved and maintained by Company for the identical goods or for comparable products manufactured or distributed by Company during calendar year 2010. Company shall provide to Hitachi monthly consolidated quality reports with respect to each Licensed Product marked with the Licensed Marks and for which shipments are being made during the term of the applicable license granted pursuant to Article 2.

4.2 Company agrees that all uses of the Licensed Hitachi Trade Dress as permitted by this Branding Agreement shall conform to and are subject to the guidelines established by Hitachi for such trade dress, which guidelines are attached as Schedule 4.2.

4.3 Except for units of Products produced, packaged, or in inventory as of the Closing Date, and Licensed Materials developed by Company or its Subsidiaries prior to Closing or varying in no significant respect from Licensed Materials developed by Company or its Subsidiaries prior to Closing, Company shall, upon Hitachi's request, (a) provide to Hitachi or, at Hitachi's request, demonstrate to Hitachi, samples of Licensed Products that bear, or are marketed or sold using any of the Licensed Marks, and (b) provide to Hitachi samples of Licensed Materials that bear any of the Licensed Marks. Any such requests shall be with reasonable notice and at reasonable intervals.

4.4 Any modifications by Company after the Closing to a Licensed Product marked with any Licensed Mark, including, but not limited to changes in manufacturing processes thereof or parts vendor selection by Company, that result in adverse changes of the annual quality return rate for such product in each of two (2) consecutive thirty (30) day periods greater than three percent (3%) shall be noticed to Hitachi within five (5) Business Days. Any such modifications shall, upon resulting in such changes, be deemed "**Material Quality Breaches**." Company shall provide to Hitachi samples of such Licensed Products.

4.5 Except for Licensed Materials developed by Hitachi or its Subsidiaries prior to Closing or varying in no significant respect from Licensed Materials developed by Hitachi or its Subsidiaries prior to Closing, Company shall submit to Hitachi all new Licensed Materials developed by Company after Closing on and in which the Licensed Marks appear prior to their commercial use. Within fifteen (15) Business Days of receipt of any submission by Company, Hitachi shall inform Company in writing whether the submission meets the applicable standards for quality or usage. If Hitachi does not respond to Company within fifteen (15) Business Days, Company may assume without penalty or prejudice that its submission has been approved, provided that Company produces a written receipt evidencing that the submission was sent to and received by Hitachi.

4.6 If Hitachi determines that any Licensed Products or Licensed Materials using the Licensed Marks materially do not meet the requirements set forth in this Branding Agreement, Hitachi may notify Company, providing Company with a description of the deficiencies. Company shall submit to Hitachi a report describing Company's plan for investigation of the causes of and for remediation of such deficiencies and the time frame for such actions within thirty (30) Business Days after receipt of the notice. If Hitachi considers the actions or time frame described in such report to be inconsistent with applicable industry standards, the Parties shall promptly meet and confer with respect to the report. If the Parties are unable through such meeting to mutually agree on appropriate actions and time frames, Hitachi shall have the right, effective on notice to Company, to suspend use of the Licensed Marks on or in connection with the materially deficient Licensed Products or Licensed Materials until such deficiencies are cured. To the extent Company has in inventory during a proper suspension of use of the Licensed Marks pursuant to this Section 4.6 any Licensed Products or Licensed Materials that: (i) were produced, manufactured, or remanufactured after the Closing Date, (ii) materially do not meet the requirements set forth in this Branding Agreement, and (iii) are subject to such proper suspension ("**Suspended Products**"); then Company shall not be authorized under the suspended license or consent to ship any such Suspended Products until the Licensed Marks have been removed or obliterated (for example, by covering such Licensed Marks with a sticker) or such material deficiencies have been cured.

4.7 For as long as Company is licensed to use the Licensed Marks for any of the Licensed Products, Company shall provide to Hitachi on an as-needed basis but no less than once during the term of the license grants set forth in Sections 2.1(a) and 2.2 and once per year during the term of the license grants set forth in Sections 2.1(b), 2.1(c), 2.1(d) and 2.1(e) the following information: (a) a list of all recalls of any Licensed Products on which the Licensed Marks appear, the reason for each recall and the action taken to remedy the problem; and (b) the number of warranty claims submitted for each Licensed Product on which the Licensed Marks appear, broken down for each product. Hitachi shall have the right to require that Company produce to Hitachi any written complaints or actual documents from which the information provided by Company under the terms of this provision were created or obtained.

5. DOMAIN NAME TRANSITION

5.1 Within ninety (90) days after the Closing Date, Company shall assign to Hitachi all registrations anywhere in the world of any domain names held by Company that include any trademark or service mark owned by Hitachi or any of its Subsidiaries (such trademarks and service marks, the "**Hitachi Marks**" and such domain names, the "**Transferred Domain Names**"). Company and Hitachi hereby agree that, without limitation to the generality of the foregoing, (a) the Hitachi Marks include, but are not limited to, the terms "HGST" and "Hitachi GST" (in any combination of upper and/or lower case letters), any derivations of the foregoing terms, and any logos based on or containing any of the foregoing (including, but not limited to, stylized or graphical versions or renditions thereof) and (b) the Transferred Domain Names include, but are not limited to, any domain names containing the term "hgst" or "hitachigst" (in any combination of upper and/or lower case letters) or any derivation of the foregoing terms.

5.2 During the twelve (12)-month period following the Closing Date, Hitachi shall maintain at the landing page for each Transferred Domain Name a hyperlink that connects the user to a designated Company URL, as notified by Company to Hitachi.

6. CESSATION OF USE OF SELLER MARKS

6.1 To the extent that as of the Closing Date Company or any of its Subsidiaries own any registered trademarks or service marks anywhere in the world that contain any Hitachi Mark, Company shall, and shall cause its Subsidiaries to: (a) not renew or maintain (including not filing any affidavits of use or paying any registration fees) such registrations, in order to allow such registrations to expire upon the expiration of their then-current terms and (b) use such trademarks or service marks only to the extent expressly permitted by this Branding Agreement.

6.2 Company agrees that, notwithstanding anything to the contrary set forth herein, but subject to Section 6.3, it shall, and shall cause each of its Subsidiaries to:

(a) as soon as practicable after the Closing Date and in any event within thirty (30) days following the Closing Date, change its and their corporate names to names that do not include any Hitachi Mark (or any word confusingly similar thereto) and make any necessary legal filings with the appropriate Governmental Entities to effect such change;

(b) as soon as practicable after the Closing Date and in any event within forty-five (45) days following the Closing Date, cease use of all stationary, business forms and business cards bearing any Hitachi Marks;

(c) as soon as practicable after the Closing Date and in any event within sixty (60) days following the Closing Date (or such longer period as may be required to obtain any needed approvals of any Governmental Entity), remove, strike over or otherwise obliterate all Hitachi Marks from all facilities, vehicles, physical signage, badges and uniforms of the Company and each of its Subsidiaries; and

(d) as soon as practicable after the Closing Date and in any event within ninety (90) days following the Closing Date, cease (i) reproducing any product manuals, collateral materials, promotional materials and packaging materials bearing any of the Hitachi Marks, except for those that are Licensed Articles (which shall be subject to Section 2.1(a)), (ii) replicating any software displaying any of the Hitachi Marks, except for software which is a Licensed Article (which shall be subject to Section 2.1(a)), and (iii) publishing any websites bearing any of the Hitachi Marks.

6.3 Notwithstanding any provision of this Agreement, this Agreement shall not prohibit, and Hitachi shall take no action to prevent, any of Company or any Subsidiary of Company during the hold separate period required by the Ministry of Commerce of the People's Republic of China ("**MOFCOM**") from using: (a) the name "HGST" (the four-letter name) and (b) the domain name "hgst.com" in connection with operating the hold separate business during the hold separate period, in each case to the extent necessary, and only for as long as necessary (and in any event for no longer than such hold separate period), to comply with the MOFCOM order dated March 2, 2012 China Time (the "**MOFCOM Order**"). For clarity, the foregoing shall not affect Company's obligations pursuant to Section 5.1 and Section 6.1 except with respect to such Subsidiary's use of the "HGST" name and the "hgst.com" domain name (collectively, such name and domain name constituting the "**HGST Marks**") as set forth (and during the time period set forth) above. Such Subsidiary shall treat the HGST Marks as if they were Licensed Hitachi Marks during the time period set forth above, and all uses by such Subsidiary of the HGST Marks shall be subject to, and such Subsidiary shall, in its use of the HGST Marks, comply with, all terms and conditions of this Branding Agreement applicable to the Licensed Hitachi Marks, the protection thereof, and/or the use thereof by Company, including without limitation the terms and conditions set forth in Sections 3 and 4 (but excluding Sections 3.1(b) and 3.1(d)), in each case solely to the extent such terms and conditions are consistent with the use of the HGST Marks required by the MOFCOM Order. Notwithstanding the foregoing, upon termination of the hold separate period, Company will, and shall be permitted to, promptly transition away from use of the HGST Marks in the same manner as is provided for the Transferred Domain Names (in the case of the "hgst.com" domain name) and the Licensed Hitachi Marks (in the case of the "HGST" name) in this Agreement, but with the final date of the hold separate period taking the place of the "Closing Date" for all purposes of such transition away from the use of the HGST Marks.

7. RIGHT TO SUBLICENSE AND ASSIGN AGREEMENT

7.1 None of the rights provided under this Branding Agreement relating to use of the Licensed Marks may be assigned, pledged, encumbered, or otherwise transferred by Company and shall not inure to the benefit of any trustee in bankruptcy, receiver or other successor of Company, whether by operation of law or otherwise, without the prior written consent of Hitachi, which shall not be unreasonably withheld, and any attempted or actual assignment or transfer without such consent shall be null and void.

7.2 Other than to its Subsidiaries, Company shall not sublicense this Branding Agreement or any rights of Company hereunder to any third party including to any affiliate of Company or, other than Subsidiaries and as provided in Section 7.4, otherwise authorize any third party, including any affiliate, to use any of the Licensed Marks.

7.3 Company shall not have the right to transfer or assign the rights granted herein to any third party including any party that has any ownership interest in or that exercises any control over Company, even as part of a transfer of all of the business of Company without the prior written consent of Hitachi, which shall not be unreasonably withheld. This Branding Agreement shall be fully and freely assignable by Hitachi.

7.4 Notwithstanding anything in this Branding Agreement to the contrary, Company may transfer its rights under this Branding Agreement between itself and its Subsidiaries and any of its legal successors-in-interest formed pursuant to a reorganization or other corporate restructuring of Company, provided that after such reorganization or corporate restructuring, such successor-in-interest agrees in writing to be bound by the terms of this Branding Agreement and Company and its Subsidiaries have substantially the same assets as Company and its Subsidiaries had immediately prior to such reorganization or corporate restructuring.

8. TERMINATION

8.1 Hitachi may terminate this Agreement by giving written notice of termination to Company at any time upon or after:

(a) the filing by Company of a petition in bankruptcy or insolvency which petition or proceeding is not dismissed within sixty (60) days;

(b) any adjudication that Company is bankrupt or insolvent;

(c) the filing by Company of any petition or answer seeking reorganization, readjustment or arrangement of its business under any law relating to bankruptcy or insolvency which petition or proceeding is not dismissed within sixty (60) days;

(d) the appointment of a receiver for all or substantially all of the property of Company;

(e) the institution of any proceeding for the liquidation winding up of Company's business which petition or proceeding is not dismissed within sixty (60) days.

8.2 The licenses granted in Article 2 may also be terminated in accordance with the following:

(a) Company shall be deemed in material breach of this Branding Agreement if there is a Material Quality Breach as to any of the Licensed Products marked with the Licensed Marks by Company.

(b) If Company materially breaches this Branding Agreement, Hitachi shall provide written notice to Company, advising that Company has committed a material breach, describing the material breach, the specific license grant(s) in Article 2 to which the material breach relates, and, in the case of a Material Quality Breach, the specific Licensed Products giving rise to the material breach, and providing Company with thirty (30) Business Days to cure. Should Company not cure the material breach within such thirty (30)-Business Day period, the specific license grant(s) identified by Hitachi, for the specific Licensed Product identified by Hitachi in the case of a Material Quality Breach, shall immediately terminate, and Company shall (i) cease all further use of the Licensed Marks on the goods that were subject to the terminated license grant(s) (the "**Terminated Products**"); (ii) cease all further shipment, distribution and sale of the Terminated Products bearing the Licensed Marks; and (iii) cease all further advertising, marketing and promotion of the Terminated Products using the Licensed Marks.

8.3 All rights and licensed granted to any Subsidiary of Company, including without limitation via sublicense from Company, shall automatically terminate if such Subsidiary ceases to meet the definition of "Subsidiary," as defined in this Branding Agreement.

8.4 Upon the termination or suspension of any of the licenses granted in Article 2 either pursuant to this Article 8 or as a result of the expiration of the license, Company shall immediately (i) cease shipping or distributing the products covered by such license grant that bear the Licensed Marks; and (ii) cease all further use of the Licensed Marks for such products. Company shall have no obligation to recall or stop the shipment or sales by its dealers or customers of any products covered by the terminated or suspended license and that bear the Licensed Marks shipped by Company prior to the termination or expiration or suspension of any license. Company may continue after any termination or expiration or suspension of any license to ship goods from which the Licensed Marks have been removed or obliterated (for example, by covering the Licensed Marks with a sticker).

8.5 To the extent that upon termination or expiration of any of the license grants in Section 2.1 or Section 2.2, Company has in inventory any Licensed Products or Repair Parts bearing any Licensed Marks, or Company Products that incorporate or use Electronic Labels, which were manufactured or remanufactured: (i) prior to Closing; or (ii) pursuant to and in compliance with this Branding Agreement and that have not been determined to have been the basis of a Material Quality Breach and were not Suspended Products at the termination or expiration of the license grants and their material deficiencies have not been cured, Company shall be entitled to sell and distribute its inventory of such products provided it uses the same channels of trade and distribution that were used by Company prior to the Closing or that Company uses for comparable products distributed under Company's own marks.

8.6 Notwithstanding anything to the contrary in this Agreement, Sections 1, 3.1(f), 3.1(g), 10, 11, 12.2, 12.3, 14, 15 and this Section 8 shall, to the extent applicable, survive any expiration or termination of this Branding Agreement or of any licenses granted herein.

8.7 Except as set forth in Section 12.3, the Parties acknowledge that each shall have available to it all remedies at law or in equity (including specific performance) for breach of this Branding Agreement in addition to or as a substitute for all remedies that they may have under this Branding Agreement.

9. UNAUTHORIZED USE BY OTHERS

9.1 During the term of the licenses granted in Article 2, Company shall notify Hitachi in writing of any unauthorized use of the Licensed Marks by others promptly as such unauthorized use comes to its attention. Upon notification Hitachi may, at its discretion, choose to take action including but not limited to bringing, prosecuting or settling any claim involving the Licensed Marks. Should Hitachi decide to take such action, Hitachi shall bear all costs and expenses in connection therewith and shall retain exclusively any damage awards or settlement amounts recovered. If Hitachi believes that Company should be joined as a party to such action, Hitachi and Company will discuss in good faith Company's cooperation and cost recovery for its participation in any such action.

9.2 Upon obtaining written confirmation from Company that a Company Reseller no longer distributes any Hitachi-branded Product, Hitachi shall have the right to contact such Company Reseller and advise it that it must cease all use of the Licensed Hitachi Marks and any other indicia suggesting an affiliation or association with Hitachi (except as may be separately authorized under any agreement directly between Hitachi and such Company Reseller). Hitachi may advise such resellers that failure to comply with Hitachi's demands violates Hitachi's rights. Should such resellers continue to use the Licensed Hitachi Marks or other prohibited indicia, Hitachi may pursue all legal action against such resellers that Hitachi in its sole discretion deems appropriate and necessary. Company agrees to reasonably cooperate with Hitachi with respect to such actions, which may include providing the names and addresses of particular resellers of Company Products.

10. ACKNOWLEDGMENTS AND COVENANTS

10.1 Company understands, acknowledges and agrees that, as between Company and Hitachi, all rights in the Licensed Marks (including all registrations thereof) throughout the world are the sole and exclusive property of Hitachi, free and clear from any claim or retention of rights thereto on Company's part and that Hitachi reserves all rights in the Licensed Marks, other than those expressly granted herein. Company shall do nothing inconsistent with such ownership, and it shall forbear from attacking the validity of the Licensed Marks, or any registrations thereof, or Hitachi's title thereto. Company acknowledges that nothing in this Branding Agreement shall give Company any right, title or interest in the Licensed Marks at any time other than the right of Company to use the Licensed Marks in accordance with the licenses granted in Article 2 and the rights granted in Section 8.5.

10.2 Company shall not knowingly take or omit to take, or authorize the taking or omission of, any action that could reasonably be expected to dilute or adversely affect Hitachi's claims to ownership of the Licensed Marks or the validity, enforceability, registration, or application for registration of the Licensed Marks.

10.3 All use of the Licensed Marks by Company shall inure to the benefit of Hitachi. During the term of this Branding Agreement and thereafter, Company shall not apply to register the Licensed Marks, any phonetic equivalent thereof, or any mark or term confusingly similar thereto as, or as part of, a trademark, service mark, trade name, business name, domain name or other indication of source or origin in any jurisdiction worldwide.

10.4 Company shall ensure that its Subsidiaries do not take any action that Company is prohibited from taking as specified in this Branding Agreement and Company shall not authorize any third party to take any action that Company is expressly prohibited from taking under the terms of this Branding Agreement.

10.5 Nothing herein shall restrict or otherwise affect the right of Hitachi to obtain relief against Company or any third party for any acts of trademark infringement, unfair competition or dilution.

11. INDEMNIFICATION

11.1 Company shall pay, indemnify, reimburse and hold harmless Hitachi and its Subsidiaries (for purposes of this Article 11, "**Hitachi Protected Parties**"), from and against any and all Losses to the extent incurred by any of them, as a result of, arising from or with respect to: (a) the sale, distribution, promotion or marketing of the Licensed Products under the Licensed Marks by Company, or by Company's Resellers other than to any Hitachi Protected Party; (ii) any actions or omissions by Company with respect thereto; and (iii) the use by Company of the Licensed Marks in a manner prohibited by this Branding Agreement; provided, however, that Company's obligations under this Section 11.2 shall not include Losses to the extent arising out of any breaches by Hitachi of any Transaction Document with respect to which Hitachi is obligated to indemnify Buyer or Buyer Parent under any Transaction Document.

11.2 The provisions of Sections 9.4 and 9.6 of the Purchase Agreement are incorporated, *mutatis mutandis*, into this Article 11 by reference, with respect to indemnification rights and obligations of the Parties arising under Section 11.1 of this Branding Agreement.

12. REPRESENTATIONS AND WARRANTIES; LIMITATIONS OF LIABILITY

12.1 Each Party represents and warrants that it has the corporate power and authority to enter this Branding Agreement, and to carry out the terms and obligations set forth in this Branding Agreement, and that the persons executing this Branding Agreement on its behalf have the authority to act for and bind the Party.

12.2 EXCEPT AS SPECIFICALLY PROVIDED IN THIS ARTICLE 12, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY OTHER MATTER WHATSOEVER, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, AND TITLE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

12.3 Except as expressly set forth herein, neither Party shall be liable for any indirect, incidental, consequential, special or punitive damages arising out of or relating to this Branding Agreement, irrespective of whether such Party has been advised of the possibility of any such damages. The foregoing limitation of liability shall not apply with respect to any liability arising under, out of or in connection with Section 11 or any infringement, misappropriation or other violation of any Intellectual Property Rights of a Party.

13. NOTICES AND OTHER COMMUNICATIONS

All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by Federal Express or other internationally recognized express carrier, registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, addressed to a Party at the addresses set forth below, or at such other address as a Party may substitute by written notice provided to the other Party in such manner. Such notices shall be deemed to have been served when delivered.

If to Hitachi:

Hitachi, Ltd.
Business Development Office
6-6 Marunouchi 1-chome
Chiyoda-ku
Tokyo 100-8280, Japan
Attention: General Manager
Facsimile: 81-3-4564-6260

If to Company:

Viviti Technologies Ltd.
c/o Western Digital Corporation
3355 Michelson Drive, Suite 100
Irvine, California 92612
Attention: General Counsel
Facsimile: (949)672-9612
E-mail: Michael.Ray@wdc.com

14. ADR, GOVERNING LAW AND JURISDICTION

14.1 The Parties agree that, in the event of a dispute arising under this Branding Agreement, the Parties shall agree to attend a non-binding mediation prior to bringing any action in a court of law. The mediation shall be facilitated by a neutral third-party, selected by the Parties. A representative from each Party with authority to settle on behalf of that party shall attend the mediation in person. The purpose of the mediation is to resolve the disputed issue(s) without the need for formal legal proceedings.

14.2 This Branding Agreement shall be governed by and construed in accordance with the laws of the State of Delaware as applied to contracts entered into and fully performed in such state.

14.3 The Parties agree that the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery shall be unavailable, any Delaware State court and the Federal court of the United States of America sitting in the State of Delaware) shall have exclusive jurisdiction of interpreting or enforcing this Branding Agreement, provided, however, that, notwithstanding the foregoing, either Party may (i) seek injunctive or other preliminary relief, (ii) enforce its Intellectual Property Rights, and (iii) seek recognition and enforcement of any order or judgment, in any court of competent jurisdiction. The parties expressly waive their right to a trial by jury.

15. MISCELLANEOUS

15.1 Nothing contained in this Branding Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark, or other designation of either Party hereto (including any contraction, abbreviation, or simulation of any of the foregoing) except as specifically provided herein; and each Party hereto agrees not to use the existence of this Branding Agreement or any provision thereof in any advertising or sales promotional activity, without the express written approval of the other Party.

15.2 The Parties acknowledge that this Branding Agreement is not and does not purport to be a full recitation of Hitachi's rights in and to the Licensed Marks, which rights may not be limited to the terms of this Branding Agreement.

15.3 Except for the Purchase Agreement and other Transaction Documents, (a) this Branding Agreement contains the complete agreement between, and contains all of the promises and undertakings made to each other by, the Parties regarding the subject matter of this Agreement, and (b) any and all prior agreements, representations, negotiations, and undertakings between the Parties, oral or written, express or implied, with respect to the subject matter hereof, are hereby superseded and merged by and into this Branding Agreement, effective as of the Closing Date. This Agreement may not be revised or modified without the mutual written consent of the Parties.

15.4 If any paragraph, provision or clause of this Branding Agreement shall be found or held to be invalid or unenforceable by a court or other decision-making body of competent jurisdiction, in a judgment from which no further appeal can be taken, the remainder of this Branding Agreement shall remain valid and enforceable, and to the extent required in the pursuit of this Branding Agreement, the Parties shall negotiate in good faith a substitute, valid and enforceable provision that reflects the Parties' intent in entering this Branding Agreement.

15.5 This Branding Agreement may be executed in identical counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement.

[Remainder of this page is intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to execute this Agreement on the dates indicated below.

For and on behalf of
Hitachi, Ltd.

By: _____ Date: _____

Name: _____

Title: _____

For and on behalf of
Viviti Technologies Ltd.

By: _____ Date: _____

Name: _____

Title: _____

[Signature page for Branding Agreement]

EXHIBIT H

EXHIBIT G TO THE STOCK PURCHASE AGREEMENT
Form of Secondment Agreement

[see attached]

Form of Secondment Agreement

FINAL
[English Translation]

FORM OF

SECONDMENT AGREEMENT

This SECONDMENT AGREEMENT (this "Agreement") is made and entered into by and between [ ], a company incorporated under the laws of Japan (the "Seconding Entity"), and [ ], a company incorporated under the laws of Japan (the "Receiving Entity" and together with the Seconding Entity, the "Parties" and each a "Party"), with respect to the terms and conditions for seconding employees (the "Secondee") from the Seconding Entity to the Receiving Entity pursuant to that certain stock purchase agreement (as amended, the "Stock Purchase Agreement"), dated as of March 7, 2011, entered into by and among Western Digital Corporation, a corporation incorporated under the laws of Delaware, Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands, Hitachi, Ltd., a company incorporated under the laws of Japan and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore, as follows.

1. DEFINITIONS; INTERPRETATION

1.1 Definitions. Bracketed terms used in this Agreement are defined or referenced in Annex A attached hereto.

2. SECONDMENT

2.1 Secondee and Secondment Period.

(a) Secondment. On the date hereof, the Seconding Entity shall use its reasonable best efforts to second to the Receiving Entity the employees referred to on Schedule 2.1 (each such employee, a "Secondee").

(b) Secondment Period.

(i) The initial period of secondment for each Secondee shall be from the date hereof until March 31, 2014 and thereafter shall, subject to the Secondee's consent, automatically renew for successive two-year periods (the initial and any renewal terms, collectively, the "Secondment Period"), [except that either Party may elect not to renew the Secondment Period by giving written notice of non-renewal no later than three months prior to the end of the then-current two-year period (whether an initial or renewal period)] 1; provided, that the Parties may agree otherwise in writing with respect to any Secondee.

[1] The bracketed language shall only apply to the secondment of Non-R&D/R&D Related Secondees described in Section 6.12(e)(ii) of the Stock Purchase Agreement.

(ii) At any time during the Secondment Period, the Receiving Entity may terminate the secondment of any Secondee (A) by written agreement of the Seconding Entity and the Receiving Entity, and (B) upon written notice from the Receiving Entity to the Seconding Entity that such Secondee has done or omitted to do anything which would entitle the Receiving Entity to terminate such Secondee's employment (*chokai kaiko*) pursuant to the employment rules, regulations and policies of the Receiving Party if such Secondee were a direct employee of the Receiving Party. Upon written notice from (X) the Seconding Entity to the Receiving Entity stating that such Secondee has voluntarily retired or resigned, or (Y) the Receiving Entity to the Seconding Entity that such Secondee has done or omitted to do such things as described in clause (B) of this paragraph, the secondment of such Secondee hereunder shall terminate upon the effectiveness of such retirement, resignation, or receipt of the notice that such Secondee has so acted or omitted to act, as applicable.

2.2 Secondment Principles. During the Secondment Period, each Secondee shall remain an employee of the Seconding Entity but shall (a) be made available on a full-time basis to the Receiving Entity, (b) be managed by the Receiving Entity, (c) be subject to the employment rules, regulations and policies of the Receiving Entity with respect to working terms and conditions such as working hours, break time and any holidays, unless otherwise set forth herein, (d) perform such duties and provide such services at such times and at such places as the Receiving Entity may require, and (e) act in accordance with and subject to the instructions of the Receiving Entity. The Parties acknowledge and agree that no Secondee shall be under the control or supervision of the Seconding Entity during the Secondment Period and agree that the Seconding Entity shall not be responsible to the Receiving Entity for the quality, nature or sufficiency of the services performed by its Secondee during such period; provided, however, that the Receiving Entity shall neither relocate any Secondee nor materially change any Secondee's duties, working hours or any other term or condition of his or her service without obtaining the Seconding Entity's written approval with respect to any relocation or material change, which approval shall not be unreasonably withheld.

2.3 Working Terms and Conditions.

(a) Secondment Costs and Expenses. The basis for calculation of employment cost, allotment, and method of payment to the Secondee related to the performance of services by the Secondee during the Secondment Period shall be subject to the terms in Annex B_2

(b) Leave. The Secondee may obtain leave pursuant to the employment rules, regulations and policies of the Seconding Entity, provided that, the Secondee shall submit a prior leave application form to its superior at the Receiving Entity. In case the annual paid leave requested by the Secondee would interfere with the operation of the Receiving Entity, it shall be entitled to order the Secondee to take such annual paid leave at different period.

[2] Please note that there are three annexes for the Secondment Agreement between Chuo Shoji Ltd. and HGST Japan since there are two secondees who each have different tables for allocation of cost.

(c) Receiving Entity Non-Disclosure Rules. Each Secondee shall be bound by any and all confidentiality rules, policies, agreements or arrangements (the "Confidentiality Rules") of the Receiving Entity. With respect to each Secondee, the Seconding Entity hereby waives its rights under any and all Confidentiality Rules of the Seconding Entity to the extent such Confidentiality Rules of the Seconding Entity are inconsistent with the Confidentiality Rules of the Receiving Entity. The Receiving Entity shall take adequate measures such as execution of a non-disclosure agreement, control or return of materials or media that include or record the Confidential Information (as defined in Section 6.1), to the extent practically possible, during and after the Secondment Period, in order to prevent divulgation of the Confidential Information which the Secondee may be aware of in the course of performing the service to the Receiving Entity.

(d) Employee Intellectual Property Rules.

(i) Without limiting the generality of Section 2.2, the Seconding Entity acknowledges that ownership of any and all intellectual property rights in any inventions, trade secrets, or work product generated by such Secondee in the course of and in connection with such Secondee's duties during the Secondment Period (the "Employee IPR") shall be treated in accordance with the rules, policies, agreements or arrangements for ownership of Employee IPR (the "IPR Rules") of the Receiving Entity.

(ii) The Seconding Entity waives and shall not exercise any rights, (A) to require any Secondee to assign or transfer any Employee IPR to any person or entity, or (B) to apply for the registration thereof, in each case, under the Seconding Entity's IPR Rules, in a manner that would be inconsistent with the Receiving Entity's IPR Rules. Notwithstanding the preceding sentence, if the Seconding Entity acquires any interest in any Employee IPR, then, pursuant to the Receiving Party's IPR Rules that such Employee IPR should be owned by the Receiving Party, the Seconding Entity shall promptly assign such Seconding Entity's interest in the Employee IPR to the Receiving Entity.

(e) Changes to the Seconding Entity's Working Terms and Conditions. Notwithstanding anything in this Agreement to the contrary but to the extent permitted by the Stock Purchase Agreement, the Seconding Entity and its Affiliates shall, in their sole discretion and from time to time, have the right to terminate or modify any of its rules, regulations and policies relating to the Secondee and the right to adopt new plans or policies, at any time, related to any Compensation and Benefit Arrangements. For the avoidance of doubt and notwithstanding anything herein to the contrary, the Secondee may participate in any Compensation and Benefit Arrangements, provided that, it satisfies all of the eligibility requirements, as applicable, set forth in the rules related to such Compensation and Benefit Arrangements of the applicable Party pursuant to Annex B.

2.4 Reimbursement. All costs and expenses and other amounts incurred by the Seconding Entity with respect to any Secondee shall accrue on a calendar month basis (except as provided in Section 4.2) and shall be reimbursed by the Receiving Entity pursuant to Annex B. The Receiving Entity shall make such reimbursement to the Seconding Entity by wire transfer of immediately available funds by the end of each calendar month in which it receives an invoice from the Seconding Entity on or before the tenth (10th) day of such calendar month. In the event that the Receiving Entity receives an invoice from the Seconding Entity after the tenth (10th) day of any calendar month, the Receiving Entity shall make such reimbursement to the Seconding Entity by the end of the following calendar month. All invoices shall be denominated in Japanese yen and shall be accompanied by reasonable documentation evidencing the breakdown for such invoiced amounts in reasonable detail. If the Secondment Period with respect to any Secondee starts or ends on a day other than on the first or last day (respectively) of a calendar month, the amount of any costs and expenses to be reimbursed by the Receiving Entity shall be prorated based on the actual number of calendar days worked in such month. For the avoidance of doubt, reimbursable amounts hereunder shall mean the amount incurred by a company pursuant to the rules, regulations and policies related to the Compensation and Benefit Arrangements as applicable to the Secondee, and actual payroll and other administrative costs and expenses. The Receiving Entity shall pay the gross amount of any present or future sales, use, excise, value-added, ad valorem or any other tax applicable to the furnishing by the Seconding Entity of benefits to the Secondee (other than income taxes), or the Seconding Entity shall be provided with a tax exemption certificate acceptable to applicable governmental authorities.

2.5 Relocation Expenses. If the Receiving Entity determines that a Secondee is required to relocate in order to perform his or her duties for the Receiving Entity, the Receiving Entity shall pay all costs and expenses associated with the relocation in accordance with the Receiving Entity's rules, regulations and policies.

2.6 Transfer. During the Secondment Period, the Seconding Entity and the Receiving Entity may discuss and negotiate the transfer of employment of any Secondee to the Receiving Entity or any of its affiliates.

2.7 Unions; Employees. The secondment of Secondee to the Receiving Entity shall be made upon adequate mutual consultation between the Seconding Entity and its labor union except as otherwise agreed in the collective agreement therebetween. The Parties shall use reasonable best efforts to complete procedures necessary or required in relation to the labor union to enable the secondment of any Secondee to the Receiving Party.

3. CERTAIN NOTICES

During the Secondment Period, the Seconding Entity shall notify the Receiving Entity promptly on becoming aware of (a) any threatened labor strike, walkout, slowdown, stoppage, picketing, or other material dispute with respect to Secondee, (b) any notice from a Secondee to the Seconding Entity of an election to terminate employment, or (c) any allegation by a Secondee or a labor union representing the Secondee of any unfair labor practices, discrimination, or breach of contract by the Seconding Entity.

4. RETIREMENT BENEFITS

4.1 Retirement Benefits. In the event that a Secondee retires (whether voluntarily or involuntarily) from the Seconding Entity during his or her Secondment Period, such Secondee's retirement benefits, including both lump-sum payment and pension (hereinafter the same), shall be calculated based on such Secondee's aggregated service years with the Seconding Entity and the Receiving Entity through the effective date of retirement, determined in accordance with the rules, regulations and policies of the Seconding Entity as set forth in Annex B. Notwithstanding the provisions in Section 2.4, all retirement benefit costs and expenses incurred by the Seconding Entity, with respect to any Secondee during his or her Secondment Period, shall be reimbursed to the Seconding Entity by the Receiving Entity once every six months. Any retirement benefit payments to be made to such Secondee shall be borne on a pro rata basis by the Seconding Entity and the Receiving Entity, based on such Secondee's periods of service with the Seconding Entity and the Receiving Entity (with his or her Secondment Period counted as time with the Receiving Entity); provided, however, any retirement benefit costs and expenses already reimbursed to the Seconding Entity by the Receiving Entity, if any, shall be deducted from any retirement benefit payment borne by the Receiving Entity.

4.2 Pre-Secondment Period Accrued Benefits. Any and all liabilities relating to any Compensation and Benefit Arrangements maintained or contributed to, or any benefits under applicable laws required to be maintained or contributed to, by the Seconding Entity for the benefit of any Secondee, calculated with respect to any time period ending prior to the commencement of the Secondment Period, shall be for the account of and borne by the Seconding Entity regardless of whether any such benefit is to be paid to any Secondee at any time after the commencement of the Secondment Period. Without prejudice to the generality of the foregoing, any benefits under the Compensation and Benefit Arrangements to be paid during the Secondment Period which vary based on length of employment or services shall be calculated giving effect to, and credit for, time served by the Secondee with the Seconding Entity.

5. CLAIMS AND LIABILITIES

5.1 Consequential Damages Waiver. EXCEPT WITH RESPECT TO THE PARTIES' RESPECTIVE INDEMNITY OBLIGATIONS UNDER SECTION 7, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY UNDER ANY LEGAL THEORY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOSS OF PROFITS, REVENUE OR BUSINESS, EVEN IF SUCH PARTY HAS PREVIOUSLY BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR PURPOSES OF THIS SECTION 5.1, "PARTIES" AND "PARTY" SHALL INCLUDE ANY AFFILIATES.

5.2 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES (AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS) ANY REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. FOR PURPOSES OF THIS SECTION 5.2, "PARTIES" AND "PARTY" SHALL INCLUDE ANY AFFILIATES.

6. CONFIDENTIAL INFORMATION

6.1 "Confidential Information" means all information disclosed, pursuant to or related to this Agreement, by a Party (the "Discloser") in writing, orally or in any other form concerning the businesses, affairs, properties, employees, finances, products, technologies and operations of the Discloser to the other Party (the "Recipient") and any notes, analyses, compilations, studies, forecasts, interpretations or other documents or records that contain any such information. Confidential Information does not include information or material that (a) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known or available; (b) is or was known by the Recipient at or before the time such information or material was received from the Discloser; (c) is furnished to the Recipient by a third party that is not under an obligation of confidentiality to the Discloser with respect to such information or material; or (d) is independently developed by the Recipient.

6.2 The Recipient shall hold all Confidential Information in confidence and shall not disclose to third parties for any purpose whatsoever other than as necessary in order to fulfill its obligations or exercise its rights under this Agreement. The Recipient shall take reasonable measures to protect the confidentiality of the Discloser's Confidential Information in a manner that is at least protective as the measures it uses to maintain the confidentiality of its own Confidential Information of similar importance. Notwithstanding the foregoing, the Recipient may disclose the Discloser's Confidential Information (a) to employees and consultants that have a need to know such information, provided that each such employee and consultant is under a duty of nondisclosure that is substantially comparable with the confidentiality and nondisclosure provisions herein, and (b) to the extent the Recipient is legally compelled to disclose such Confidential Information, provided that if permitted by applicable law and regulations the Recipient shall give advance notice of such compelled disclosure to the Discloser, and shall cooperate with the Discloser in connection with any efforts to prevent or limit the scope of such disclosure and use of the Confidential Information.

7. INDEMNIFICATION

7.1 Indemnification.

(A) Indemnification by the Receiving Entity. The Receiving Entity shall indemnify, defend and hold harmless the Seconding Entity and its officers, directors and employees from and against any and all claims related to (a) the actions or omissions of any Secondee in the course and scope of his or her services to the Receiving Entity during his or her Secondment Period, and (b) any breach by the Receiving Entity of this Agreement.

(B) Indemnification by the Seconding Entity. The Seconding Entity shall indemnify, defend and hold harmless the Receiving Entity and its officers, directors and employees from and against any and all claims related to (a) the actions or omissions of the Seconding Entity with respect to any Secondee, and (b) any breach by the Seconding Entity of this Agreement.

7.2 Indemnification Procedures. If an indemnified party (an "Indemnified Party") becomes aware of a claim for which indemnification may be sought hereunder, then such Indemnified Party shall give notice thereof (a "Claim Notice") to the indemnifying party (an "Indemnifying Party") as promptly as practicable; provided, however, that the failure of an Indemnified Party to give a timely Claim Notice hereunder shall not affect its rights to indemnification hereunder. If the Indemnifying Party notifies in writing to the Indemnified Party within 20 Business Days after receipt of a Claim Notice that the Indemnifying Party is obligated under the terms of its indemnity hereunder in connection with the claim set forth in the Claim Notice, then the Indemnifying Party shall be entitled, at its own cost, risk and expense, to defend or negotiate the settlement of such claim through its representative. Notwithstanding the foregoing, the Indemnified Party shall have the right to defend and negotiate the settlement of such claim through its representative at its sole discretion. Either Party appointing a representative to defend and settle a claim made by a third party shall, from time to time, advise of the status of the defense and consult in good faith with respect to the defense with, the other Party that has not appointed its representative. Neither Party shall make settlement in connection with a claim with a third party without prior consent of the other Party (such consent shall not be unreasonably withheld). The Indemnifying Party shall indemnify the Indemnified Party in accordance with any settlement or all other resolution, or judgment or order by the court (by the appellate court if appealed) under this Section 7.2.

8. TERM AND TERMINATION

8.1 Term. This Agreement shall be effective as of the date hereof, and shall continue in full force and effect until the expiration of the Secondment Period for all of the Secondee (the "Term").

8.2 Effect of Termination.

(a) Continuing Liability. Termination of this Agreement for any reason shall not (a) release either Party from any liability, obligation or agreement which has already accrued at the time of termination, or (b) be deemed a waiver or release of, or otherwise be deemed to prejudice or adversely affect, any rights, remedies or claims, whether for damages or otherwise, which a Party may have under this Agreement, at law or otherwise, or which may arise out of or in connection with such termination.

(b) Survival. The provisions of Sections 2.3(a), 2.4, 4.1, and 4.2 with respect to any payment obligations which accrued prior to, and remain outstanding as of, the expiration of the Term, and Sections 1.1, 2.3(c), 2.3(d), 5, 6, 7, 9, 11, and 12, and this Item (b) shall survive any termination of this Agreement.

9. NOTICES

9.1 Addresses. Any notice, claim or demand in connection with this Agreement or with any litigation under this Agreement (each a "Notice") shall be deemed to be sufficiently given if delivered or sent to the recipient at its fax number or address set out in Schedule 9.1 or any other fax number or address notified to the sender by the recipient for the purposes of this Agreement.

9.2 Form. Any Notice shall be deemed to have been received on the next Business Day in the place to which it is sent, if sent by fax, or three Business Days from the date deposited with a courier, if sent by international courier, or five Business Days from the date of posting, if sent by post.

9.3 Contact Person. The person named by each Party in Schedule 9.1 shall be the primary point of contact at that Party for all matters relating to this Agreement. Each Party agrees that it will exercise its rights and send and receive all notices under this Agreement through such person or to any alternative person specified by a Party by giving not less than five Business Days' written notice to the other Party.

10. GENERAL

10.1 Whole Agreement. This Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by applicable law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to the matters dealt with in this Agreement except as otherwise set forth in the Stock Purchase Agreement.

10.2 No Partnership. Nothing in this Agreement shall be deemed to constitute a partnership between the Parties and no Party shall be deemed to be the representative of the other Party for any purpose.

10.3 Waiver. No failure of a Party to exercise, and no delay by it in exercising, any right, power or remedy in connection with this Agreement (each, a "Right") shall operate as a waiver of that Right, nor shall any single or partial exercise of any Right preclude any other or further exercise of such Right or the exercise of any other Right. Any express waiver with regard to any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach.

10.4 Variation. No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

10.5 Assignment. Except as otherwise provided in this Agreement, the Parties may not assign or transfer, or delegate all or any part of their rights or obligations under this Agreement or any benefit arising under or out of this Agreement.

10.6 Further Assurances. At any time after the date hereof, each Party shall, at its own cost, execute such documents and do such acts and things for the purpose of giving to the other Party the full benefit of the provisions of this Agreement.

10.7 Invalidity. If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

10.8 Counterparts. This Agreement may be entered into in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

10.9 Costs. Each Party shall bear all costs incurred by it in connection with the preparation, negotiation and entry into this Agreement and the documents to be entered into pursuant to this Agreement.

10.10 Language. This Agreement shall be in the Japanese language, and any translation of this Agreement into any other language other than Japanese by either Party shall be for convenience purposes only. In the event of any conflict between this Agreement and a convenience translation, this Japanese version shall prevail.

10.11 Governing Law. This Agreement and the legal relations among the Parties shall be governed by and construed in accordance with the laws of Japan.

11. NEGOTIATION PROCEDURES; CONSENT TO JURISDICTION, SERVICE OF PROCESS AND VENUE

11.1 Negotiation Procedure.

(a) Good Faith Discussions. The Parties intend that all disputes, controversies or differences between the Parties arising out of or in relation to or in connection with this Agreement shall be settled by the Parties amicably through good faith discussions upon the written request of either Party.

(b) Negotiation Procedures. Prior to filing suit, instituting a judicial or administrative proceeding, or seeking other judicial or governmental resolution (each, a "Proceeding") in connection with any dispute between the Parties or any of their subsidiaries arising out of or in relation to or in connection with this Agreement, the Parties will attempt to resolve such dispute by good faith negotiations. Such negotiations shall proceed as follows:

(i) Any Party may send a written notice to another Party requesting such negotiations. Promptly following receipt of such notice by the receiving Party, each Party shall cause the individual designated by it as having general responsibility for this Agreement to meet in person with the individual so designated by the other Party to discuss the dispute.

(ii) If the dispute is not resolved within thirty (30) days after the first meeting between such individuals (or, if earlier, within forty five (45) days of the notice referred to in clause (a) above), then, upon the written request of any Party, each Party shall cause the individual designated by it as having general responsibility for the overall relationship defined by this Agreement to meet in person with the individual so designated by the other Party to discuss the dispute.

(iii) If the dispute is not resolved within fifteen (15) days after the first meeting between such individuals (or, if earlier, within thirty (30) days of the notice referred to in clause (ii) above), then, upon the written request of either Party, each Party shall nominate one corporate officer or director, which corporate officers or directors shall meet in person and attempt in good faith to negotiate a resolution to the dispute.

Except and only to the limited extent provided in Item (c), neither Party shall file suit, institute a Proceeding or seek other judicial or governmental resolution of the dispute until at least thirty (30) days after the first meeting between the corporate officers or directors described in clause (iii) above (or if earlier forty five (45) days after the notice referred to in such clause (iii)) but after the expiration of such periods, either Party may file suit, institute a Proceeding or seek other judicial or governmental resolution. For purposes of this Agreement, the procedures set forth in this Item (b) shall be referred to as the "Negotiation Procedures".

(c) Institution of Proceedings. Notwithstanding the provisions of Item (b), any Party may institute a Proceeding at any time seeking a temporary restraining order including preliminary injunction, if necessary in the sole judgment of that Party to avoid material harm to its property, rights or other interests, before commencing, or at any time during the course of, the Negotiation Procedures described in Item (b). In addition, any Party may file an action prior to the commencement of or at any time during or after the Negotiation Procedures in Item (b) if in the sole judgment of that Party it is necessary to prevent the expiration of a statute of limitations or filing period or the loss of any other substantive or procedural right.

11.2 Consent to Jurisdiction, Service of Process and Venue. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Tokyo District Courts for the purposes of any action, suit, proceeding, hearing, order, charge or complaint (each, an "Action") or other proceeding arising out of or in relation to or in connection with this Agreement (and agrees that no such Action or proceeding arising out of or in relation to or in connection with this Agreement shall be brought by it or any of the subsidiaries except in such courts).

[Remainder of page intentionally blank.]

March [Date], 2012

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ANNEX A

DEFINITIONS

"Action" has the meaning specified in Section 11.2.

"Agreement" has the meaning set forth in the preamble.

"Affiliate" means any person or entity now or hereafter controlling, controlled by or under common control with another person or entity.

"Compensation and Benefit Arrangements" means any plan, program, policy, practice or arrangement relating to compensation, insurance, bonuses, vacation, profit-sharing, stock options, disability, pension, retirement, allowances, welfare, healthcare, unemployment or any other benefits to employees or former employees, their beneficiaries or dependents.

"Business Day" means a day, other than Saturday, Sunday or public holidays in Japan.

"Claim Notice" has the meaning specified in Section 7.2.

"Confidential Information" has the meaning specified in Section 6.

"Confidentiality Rules" has the meaning specified in Section 2.3.

"Discloser" has the meaning specified in Section 6.1.

"Employee IPR" has the meaning specified in Section 2.3(d)(i).

"Secondment Period" has the meaning specified in Section 2.1(b)(i).

"Indemnified Party" has the meaning specified in Section 7.2.

"Indemnifying Party" has the meaning specified in Section 7.2.

"IPR Rules" has the meaning specified in Section 2.3(d)(i).

"Negotiation Procedures" has the meaning specified in Section 11.1(b).

"Notice" has the meaning specified in Section 9.1.

"Parties" or "Party" has the meaning set forth in the preamble.

"Proceeding" has the meaning specified in Section 11.1(b).

"Receiving Entity" has the meaning set forth in the preamble.

"Recipient" has the meaning specified in Section 6.

"Right" has the meaning specified in Section 10.3.

"Secondee" has the meaning specified in Section 2.1(a).

"Seconding Entity" has the meaning set forth in the preamble.

"Stock Purchase Agreement" has the meaning specified in the preamble.

"Term" has the meaning specified in Section 8.1.

EXHIBIT I

EXHIBIT H TO THE STOCK PURCHASE AGREEMENT
Form of Company Waiver and Release

[see attached]

Form of Company Waiver and Release

SEPARATION AGREEMENT AND GENERAL RELEASE

I, XXXX XXXX, agree to the following:

1. Benefits Payable. In exchange for signing this Separation Agreement and General Release ("Agreement"), I will receive the following benefits:

(a) Cash Payment: A lump sum payment of **$XXXX.XX**, minus legally required deductions; and

(b) COBRA Premiums: A lump sum payment of **$XXXX.XX**, minus legally required deductions, as a subsidy to pay my COBRA premiums for continuing medical, dental and vision coverage, based on my current elections. I understand that I must actively enroll in COBRA coverage and pay related premiums to maintain such insurance coverage.

Together, these benefits will be referred to as the "RA Payment," and are also subject to the terms and conditions set forth in the Hitachi Global Storage Technologies Resource Action Plan ("Hitachi RA Plan"), to which I agree to be bound.

2. Employment Termination and Transition. I agree that my employment with Hitachi Global Storage Technologies, Inc. ("Company") has ended or will end on **XXXXXX**, or on a later date as determined by the Company in its sole discretion. I understand that my eligibility for the RA Payment is dependent upon my remaining employed with the Company until the date determined by the Company. I will act reasonably and in good faith to ensure a smooth transition of my job responsibilities and, as requested, assist the Company in any other transitional activities within the scope of my past job duties, including without limitation, providing assistance, cooperation and information to Company management to allow an effective transition of my responsibilities.

3. Released Parties. I understand that this Agreement releases legal claims against the Company, its current and former parents (including without limitation, Hitachi Global Storage Technologies Netherlands B.V., Viviti Technologies Ltd., Hitachi, Ltd. and Western Digital Corporation), their subsidiaries, related companies, partnerships, joint ventures, or other affiliates, and, with respect to each of them, their predecessors and successors; and, with respect to each such entity, all of its past, present, and future employees, officers, directors, stockholders, owners, representatives, assigns, attorneys, agents, insurers, employee benefit programs (and the trustees, administrators, fiduciaries, and insurers of such programs), and any other persons acting by, through, under or in concert with any of the persons or entities listed in this paragraph (altogether, the "Released Parties").

4. Release of Legal Claims. I, on my own behalf, on behalf of my heirs, family members, executors, and assigns, hereby fully and forever release each Released Party from any claim, obligation, duty or cause of action relating to any matter of any kind ("Claims"), whether presently known or unknown, suspected or unsuspected, that I may possess arising from any acts, facts or omissions that have occurred up to and including the date I signed this Agreement, including without limitation:

(a) any and all Claims relating to or arising from my employment relationship with the Company and the termination of that relationship;

Employee Initials _____

(b) any and all Claims under the law of any jurisdiction including, without limitation, wrongful discharge of employment, constructive discharge from employment, termination in violation of public policy, discrimination (including age discrimination), whistleblower claims, retaliation, failure to accommodate a disability, breach of contract, both express and implied, breach of a covenant of good faith and fair dealing, both express and implied, promissory estoppel, negligent or intentional infliction of emotional distress, negligent or intentional misrepresentation, negligent or intentional interference with contract or prospective economic advantage, unfair business practices, defamation, libel, slander, negligence, personal injury, assault, battery, invasion of privacy, false imprisonment, and conversion;

(c) any and all Claims for violation of any federal, state or municipal statute, including, without limitation, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Worker Adjustment and Retraining Notification Act of 1988 ("WARN Act"), the Fair Labor Standards Act, the Employee Retirement Income Security Act of 1974, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, the California WARN Act and any other similar state or local law;

(d) any and all Claims for violation of the federal, or any state, constitution;

(e) any and all Claims arising out of any other laws and regulations relating to employment or employment discrimination;

(f) any Claim for any loss, cost, damage, or expense arising out of any dispute over the non-withholding or other tax treatment of any of the proceeds that I have received under this Agreement; and

(g) any and all Claims for attorneys' fees and costs.

I agree that the release of claims set forth in this section shall operate as a complete general release as to the Claims released. This release does not apply to any obligations incurred under this Agreement, nor does it apply to legal claims that the law does not permit me to waive by signing this Agreement.

5. Pursuit of Claims. I acknowledge that I have not filed, initiated, or prosecuted (or caused to be filed, initiated, or prosecuted) or assigned any Claim, lawsuit, complaint, charge, action, compliance review, investigation, or proceeding with respect to any Claim this Agreement purports to waive.

6. Acknowledgement of Release of ADEA Claims. I acknowledge that I am waiving and releasing any rights I may have under the Age Discrimination in Employment Act of 1967 ("ADEA") and that this waiver and release is knowing and voluntary. The Company and I agree that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the date I signed this Agreement. I acknowledge that the RA Payment is being provided in consideration for this Agreement and is in addition to anything of value to which I was already entitled.

Employee Initials _____

7. Civil Code Section 1542. I represent that I am not aware of any claim that I might have other than the Claims that are released by this Agreement. I acknowledge that I have been advised by legal counsel to the extent I desired and that I am familiar with the provisions of California Civil Code Section 1542, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

I, being aware of the above code section, expressly waive any rights I might have under such code section, as well as similar rights under any other statute or common law principles intended to protect against the waiver of unknown claims.

8. Consideration of Release and Statistical Information. I acknowledge that the Company is advising me to take this Agreement home, read it and carefully consider all of its terms before signing it.

(a) If I am under the age of 40, I have at least 45 calendar days ("Consideration Period") after my termination date to consider this Agreement and to review all other documentation associated with the Hitachi RA Plan provided to me by the Company. I understand that I may take the full 45 business days to consider this information.

(b) If I am forty years of age or older, I have at least 45 calendar days after receiving a copy of this Agreement ("Consideration Period") to consider this Agreement, the attached statistical data about terminated employees and all other documentation associated with the Hitachi RA Plan provided to me by the Company. I understand that I may take the full 45 calendar days to consider this information.

If I sign this Agreement before expiration of the applicable Consideration Period, I hereby certify that I knowingly and voluntarily waive the right to any remaining portion of the applicable Consideration Period, for reasons personal to me, with no pressure by any Company representative to do so. I have carefully considered this Agreement, have obtained satisfactory answers to any questions I had, and have determined that the Company has complied with all disclosure requirements necessary to obtain a valid ADEA and OWBPA release of claims. I have read this Agreement carefully, I fully understand what it means, and I am entering into it voluntarily.

9. Revocation of Release. If I am 40 years of age or older, I understand that I may change my mind about (i.e., revoke) my waiver and release under this Agreement within 7 days after I sign it, by delivering a written notice of revocation to the Human Resources Department responsible for my most recent work location. Revocation of my waiver does not alter or change the termination of my employment with the Company. If I am under 40 years old, I may not revoke this Agreement once I have signed it.

Employee Initials _____

10. This Agreement to be Kept Confidential. I agree not to disclose the terms, amount, or existence of this Agreement to anyone other than a member of my immediate family, attorney, or other professional advisor and, even as to such a person, only if the person agrees to honor this confidentiality requirement. Such a person's violation of this confidentiality requirement will be treated as a violation of this Agreement by me. This Section does not prohibit my disclosure of the terms, amount, or existence of this Agreement to the extent necessary to enforce this Agreement, nor does it prohibit disclosures protected or required by law. I acknowledge that the Company would be irreparably harmed if this Section is violated.

11. Confidential Information, Nonsolicitation and Nondisparagement. I agree to remain bound by any Company or Released Party agreement or policy relating to confidential information, employee inventions, nonsolicitation, noncompetition, or similar matters to which I am now subject ("Surviving Agreements"). I agree not to criticize or disparage any Released Party, or the products, processes, policies, practices or research of any Released Party. Nothing in this paragraph or paragraph 10 shall prohibit me from complying with any lawful subpoena or court order or taking any other actions affirmatively authorized by law.

12. Return of Property. I have returned to the Company all files, documents, records, copies of the foregoing, computers, computer peripherals, cellular phones or other electronic mobile devices, Company-provided credit cards, keys, building passes, security passes, access or identification cards, and any other property of the Company in my possession or control. I agree not to incur any expenses, obligations, or liabilities on behalf of the Company.

13. Non-Admission of Liability. This Agreement is not an admission of guilt or wrongdoing by any Released Party. I agree that I have voluntarily executed this Agreement on my own behalf, and also on behalf of any heirs, agents, representatives, successors and assigns that I may have now or in the future.

14. Information Concerning Severance Program. This Agreement is offered as part of the Hitachi RA Plan. The Company separately has provided me with a copy of the Hitachi Global Storage Technologies Resource Action Plan and Summary Plan Description.

15. Entire Agreement and Modification. This Agreement, the Hitachi RA Plan, and any Surviving Agreements are the entire agreement between me and the Company regarding the subject matter of this Agreement. I acknowledge that the Company has made no representations or promises to me (such as that my former position will remain vacant), other than those contained in or referred to by this Agreement. All prior representations, understandings and agreements concerning the subject matter of this Agreement are hereby superseded. Once effective, this Agreement may not be modified in any manner, nor may any provision or any legal remedy with respect to it be waived, except by a writing signed by both me and the Company's most senior Human Resources executive. If one party successfully asserts that any provision in this Agreement is void, the rest of the Agreement shall remain valid and enforceable unless the other party to this Agreement elects to cancel it. If this Agreement is cancelled, I agree to repay to the Company the RA Payment that I received for signing it.

[Remainder of Page Intentionally Left Blank]

Employee Initials _____

PLEASE TAKE THIS AGREEMENT HOME AND READ IT CAREFULLY BEFORE SIGNING IT. THIS AGREEMENT INCLUDES A RELEASE OF KNOWN AND UNKNOWN CLAIMS, WHICH MEANS THAT WITH VERY LIMITED EXCEPTIONS YOU ARE WAIVING YOUR RIGHT TO TAKE LEGAL ACTION AGAINST THE COMPANY AND OTHER PARTIES FOR EMPLOYMENT RELATED DISPUTES. YOU ARE HEREBY ADVISED TO TAKE ADVANTAGE OF THE CONSIDERATION PERIOD IN PARAGRAPH 8 AND TO CONSULT AN ATTORNEY OF YOUR CHOICE (AT YOUR OWN COST) BEFORE SIGNING THIS AGREEMENT.

PLEASE INITIAL EACH PAGE OF THIS AGREEMENT AND SIGN IT IMMEDIATELY BELOW.

EMPLOYEE

Employee Signature	Print Name
Employee Serial Number	Date

HITACHI GLOBAL STORAGE TECHNOLOGIES

Director, Human Resources	Date

Employee Initials _____

March [•], 2012

Re: Separation Agreement and General Release

Reference is hereby made to that certain Stock Purchase Agreement (as may be amended from time to time, the "SPA"), dated as of March 7, 2011, by and among Western Digital Corporation (the "Buyer Parent"), Western Digital Ireland, Ltd. (the "Buyer"), Hitachi, Ltd. (the "Seller"), and Viviti Technologies Ltd. (the "Company") and the Separation Agreement and General Release (the "Release"), by and between the Hitachi Global Storage Technologies, Inc.("HGST") and [**Employee Name**] ("Employee"), dated as of [•], 2012. Terms not defined herein shall have the meanings assigned to such terms in the SPA or Release, as appropriate.

For the purpose of clarification, nothing in the Release shall constitute a waiver or release by each Employee of any rights to any claims pursuant to any applicable directors' and officers' liability insurance policies or for indemnification, reimbursement, offset or recovery provided to such Employee under the SPA, applicable indemnification agreements or under the formation and corporate governance documents of HGST, the Company and each of their subsidiaries or other affiliates. Each Employee may rely on this letter in releasing their signature page to the Release to HGST.

Nothing in this letter is intended to modify the SPA or the Release in any respect except as expressly set forth herein.

Sincerely,

HITACHI GLOBAL STORAGE TECHNOLOGIES, INC.

By: _____
Name:
Title:

cc: Western Digital Corporation

EXHIBIT J

EXHIBIT I TO THE STOCK PURCHASE AGREEMENT
Form of Reverse Services Agreement

[see attached]

Form of Reverse Services Agreement

Exhibit I

REVERSE SERVICES AGREEMENT

THIS REVERSE SERVICES AGREEMENT (this "Agreement") is entered into as of March __, 2012 (the "Effective Date"), by and among Hitachi, Ltd., a company incorporated under the laws of Japan ("Seller"), and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore and, as of the Closing, a wholly -owned subsidiary of Buyer Parent ("Company"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined below).

RECITALS

WHEREAS, on March 7, 2011, Buyer Parent, Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly-owned subsidiary of the Buyer Parent ("Buyer"), Seller and Company entered into a Stock Purchase Agreement, as amended by a First Amendment to Stock Purchase Agreement, dated May 27, 2011, a Second Amendment to Stock Purchase Agreement, dated November 23, 2011, a Third Amendment to Stock Purchase Agreement, dated January 30, 2012, a Fourth Amendment to Stock Purchase Agreement, dated February 15, 2012, a Fifth Amendment to Stock Purchase Agreement, dated March 6, 2012, and a Sixth Amendment to Stock Purchase Agreement, dated March 6, 2012 (as amended, through the date hereof, the "Purchase Agreement") and pursuant to, and subject to the terms thereof, Buyer acquired from Seller all of Seller's right, title and interest in and to the Stock;

WHEREAS, Company and the Subsidiaries provided certain services to Seller and its Affiliates prior to the Closing; and WHEREAS, Company shall provide, and, as applicable, shall cause the Subsidiaries, Representatives and Authorized Third Parties (each as defined below) to provide, Seller and its Affiliates certain services reasonably necessary for the operation of Seller and its Affiliates following the Closing, pursuant to and in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

SERVICES

1.1 Services.

(a) Subject to the terms and conditions of this Agreement, Company shall provide, and, as applicable, shall cause the Subsidiaries, Representatives and Authorized Third Parties to provide, to Seller and its Affiliates the services described on Exhibit A attached hereto in Japan (and such other locations specified on Exhibit A attached hereto) (the "Services") for the period from the Effective Date until the termination or expiration of this Agreement pursuant to Article III below (the "Services Period") solely to the extent that (1) such Services are provided by Company or the Subsidiaries, Representatives and Authorized Third Parties to Seller or any

of its Affiliates in Japan (and such other locations specified on Exhibit A attached hereto) as of the Effective Date, and (2) such Services are reasonably necessary to support during the Services Period the operation of Seller and its Affiliates in Japan (and such other locations specified on Exhibit A attached hereto) in all material respects as they were operated as of the Effective Date. Company shall provide, and shall cause the Subsidiaries, Representatives and Authorized Third Parties to provide, the Services to Seller and its Affiliates in substantially the same manner as Company, the Subsidiaries, Representatives and Authorized Third Parties provided such services to Seller and its Affiliates as of the Effective Date. For purposes of this Agreement, "Representatives" means, with respect to Company, its directors, officers, employees, financial advisors, attorneys, accountants, consultants, agents and other authorized representatives, acting in such capacity.

(b) Company shall, and as applicable, shall cause the Subsidiaries, Representatives and Authorized Third Parties to, (i) materially comply with all applicable Laws relating to the performance of the Services; and (ii) materially comply with any reasonable confidentiality, security, privacy or other policies of Seller and its Affiliates relating to the performance of the Services which have been provided to Company reasonably in advance.

(c) To the extent permitted by applicable Law, Company agrees to pass through to Seller and its Affiliates any rights Company may have with respect to Authorized Third Parties in connection with any failure by such Authorized Third Parties to materially comply with all applicable Laws relating to the performance of the Services or to materially comply with any reasonable confidentiality, security, privacy or other policies of Seller or any of its Affiliates, or Company or the Subsidiaries, relating to the performance of the Services.

(d) Seller shall use, and shall cause its Affiliates to use, the Services only for substantially the same purpose and in substantially the same manner and amount as the Services were used by Seller and its Affiliates as of the Effective Date; provided, however, that the scope and amount of the Services may be reduced by Seller as specified herein.

(e) Notwithstanding anything herein to the contrary, the Services shall not include (i) the provision of any funding or financial accommodation and (ii) any service that is directly provided by any third party to Seller or any of its Affiliates under an agreement between such third party and Seller or any such Affiliate.

1.2 Additional Services. Seller may request that Company and/or the Subsidiaries, Representatives and Authorized Third Parties provide additional services required by Seller or its Affiliates which have not been addressed herein and which are reasonably necessary to support the operation of Seller or any of its Affiliates during the Services Period as Seller or any of its Affiliates was operated in all material respects as of the Effective Date. Seller shall request such additional services from Company in writing within thirty (30) calendar days of the Effective Date. Within five (5) Business Days of Company's receipt of Seller's written request for such additional services, the Service Coordinators (as defined below) shall commence negotiations, in good faith, with respect to the scope, duration and price (which may be a market price) of such additional services to be provided during the Services Period. Within five (5) Business Days of agreement on such items, the parties shall work in good faith to set forth the additional agreed-upon services in a new services description, in a format similar to that set forth in Exhibit A.

Upon the mutual written agreement to such new services description, the additional agreed -upon services shall be deemed "Services" under this Agreement, and such new schedule shall be deemed incorporated into Exhibit A and shall in all other respects be subject to the terms and conditions of this Agreement. Notwithstanding the foregoing, Company has no obligation to agree to provide any service pursuant to this Section 1.2 to the extent such service (a)(i) had not been provided by Company, the Subsidiaries or any Representative or Authorized Third Party to Seller or any of its Affiliates as of the Effective Date ("Existing Services") and (ii) is not related to the continuation of the Existing Services; or (b) does not require any historical or institutional knowledge or unique capabilities on the part of Company or the Subsidiaries, Representatives or Authorized Third Parties.

1.3 Service Schedules. The parties acknowledge and agree that the descriptions of Services in Exhibit A are general only and do not purport to contain an exhaustive description of the Services to be provided. The parties further acknowledge and agree that it may not be practicable to describe each and every aspect of a particular Service in detail; therefore, each Service that is generally agreed upon by the parties and included in Exhibit A will be provided in accordance with the applicable terms of this Agreement, consistent with the past practices of the parties even where all aspects regarding the provision of a particular Service is not described in detail.

1.4 Service Coordinators. Each of Seller and Company shall nominate a representative to act as the primary contact person with respect to the provision of the Services (each such person, a "Service Coordinator"). The Service Coordinators shall be managerial-level employees of Company and Seller, as applicable. The initial Service Coordinators shall be Toyoki Furuta for Seller and a designee to be provided promptly after the Effective Date for Company, and each of their respective phone numbers, facsimile numbers and email addresses shall be set forth on an update made promptly after the Effective Date to Schedule 1 attached hereto. Each of Seller and Company may, in its sole discretion, change its Service Coordinator from time to time by providing written notice to the other party of such change and the relevant contact information for the new Service Coordinator at least three (3) Business Days prior to such change taking effect. Unless Seller and Company otherwise agree in writing, all communications relating to this Agreement or to the Services shall be directed to the Service Coordinators in accordance with Section 5.3 hereof. At Seller's Service Coordinator request, Company's Service Coordinator shall provide Seller's Service Coordinator with an estimate of Service Fees and Expenses for the Services.

1.5 Insurance. During the Services Period, Company shall maintain adequate insurance for the conduct of the Services in form and coverage consistent with Company's current coverage as of the Effective Date.

1.6 Subcontractors. Company may subcontract any of its obligations under this Agreement to third-party service providers which have been approved by Seller in writing ("Authorized Third Parties"), which approval shall not be unreasonably withheld or delayed. The Authorized Third Parties include those parties so identified in Exhibit A.

1.7 Consents. Company shall use commercially reasonably efforts to obtain all material licenses, approvals and consents of any third party required by Company to provide the Services (collectively "Required Consents"). If notwithstanding such commercial reasonable efforts, Company is unable to provide any Service because of a failure to obtain such material licenses, approvals or consents, or Company reasonably believes that performance of the Service would infringe or misappropriate a third party's intellectual property rights, the parties shall cooperate to determine the best alternative approach.

1.8 Intellectual Property.

(a) Developed IP. Subject to Seller's compliance with the terms and conditions of this Agreement, including payment of all Service Fees and Expenses, Company hereby assigns and agrees to assign all of its right, title and interest in and to the Developed IP to Seller. Seller shall have the sole right to apply for, file, register, or otherwise seek Intellectual Property Rights with respect to Developed IP, including the right to seek Patent protection for inventions that constitute Developed IP, if any. Company will provide (and will use commercially reasonable efforts to cause any inventors of Developed IP in Company's or the Subsidiaries' employ to provide) reasonable information and assistance, at Seller's cost and expense, to effect the assignment of rights pursuant to this Section 1.8(a) . With respect to any Developed Technology, Company reserves and Seller hereby grants and agrees to grant to Company and the Subsidiaries, under the Developed Intellectual Property Rights, a worldwide, non-exclusive, perpetual and irrevocable license to use such Developed Technology in the ordinary course of its business. With respect to any Patents within the Developed Intellectual Property Rights, Company reserves and Seller hereby grants and agrees to grant to Company and the Subsidiaries a worldwide, non-exclusive, perpetual and irrevocable license to make, have made, use, sell, offer for sale, and import any article of manufacture or composition of matter and practice any method or process.

(b) Background IP. To the extent, if any, that any Background Technology is embodied in any Deliverables provided to Seller under this Agreement, subject to Seller's compliance with the terms and conditions of this Agreement, including payment of all Service Fees and Expenses, Company hereby grants and agrees to grant to Seller, under Company's Background Intellectual Property Rights, a worldwide, non-exclusive, perpetual, and irrevocable license to use such Background Technology, solely as embodied in such Deliverables, in the ordinary course of Seller's business.

(c) No Other Rights. Except as expressly set forth in this Agreement, neither party grants any rights in or to its Technology or Intellectual Property Rights pursuant to this Agreement. As between the parties, each party shall be solely responsible to prepare, file, prosecute, maintain, and enforce its Intellectual Property Rights in its discretion and at its own cost. Except as expressly set forth in this Agreement, there shall be no right, license, authority, covenant not to sue, immunity from suit, or other defense, whether by implication, by reason of exhaustion, estoppel, or otherwise pursuant to or as a result of this Agreement or the activities of the parties under this Agreement.

(d) Company will use commercially reasonable efforts to identify to Seller any Patents owned by Company and claiming Background Technology Company expects to be embodied in Deliverables to be delivered to Seller in connection with the provision of the Services under which Company does not have the right to grant to company a license of the scope set forth in Section 1.8(b) without incurring an obligation to pay a royalty or other consideration to a third party.

(e) As used in this Section 1.8:

(i) "Background Intellectual Property Rights" means Intellectual Property Rights, if any, owned by Company that are (a) embodied in Background Technology, and (b) not Developed Intellectual Property Rights; provided, however, that a Patent will be a Background Intellectual Property Right only if Company has the right to grant to Seller a license of the scope set forth in Section 1.8(b)) under such Patent without incurring any obligation to pay any royalty or other consideration to any third party.

(ii) "Background Technology" means Technology, if any, owned by Company or the Subsidiaries that is (A) embodied in any Deliverable, and (B) not Developed Technology.

(iii) "Deliverables" means the deliverables, if any, to be provided by Company as part of the Services performed pursuant to this Agreement.

(iv) "Developed Intellectual Property Rights" means Intellectual Property Rights to the extent such Intellectual Property Rights (A) are first created by Company in the course of its performance of the Services pursuant to this Agreement and within the scope and during the term of this Agreement, and (B) are embodied in Developed Technology. For the avoidance of doubt, "Developed Intellectual Property Rights" includes the right to seek Patent protection for inventions that constitute Developed Intellectual Property, if any, but does not include any Patents or Patent applications of Company or the Subsidiaries.

(v) "Developed IP" means, collectively, Developed Technology and Developed Intellectual Property Rights.

(vi) "Developed Technology" means Technology embodied in any Deliverable to the extent such Technology is first developed or created by Company in the course of its performance of the Services pursuant to this Agreement and within the scope and during the term of this Agreement.

(vii) "Intellectual Property Rights" means Patents, copyrights, and rights with respect to trade secrets, whether arising under the laws of the United States, Japan or any other jurisdiction, including, in each case, any rights apply for, register, and enforce any of the foregoing. Notwithstanding the foregoing, "Intellectual Property Rights" does not include any trademark rights or similar rights with respect to indicia of source or origin.

(viii) "Patents" means all classes and types of patents, including utility patents, utility models, design patents, invention certificates, including divisionals, continuations, continuations-in-part, reexaminations, reissues, extensions and renewals, in all jurisdictions of the world.

(ix) "Software or Firmware" means a set of instructions, that either (i) directly provides instructions to the computer hardware, or, (ii) indirectly serves as an input to another piece of software.

(x) "Technology" means inventions, know-how, designs, specifications, Software or Firmware and other copyrightable material, technical information, devices, and other developments and technology.

1.9 Use of Services. Company shall be required to provide, or cause the Subsidiaries, Representatives and Authorized Third Parties to provide, Services in Japan (and such other locations specified on Exhibit A attached hereto) only to Seller and its Affiliates, and only in connection with the operation of Seller and its Affiliates in existence as of the Effective Date. Seller shall not, and shall not permit any of its Affiliates or any third parties under its control to, resell any Services to any Person whatsoever or permit the use of the Services by any Person other than in connection therewith.

1.10 Interruption of Services. Subject to Section 5.14, Company may cease or suspend providing, or have the Subsidiaries, Representatives or Authorized Third Parties cease or suspend providing, as applicable, the Services to Seller and its Affiliates if and to the extent such cessation or suspension is (i) required by applicable Law, (ii) necessary due to regularly scheduled maintenance, alterations, repairs or replacements with respect to the applicable Services or the facilities used to provide such Services, (iii) necessary due to emergency maintenance, alterations, repairs or replacements with respect to the applicable Services or the facilities used to provide such Services, or (iv) necessary due to the temporary shutdown of the operation of the facilities providing any Service whenever Company determines such action is necessary in the exercise of its reasonable judgment.

1.11 Cooperation. Seller shall cooperate, and shall cause its Affiliates to cooperate, with Company, the Subsidiaries, Representatives and Authorized Third Parties, and provide such Persons with such information and assistance as such Persons may reasonably require to enable them to provide the Services. Seller shall allow, and shall cause its Affiliates to allow, such Persons and their respective employees, agents and sub-contractors reasonable access to its facilities as necessary for the performance of the Services.

1.12 Right to Change or Eliminate Services. The parties acknowledge that Company and its Affiliates may make changes from time to time in the manner in which the Services are performed, including without limitation, the elimination of Services, if Company (i) makes similar changes in the manner in which similar services are performed for its Affiliates, or eliminates for its Affiliates similar Services, and (ii) furnishes to Seller substantially the same notice (in consent and timing) as Company furnishes to its own Affiliates respecting such changes and/or eliminations.

1.13 Consultation Period.

(a) The Service Coordinators shall collectively review, as promptly as reasonably practicable after the Effective Date, the Services listed on Exhibit A to determine if they properly reflect the Existing Services in Japan (and such other locations specified on Exhibit A attached hereto) that are reasonably necessary, during the Services Period, to support the operation of Seller or its Affiliates as Seller or such Affiliate was operated in all material respects as of the Effective Date ("Needed Services"). In connection with such review, Seller shall have the right to amend Exhibit A to add any Needed Services to Exhibit A at any time within the forty-five (45) day period after the Effective Date (such period, the "Consultation Period"); and (b) Seller shall not have a right to update Exhibit A with respect to adding any services relating to intellectual property matters.

(b) During the Consultation Period, the Service Coordinators shall discuss in good faith details with respect to the process of invoicing by Company and the Subsidiaries for the Services pursuant to Section 4.2, including determining whether a monthly billing cycle is appropriate for the invoicing of specific Services.

1.14 Excluded Services. Notwithstanding anything herein to the contrary, the following shall not be included as Services pursuant to this Agreement: Any services relating to intellectual property matters other than those listed on Exhibit A as of the Effective Date.

ARTICLE II

QUALITY OF SERVICES; LIMITATION OF LIABILITY; IMPROVEMENTS

2.1 Quality of Services.

(a) Company shall perform the Services, or to cause the Services to be performed, in a workmanlike manner at the same general level of service, with the same degree of care (which in no event may be less than reasonable care), and in a manner similar in all material respects to the manner in which such Services have been provided by Company and the Subsidiaries, Representatives and Authorized Third Parties to Seller and its Affiliates as of the Effective Date.

(b) In addition to the above and to the extent permitted by applicable Law, Company agrees to pass through to Seller and its Affiliates any warranties provided by Authorized Third Parties providing the Services.

(c) In the event of an alleged breach, default or nonperformance of any obligation under this Agreement by Seller or Company, the other party shall provide prompt written notice to the breaching party setting forth in reasonable detail the nature and extent of the alleged breach, default or nonperformance. The breaching party will then have a period of ten (10) Business Days in which to initiate actions reasonably designed to cure such alleged breach, default or nonperformance, and all such deficiencies shall, in any case, be cured within thirty (30) days following receipt by the breaching party of notice thereof.

2.2 Specific Performance. Company acknowledges that the rights of Seller to enforce the covenants and agreements made in this Agreement are special, unique, and of extraordinary character, and that, in the event Company violates or fails or refuses to perform any covenant or agreement made by it herein, Seller would be irreparably damaged and be without adequate remedy at law. Company agrees, therefore, that, in the event it fails or refuses to perform, or otherwise violates, any covenant or agreement made by it herein, Seller shall, in addition to any remedies available at law, be entitled to seek specific performance of such covenant(s) or agreement(s) and any other equitable remedy. For the avoidance of doubt, the foregoing shall not apply to the extent Company, the Subsidiaries, Representatives or Authorized Third Parties are expressly permitted to cease or suspend the provision of Services pursuant to Section 1.10 or otherwise not comply with other obligations hereunder pursuant to Section 5.14.

2.3 Limitation of Liability. IN NO EVENT SHALL COMPANY, THE SUBSIDIARIES NOR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS (INCLUDING COMPANY'S REPRESENTATIVES) BE LIABLE TO SELLER OR ANY OF ITS AFFILIATES FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS RESULTING FROM INTERRUPTION OF BUSINESS OR LOSS OF DATA ARISING UNDER OR RELATING TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT IN THE CASE OF COMPANY'S GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, IN NO EVENT SHALL THE TOTAL LIABILITY OF COMPANY, THE SUBSIDIARIES AND ANY OF ITS OR THEIR DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS (INCLUDING COMPANY'S REPRESENTATIVES) ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT EXCEED THE FEES PAID BY SELLER TO COMPANY HEREUNDER.

2.4 No Other Warranties. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY STATED HEREIN, COMPANY DISCLAIMS ALL EXPRESS AND IMPLIED REPRESENTATIONS AND WARRANTIES IN CONNECTION WITH THE SERVICES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

2.5 Indemnification. Company shall indemnify, hold harmless and reimburse Seller and its Affiliates for all Losses based upon, attributable to, arising out of or resulting from Company's gross negligence, fraud or willful misconduct in connection with the Services. Notwithstanding anything herein to the contrary, neither Company, any of the Subsidiaries, nor any Representative shall be liable or held accountable, in damages or otherwise, for any error in judgment or any mistake of fact or Law or for anything which Company does or refrains from doing, other than for Company's gross negligence, fraud or willful misconduct.

2.6 Mitigation. Seller has a duty to mitigate (and cause its Affiliates to mitigate) the Losses that would otherwise be recoverable from Company pursuant to this Agreement by taking appropriate and reasonable actions to reduce or limit the amount of any such Losses.

ARTICLE III

TERM AND TERMINATION OF THE SERVICES

3.1 Term. Unless earlier terminated pursuant to Section 3.2, with respect to each of the Services (or any portion thereof), the term of this Agreement as it relates thereto will be for a period beginning on the Effective Date and continuing until the termination by Seller of all the Services to be provided by Company under this Agreement pursuant to Section 3.2(a); provided, however, that, if any Service (or portion thereof) is designated to be provided for a fixed period or until a certain date as set forth in Exhibit A attached hereto, then this Agreement shall be automatically deemed terminated with respect to such Service (or portion thereof) upon completion of such period or on such date.

3.2 Termination.

(a) Any of the Services, or any portion thereof, may be terminated by Seller, in its sole discretion, at any time by furnishing forty-five (45) days' prior written notice to Company of Seller's intention to terminate the applicable Service, which written notice shall specify (i) the Service (or portion thereof) being terminated and (ii) the date on which the Service (or portion thereof) shall be terminated; provided, however, that Seller shall be responsible for the payment of any and all Service Fees and Expenses (each as defined below) accrued or incurred for such Service under this Agreement prior to the later of (A) the effective date of the termination and, (B) in the event that Company is contractually or legally required to incur Expenses related to such Service beyond the effective date of the termination, the date that Company is no longer contractually or legally required to incur such Expenses.

(b) Either Seller or Company, with respect to (i) and (ii) below, and Company, with respect to (iii) below, may immediately terminate this Agreement by written notice to the other party upon the occurrence of any of the following events:

(i) the other party (A) enters into proceedings in bankruptcy or insolvency, (B) makes an assignment for the benefit of creditors, (C) files or has filed against it any petition under a bankruptcy law or any other law for relief as a debtor (or similar law in purpose or effect) or (D) enters into liquidation or dissolution proceedings;

(ii) the other party materially breaches any of its obligations hereunder and the breach remains uncured for the applicable period specified in Section 2.1(c); or

(iii) any amount due under this Agreement remains unpaid by Seller for a period of more than fifteen (15) days following Seller's receipt of a notice of delinquency.

3.3 Survival of Certain Obligations. Without prejudice to the survival of other agreements of the parties, the right of Company to receive the applicable payments for expenses for the Services rendered prior to the effective date(s) of termination of such Services under this Agreement shall survive the termination or expiration, in whole or in part, of this Agreement. In addition, Section 1.8, Section 2.3, Section 2.4, Section 2.5, Section 2.6, Section 3.3, Section 4.1, Section 4.2, and Article V shall survive the termination or expiration of this Agreement.

ARTICLE IV

CONSIDERATION

4.1 Consideration.

(a) The fees charged by Company for Services hereunder ("Service Fees") shall be equal to Company's and, as applicable, the Subsidiaries' fully allocated cost for such Services, including (a) all compensation, benefit and other costs and expenses incurred by or with respect to employees directly engaged in providing such Services, including (i) in respect of compensation, all applicable bonus compensation, (ii) in respect of benefits, all benefits under Plans, and (iii) in respect of costs and expenses, all costs of materials and for such items as travel incurred in respect of the Services, as well as a reasonable allocation for space, maintenance, and facilities costs allocable to employees engaged in providing the Services, as well as the actual cost of any third party services used in providing the Services, and (b) similar costs with respect to those directly engaged in the supervision of such Services. Without limitation or modification of the foregoing, the cost-allocation memoranda attached hereto as Exhibit B memorialize how the fully allocated costs for the Services described in Items Nos. 2, 4, 5, 7 and 25 set forth on Exhibit A attached hereto are calculated as of the Effective Date. For clarity, each attachment comprising Exhibit B attached hereto references the Item No. set forth on Exhibit A attached hereto to which such cost allocation memorandum corresponds.

(b) In addition to the Service Fees, Seller will reimburse Company for all reasonable, documented, out-of-pocket expenses incurred by Company or the relevant Subsidiary, Representative and/or Authorized Third Party in connection with the provision of the Services ("Expenses").

4.2 Invoicing.

(a) Company and/or the relevant Subsidiary will invoice Seller for such expenses monthly in arrears for the Services provided under this Agreement. Each such invoice shall include (i) a brief description of the Service provided by Company, the Subsidiaries, Representatives and Authorized Third Parties during that month, and the Service Fees for such Services Fees and (ii) the amounts of Expenses incurred by Company, the Subsidiaries, Representatives and Authorized Third Parties during that month and reasonable documentation of such expenses. Seller shall pay all amounts due under each invoice (in the currency denominated by Company in such invoice) within forty-five (45) days following receipt of such invoice (the "Due Date") without offset, withholding or deduction of any kind. Seller shall be responsible for the payment of all Taxes payable with respect to the performance, receipt or consumption of the Services or the execution and delivery of this Agreement, other than any Tax based upon the net income of Company or any other Person providing any of the Services.

(b) Interest shall accrue on any unpaid balance at a rate of 1% per month for the period commencing on the Due Date and ending on the date payment is received in full by Company, and Seller shall bear all reasonable costs and expenses (including attorney's fees and court costs) incurred by Company or the Subsidiaries in collecting outstanding balances from Seller not paid on the Due Date.

ARTICLE V

MISCELLANEOUS

5.1 Confidentiality.

(a) Each party (the "Receiving Party") agrees that, from the Effective Date until the fifth anniversary of the Effective Date, it shall, and shall cause its Affiliates and Representatives to:

(i) take proper and all reasonable measures to ensure the confidentiality of all Confidential Information (as defined below) of the other party (the "Disclosing Party"), including keeping it separate from information belonging to the Receiving Party;

(ii) use such Confidential Information only for the Proper Use (as defined below);

(iii) permit access to such Confidential Information only to such of its Representatives having a need to know such Confidential Information ("Permitted Disclosees"), provided, that Receiving Party shall cause or have caused its Permitted Disclosees to be bound by and comply with the confidentiality no less restrictive than hereunder by written agreements, and inform each of those Permitted Disclosees of the confidential nature of such Confidential Information and of the obligations on Receiving Party in respect thereof, and Receiving Party shall be responsible for any breach of this Section 5.1 by any of its Permitted Disclosees;

(iv) make copies of the Confidential Information of the Disclosing Party only to the extent that the same are strictly required for the Proper Use;

(v) treat all Confidential Information of the Disclosing Party with the degree of care to avoid disclosure to any third party as is used with respect to Receiving Party's own information of like importance which is to be kept confidential; and

(vi) promptly return all Confidential Information of the Disclosing Party to the Disclosing Party upon its written request or (at the Disclosing Party's option) destroy all such Confidential Information and provide to the Disclosing Party a certificate of such destruction signed by a duly authorized officer of the Receiving Party.

(b) Where any Confidential Information of the Disclosing Party is the subject of any security regulations of any Governmental Entity, Receiving Party shall, and hereby undertakes to, take such measures as may be required by such regulations to protect such Confidential Information. Without prejudice to any obligations imposed on and assumed by the Receiving Party under any security regulations of any Governmental Entity, the obligations of confidentiality herein shall not apply to any Information which the Receiving Party by its written records can show:

(i) was in the possession of the Receiving Party before such Information was imparted or disclosed by the Disclosing Party;

(ii) is independently developed by any servant, agent or employee of the Receiving Party without access to or use or knowledge of the Information;

(iii) is in or subsequently comes into the public domain other than by breach by the Receiving Party of its obligations hereunder;

(iv) is received by the Receiving Party without restriction on disclosure or use from a third party which the Receiving Party reasonably and honestly believes is entitled to make such disclosure; or

(v) is approved for release by the written agreement of the Disclosing Party.

The Receiving Party may disclose Confidential Information of the Disclosing Party if required to be disclosed by applicable Law; provided that, if the Receiving Party is to make such disclosure, it shall give the Disclosing Party as much prior notice thereof as is reasonably practicable so that the Disclosing Party may seek such protective orders or other confidentiality protection as the Disclosing Party, in its sole discretion, may elect, and the Receiving Party shall reasonably co-operate with the Disclosing Party in protecting the confidential or proprietary nature of such Confidential Information which is to be so disclosed.

(c) As used in this Section 5.1:

(i) "Confidential Information" shall mean: (A) in respect of Information provided in documentary form or by way of a model or in other tangible or intangible form, Information which at the time of disclosure to the Receiving Party is marked, or otherwise designated, to show expressly or by implication that it is imparted or disclosed in confidence; (B) Information the nature of which, or the circumstances in which it was supplied, implies that it should be treated as confidential notwithstanding the absence of any mark or designation of confidentiality; (C) in respect of Information that is imparted or disclosed orally or by demonstration or presentation, any Information that the Receiving Party has been expressly informed by the Disclosing Party at the time of disclosure to have been imparted or disclosed in confidence; (D) in respect of Information imparted or disclosed orally or by demonstration or presentation, any note or record of the disclosure; and (E) any copy of any of the foregoing.

(ii) "Information" shall mean (A) with respect to that disclosed by Company, information relating to the Services provided pursuant to this Agreement, by or on behalf of Company, to Seller or any of its Affiliates, in oral or documentary form or by way of models or other tangible or intangible form or by demonstrations or presentations; and (B) with respect to that disclosed by Seller or any of its Affiliates, information relating to Seller's or any of its Affiliates' utilization or receipt of Services provided pursuant to this Agreement, by or on behalf of Seller or any of its Affiliates, to Company, in oral or documentary form or by way of models or other tangible or intangible form or by demonstrations or presentations, including all Seller and Affiliate information accessed in connection with the provision of the Services, whether in electronic or other form.

(iii) "Proper Use" shall mean (A) with respect to Seller and its Affiliates, the use of Company's Confidential Information (1) wholly necessarily and exclusively for the purpose of conducting the business of Seller and its Affiliates in connection with the Services; (2) in connection with the enforcement of Seller's rights hereunder; and (3) in connection with the defense by Seller of any claim asserted against Seller hereunder; and (B) with respect to Company, the use of Seller's and its Affiliates' Confidential Information (1) wholly necessarily and exclusively for the purpose of providing or the causing the provision of, the Services; (2) in connection with the enforcement of Company's rights hereunder; and (3) in connection with the defense by Company of any claim asserted against Company hereunder.

5.2 Entire Agreement; Amendments and Waivers.

(a) This Agreement and the Purchase Agreement contain the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements, written or oral, with respect to their subject matter. The exhibits and schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement.

(b) Any provision of this Agreement, including all exhibits hereto, may be amended or waived, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by the parties to this Agreement or, in the case of a waiver, by the party against whom the waiver is to be effective.

(c) No failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by applicable Law.

5.3 Notices. All notices, requests and other communications to either party hereunder shall be in writing (including facsimile transmission) and shall be given, if to Company, to:

Viviti Technologies Ltd.
c/o Hitachi Global Storage Technologies, Inc.
3403 Yerba Buena Road
San Jose, CA 95135
Attention: Christopher Dewees
Facsimile: (408) 717-9063
E-mail: Christopher.Dewees@hitachigst.com

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

O'Melveny & Myers LLP
610 Newport Center Drive, Suite 1700
Newport Beach, California 92660
Attention: J. Jay Herron, Esq.
Facsimile: (949) 823-6994
E-mail: jherron@omm.com

if to Seller, to:

Hitachi, Ltd., Business Development Office
6-6 Marunouchi 1-chome
Chiyoda-ku
Tokyo 100-8280, Japan
Attention: General Manager
Phone: +81-3-4564-5483
Fax: +81-3-4564-6260

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

Morrison & Foerster LLP
Shin-Marunouchi Building, 29th Floor
5-1, Marunouchi 1-chome
Chiyoda-ku, Tokyo 100-6529
Japan
Attention: Kenneth A. Siegel, Esq.
Facsimile: 011-81-3-3214-6512
E-mail: KSiegel@mofo.com

or to such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other party hereto. All such notices, requests and other communications shall be deemed received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day in the place of receipt. Otherwise, any such notice, request or communication shall be deemed to have been received on the next succeeding Business Day in the place of receipt.

5.4 Disputes. In the event of any controversy or dispute arising out of or relating to this Agreement, the Service Coordinators shall in good faith attempt to resolve such dispute. If after twenty (20) days the parties have not reached an agreement with respect to such dispute, either party may file a claim against the other party pursuant to Section 5.5 below.

5.5 Governing Law; Negotiation Procedure; Service of Process; Consent to Jurisdiction; Venue; Waiver of Jury Trial.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its conflicts of law rules.

(b) Negotiation Procedure; Service of Process.

(i) The parties intend that all disputes between the parties arising out of this Agreement shall be settled by the parties amicably through good faith discussions upon the written request of either party.

(ii) Prior to filing suit, instituting a Proceeding or seeking other judicial or governmental resolution in connection with any dispute between the parties or any of their subsidiaries arising out of this Agreement or any of the transactions contemplated hereby, the parties will attempt to resolve such dispute by good faith negotiations. Such negotiations shall proceed as follows:

(A) Either party may send a written notice to another party requesting such negotiations. Promptly following receipt of such notice by the receiving party, each party shall cause the individual designated by it as having general responsibility for this Agreement to meet in person with the individual so designated by the other party to discuss the dispute.

(B) If the dispute is not resolved within thirty (30) days after the first meeting between such individuals (or if earlier within forty five (45) days of the notice referred to in clause (i) above), then, upon the written request of either party, each party shall cause the individual designated by it as having general responsibility for the overall relationship defined by this Agreement to meet in person with the individual so designated by the other party to discuss the dispute.

(C) If the dispute is not resolved within fifteen (15) days after the first meeting between such individuals (or if earlier within thirty (30) days of the notice referred to in clause (ii) above), then, upon the written request of either party, Company shall nominate one corporate officer of the rank of senior vice president or higher, and Seller shall nominate one corporate officer of the rank of Board Director or higher, which corporate officers shall meet in person and attempt in good faith to negotiate a resolution to the dispute.

(iii) Except and only to the limited extent provided in Section 5.5(b)(iv), neither party shall file suit, institute a Proceeding or seek other judicial or governmental resolution of the dispute until at thirty (30) days after the first meeting between the corporate officers described in clause (iii) above (or if earlier forty five (45) days after the notice referred to in such clause (iii)) but after the expiration of such periods, either party may file suit, institute a Proceeding or seek other judicial or governmental resolution. For purposes of this Agreement, the procedures set forth in Section 5.5(b)(ii) and this Section 5.5(b)(iii) shall be referred to as the "Negotiation Procedures".

(iv) Notwithstanding the provisions of Sections 5.5(b)(ii) and 5.5(b)(iii), either party may institute a Proceeding at any time seeking a preliminary injunction, temporary restraining order, or other equitable relief, if necessary in the sole judgment of that party to avoid material harm to its property, rights or other interests, before commencing, or at any time during the course of, the dispute procedure described in Sections 5.5(b)(ii) and 5.5(b)(iii). In addition, either party may file an action prior to the commencement of or at any time during or after the dispute resolution procedures in Sections 5.5(b)(ii) and 5.5(b)(iii) if in the sole judgment of that party it is necessary to prevent the expiration of a statute of limitations or filing period or the loss of any other substantive or procedural right.

(c) Consent to Jurisdiction; Venue. Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery shall be unavailable, any Delaware State court and the Federal court of the United States of America sitting in the State of Delaware) for the purposes of any Action or other proceeding arising out of this Agreement or any transaction contemplated hereby (and agrees that no such Action or proceeding relating to this Agreement shall be brought by it or any of its Affiliates except in such courts). Each of the parties further agrees that, to the fullest extent permitted by applicable Law, service of any process, summons, notice or document by U.S. registered mail to such person's respective address set forth in Section 5.3 above shall be effective service of process for any Action or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of the parties irrevocably and unconditionally waives (and agrees not to plead or claim), any objection to the laying of venue of any Action or proceeding arising out of this Agreement or the transactions contemplated hereby in the Delaware Court of Chancery (and if the Delaware Court of Chancery shall be unavailable, in any Delaware State court or the Federal court of the United States of America sitting in the State of Delaware) or that any such Action or proceeding brought in any such court has been brought in an inconvenient forum.

(d) Waiver of Jury Trial. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

5.6 Books and Records; Inspection. Seller shall, and shall cause its Affiliates to, make available on a timely basis to Company and the Subsidiaries, Representatives and Authorized Third Parties such information and materials reasonably requested by Company to enable such Persons to provide the Services. Seller shall, and shall cause its Affiliates to, provide to such Persons reasonable access to the premises of Seller and its Affiliates, to the extent necessary for the purpose of providing the Services. During the Services Period and for a period of three (3) years following the Services Period or, if applicable Law requires a longer period, such longer period, Company shall maintain a complete and accurate set of files, books and records of all business activities and operations conducted by Company related to the Services provided under the terms of this Agreement, as well as any correspondence related to compliance with any applicable national, state and local laws, rules and regulations. Company will provide Seller, subject to Section 5.1 hereof, such information as Seller may reasonably request from Company's books and records to the extent relating to the provision of any Service hereunder.

5.7 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Entity to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

5.8 Binding Effect; Benefit; Assignment.

(a) The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. No provision of this Agreement is intended to confer any rights, benefits, remedies, obligations or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

(b) No party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto, except that Seller may transfer or assign its rights and obligations under this Agreement, in whole or from time to time in part, to one or more of its Affiliates at any time; provided that such transfer or assignment shall not relieve Seller of any of its obligations hereunder.

5.9 Definitional and Interpretive Provisions. Section 1.2 of the Purchase Agreement shall also apply to this Agreement; provided, however, that for the purposes of this Agreement, "Business Days" shall mean a day, other than Saturday, Sunday or a public holiday in the country in which the applicable Service is performed.

5.10 Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

5.11 No Third Party Beneficiaries. This Agreement is intended and agreed to be solely for the benefit of the parties, and no third party, other than their respective Affiliates, shall accrue any benefit, claim or right of any kind whatsoever pursuant to, under, by or through this Agreement.

5.12 Relationship of the Parties. It is expressly understood and agreed that in rendering the Services hereunder, each of the parties is acting as an independent contractor and that this Agreement does not make the providing party an employee, agent or other representative of the other party for any purpose whatsoever. Neither party has the right or authority to enter into any contract, warranty, guarantee or other undertaking in the name or for the account of the other party, or to assume or create any obligation or liability of any kind, express or implied, on behalf of the other party, or to bind the other party in any manner whatsoever, or to hold itself out as having any right, power or authority to create any such obligation or liability on behalf of the other party or to bind the other party in any manner whatsoever (except as to any actions taken by a party at the express written request and direction of the other party). No employee, contractor or subcontractor of either party shall be deemed to be an employee, contractor or subcontractor of the other party, it being fully understood and agreed that no employee of either party is entitled to benefits or compensation from the other party. Each party is wholly responsible for withholding and payment of all applicable national, state and local and other payroll taxes with respect to its own employees, including any contributions from them as required by Law.

5.13 Conflict. In case of conflict between the terms and conditions of this Agreement and any exhibit or schedule hereto, the terms and conditions of such exhibit or schedule shall control and govern, insofar as such terms and conditions in the exhibit or schedule relate to the Service that is the subject of such conflict. In the event of any conflict between the terms of the Purchase Agreement, on the one hand, and this Agreement and each exhibit or schedule hereto, on the other hand, the terms of this Agreement shall control and govern.

5.14 Force Majeure. Each party shall be excused from its obligations under this Agreement, other than payment obligations, to the extent that any delay or failure in the performance of such obligations is a result of any cause beyond its reasonable control (and without the fault of such party), including, acts of God, acts of civil or military authority, embargoes, epidemics, war, terrorism, riots, insurrections, fires, explosions, earthquakes, floods, severe weather conditions or changes in Law.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

Hitachi, Ltd.

By: _____
Name: _____
Title: _____

Viviti Technologies Ltd.

By: _____
Name:
Title: _____

SIXTH AMENDMENT TO STOCK PURCHASE AGREEMENT

This Sixth Amendment to the Stock Purchase Agreement (this "Amendment") is made this 6th day of March, 2012, by and among Western Digital Corporation, a Delaware corporation (the "Buyer Parent"), Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly owned subsidiary of the Buyer Parent (the "Buyer"), Hitachi, Ltd., a company incorporated under the laws of Japan (the "Seller"), and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore and a wholly owned subsidiary of the Seller (the "Company", and collectively with the Seller, the Buyer and the Buyer Parent, the "Parties", and each, a "Party"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stock Purchase Agreement (as defined below).

WHEREAS, the Parties entered into a Stock Purchase Agreement on March 7, 2011, as amended by a First Amendment to Stock Purchase Agreement, dated May 27, 2011, as further amended by a Second Amendment to Stock Purchase Agreement, dated November 23, 2011, as further amended by a Third Amendment to Stock Purchase Agreement, dated January 30, 2012, as further amended by a Fourth Amendment to Stock Purchase Agreement, dated February 15, 2012, and as further amended by a Fifth Amendment to Stock Purchase Agreement, dated as of the date hereof (together, the "Stock Purchase Agreement");

WHEREAS, immediately prior to the execution of this Amendment, the Parties executed the Fifth Amendment to Stock Purchase Agreement; and

WHEREAS, the Parties desire to amend the Stock Purchase Agreement as reflected herein.

NOW, therefore, in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Section 1.1 of the Stock Purchase Agreement**. The definition of Target Working Capital set forth in Section 1.1 (Definitions) of the Stock Purchase Agreement is hereby amended and restated in its entirety to read as follows: ""Target Working Capital" means $0.00 (zero)."

2. **Section 2.2 of the Stock Purchase Agreement**. A new Section 2.2(h) is hereby added to the Stock Purchase Agreement as follows:

"(h) Assumed Benefit Plan Credit. The Purchase Price shall be increased by $84,000,000, which the Parties hereby agree represents the net value, as of the Closing, of the liabilities in respect to unfunded Benefit Plans that will be assumed by the Seller (or its Affiliates) as of the Closing."

3. **Section 2.5 of the Stock Purchase Agreement**. Section 2.5 of the Stock Purchase Agreement is hereby deleted in its entirety and replaced by the following:

"**Section 2.5 Closing**. Unless this Agreement shall have been terminated pursuant to Article X, and subject to the satisfaction or waiver of all of the conditions set forth in Article VII and Article VIII, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of O'Melveny & Myers LLP, 610 Newport Center Drive, 17th Floor, Newport Beach, California, or such other place (including by electronic transmission) as the Buyer and the Seller shall agree, on March 8, 2012, or at such other time and place as shall be mutually agreed by the Parties (the "Closing Date")."

4. **Section 6.12(d)(i)(B) of the Stock Purchase Agreement – Seller Benefit Plans Adjustment**. Section 6.12(d)(i)(B) of the Stock Purchase Agreement is hereby deleted in its entirety and replaced by the following:

""Assumed PBO" means the Projected Benefit Obligation with respect to the Assumed Benefit Plans as determined according to the actuarial methods and assumptions used in determining the Projected Benefit Obligation set forth in the Financial Statements less $148,000,000."

5. **Section 6.12(d)(v) of the Stock Purchase Agreement – Seller Benefit Plans Adjustment**. Section 6.12(d)(v) of the Stock Purchase Agreement is hereby amended to include the following language immediately prior to the proviso:

"and (D) substituting (1) an amount equal to what the Estimated Unfunded Assumed PBO Amount attributable to the Hitachi Ltd. Corporate Pension Fund would be if the definition of Assumed PBO in Section 6.12(d)(i)(B) did not contain the reduction of $148,000,000 for (2) $148,000,000 in Section 6.12(d)(i)(B);"

6. **Section 10.1(b) of the Stock Purchase Agreement**. Section 10.1(b) of the Stock Purchase Agreement is hereby deleted in its entirety and replaced by the following:

"(b) by any of the Parties at any time after March 15, 2012 (the "Termination Date"), if the Closing shall not have occurred and the Party seeking termination is not in material violation or breach of its respective representations, warranties, covenants or obligations contained in this Agreement;"

7. **Statement of Estimated Working Capital**. The Parties hereby acknowledge and agree that the statement of estimated Working Capital attached as Exhibit A hereto is the "Statement of Estimated Working Capital" as such term is defined in the Stock Purchase Agreement.

8. **Consideration Spreadsheet**. The Parties hereby acknowledge and agree that the Consideration Spreadsheet delivered by the Company to the Buyer Parent pursuant to Section 2.3(a) shall be amended to reflect the amendment to Section 6.12(d)(i)(B) of the Stock Purchase Agreement set forth in item 4. above.

9. **Satisfaction of Certain Conditions under the Stock Purchase Agreement**. The Parties hereby acknowledge and agree that all of the conditions set forth in Section 7.2 and Section 8.2 of the Stock Purchase Agreement have been satisfied.

10. **Effect on the Stock Purchase Agreement**. This Amendment shall not constitute a waiver, amendment or modification of any provision of the Stock Purchase Agreement not expressly referred to herein. Except as expressly amended or modified herein, the provisions of the Stock Purchase Agreement are and shall remain in full force and effect and are hereby ratified and confirmed. On and after the date hereof, each reference in the Stock Purchase Agreement to "this Agreement", "herein", "hereof", "hereunder" or words of similar import shall mean and be a reference to the Stock Purchase Agreement as amended hereby, although it shall not alter the dates as of which any provision of the Stock Purchase Agreement speaks. For example, phrases such as "as of the date hereof" and "as of the date of this Agreement" shall continue to refer to March 7, 2011, the date that the Stock Purchase Agreement was originally executed. To the extent that a provision of this Amendment conflicts with or differs from a provision of the Stock Purchase Agreement, such provision of this Amendment shall prevail and govern for all purposes and in all respects.

11. **Miscellaneous**. Sections 12.4, 12.5, 12.7 and 12.13 of the Stock Purchase Agreement are incorporated herein by reference.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Sixth Amendment to Stock Purchase Agreement as of the date first written above.

"BUYER PARENT"

WESTERN DIGITAL CORPORATION

By: /s/ Michael Ray
Michael Ray
Senior Vice President, General Counsel and Secretary

"BUYER"

WESTERN DIGITAL IRELAND, LTD.

By: /s/ Michael Ray
Michael Ray
Vice President

"SELLER"

HITACHI, LTD.

By: /s/ Toyoki Furuta
Name: Toyoki Furuta
Title: General Manager
Business Development Office

"COMPANY"

VIVITI TECHNOLOGIES LTD.

By: /s/ Christopher S. Dewees
Name: Christopher S. Dewees
Title: SVP

Western Digital Corporation
Summary of Compensation Arrangements
for
Named Executive Officers and Directors

NAMED EXECUTIVE OFFICERS

Base Salaries. The current annual base salaries for the current executive officers of Western Digital Corporation (the "Company") who were named in the Summary Compensation Table in the Company's Proxy Statement that was filed with the Securities and Exchange Commission in connection with the Company's 2011 Annual Meeting of Stockholders (the "Named Executive Officers") are as follows:

Named Executive Officer	Title	Current Base Salary
John F. Coyne	President and Chief Executive Officer	$1,000,000
Timothy M. Leyden	Chief Operating Officer	$600,000
Wolfgang U. Nickl	Senior Vice President and Chief Financial Officer	$400,000
James J. Murphy	Executive Vice President, Worldwide Sales and Sales Operations	$425,000
James K. Welsh III	Executive Vice President and GM, Branded Products	$400,000
James D. Morris	Executive Vice President and GM, Storage Products	$400,000

Semi-Annual Bonuses. Under the Company's Incentive Compensation Plan (the "ICP"), the Named Executive Officers are also eligible to receive semi-annual cash bonus awards that are determined based on the Company's achievement of performance goals pre-established by the Compensation Committee (the "Committee") of the Company's Board of Directors as well as other discretionary factors. The ICP, including the performance goals established by the Committee for the second half of fiscal 2012, are further described in the Company's current report on form 8-K filed with the Securities and Exchange Commission on February 24, 2012, which is incorporated herein by reference.

Additional Compensation. The Named Executive Officers are also eligible to receive equity-based incentives and discretionary bonuses as determined from time to time by the Committee, are entitled to participate in various Company plans, and are subject to other written agreements, in each case as set forth in exhibits to the Company's filings with the Securities and Exchange Commission. In addition, the Named Executive Officers may be eligible to receive perquisites and other personal benefits as disclosed in the Company's Proxy Statement filed with the Securities and Exchange Commission in connection with the Company's 2011 Annual Meeting of Stockholders.

Annual Retainer and Committee Retainer Fees. The following table sets forth the current annual retainer and committee membership fees payable to each of the Company's non-employee directors:

Type of Fee	Current Annual Retainer Fees
Annual Retainer	$ 75,000
Lead Independent Director Retainer	$ 20,000
Non-Executive Chairman of Board Retainer	$ 100,000
Additional Committee Retainers	
• Audit Committee	$ 10,000
• Compensation Committee	$ 5,000
• Governance Committee	$ 2,500
Additional Committee Chairman Retainers	
• Audit Committee	$ 15,000
• Compensation Committee	$ 10,000
• Governance Committee	$ 7,500

The retainer fee to the Company's lead independent director referred to above is paid only if the Chairman of the Board is an employee of the Company. Effective commencing with the Company's 2010 Annual Meeting of Stockholders, the annual retainer fees are paid immediately following the Annual Meeting of Stockholders.

Non-employee directors do not receive a separate fee for each Board of Directors or committee meeting they attend. However, the Company reimburses all non-employee directors for reasonable out-of-pocket expenses incurred to attend each Board of Directors or committee meeting. Mr. Coyne, who is an employee of the Company, does not receive any compensation for his service on the Board or any Board committee.

Additional Director Compensation. The Company's non-employee directors are also entitled to participate in the following other Company plans as set forth in exhibits to the Company's filings with the Securities and Exchange Commission: Non-Employee Director Option Grant Program and Non-Employee Director Restricted Stock Unit Grant Program, each as adopted under the Company's Amended and Restated 2004 Performance Incentive Plan; Amended and Restated Non-Employee Directors Stock-for-Fees Plan; and Deferred Compensation Plan.

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") is entered into by and between Western Digital Corporation (the "Company") and Stephen Dwight Milligan ("Executive"), as of the 7th day of March, 2011. This Agreement is being entered into in connection with the Company's entry into a Stock Purchase Agreement by and among the Company, Western Digital Ireland, Ltd., Hitachi, Ltd. and Viviti Technologies Ltd. dated on or about the date hereof (the "Stock Purchase Agreement"), and shall become effective on the date of the closing of the transactions contemplated by the Stock Purchase Agreement (the "Effective Date"). If the transactions contemplated by the Stock Purchase Agreement fail to close for any reason, or if the Stock Purchase Agreement terminates for any reason without the transactions contemplated thereby closing, this Agreement shall automatically terminate and be of no force and effect.

1. EMPLOYMENT.

The Company hereby agrees to employ Executive and Executive hereby agrees to accept such employment, upon the terms and conditions hereinafter set forth including but not limited to provisions governing early termination, from the Effective Date to and including the fifth anniversary of the Effective Date ("Employment Period"). Unless Executive's employment is terminated pursuant to any early termination provision hereof or the parties mutually agree otherwise in writing, Executive's employment with the Company shall terminate without further action by either party on the fifth anniversary of the Effective Date.

2. DUTIES.

A. President. Beginning on the Effective Date, Executive shall serve as President of the Company and shall report to the Company's Chief Executive Officer. Executive's duties shall include overall responsibility for sales, business units, manufacturing, materials and engineering activities of the Company. The Company's Chief Executive Officer currently intends to establish an "Office of the Chief Executive Officer" to help guide the strategic direction and leadership tone of the Company following the closing of the transactions contemplated by the Stock Purchase Agreement, and to help guide integration activities. In the event the "Office of the Chief Executive Officer" is established, the Executive shall be included as a member of the Office of the Chief Executive Officer during the Employment Period. Executive's principal place of employment shall be the Company's principal executive office in Irvine, California.

B. Executive Commitment. During the Employment Period, Executive agrees to devote substantially all of his time, energy and ability to the business of the Company, subject to paragraph E of Section 3.

3. COMPENSATION.

A. Base Salary. During the Employment Period, the Company will pay to Executive a base salary at the rate of $800,000 per year. Such salary shall be earned monthly and shall be payable in periodic installments in accordance with the Company's customary practices. Amounts payable shall be reduced by standard withholding and other authorized deductions. Executive's base salary may be increased in the sole discretion of the Compensation Committee of the Board of Directors (the "Compensation Committee").

B. Bonus. Executive's target bonus during the Employment Period for purposes of the Company's semi-annual Incentive Compensation Plan (ICP) bonus program shall be 125% of his semi-annual base salary from the Company in effect on the last day of such fiscal period. Executive's actual bonus under the ICP may range from 0% to 200% of his target bonus based on the level of attainment of the applicable performance objectives established under the ICP. If the Effective Date occurs after the first day of a semi-annual performance period, Executive shall be entitled to participate in the ICP for such performance period and Executive's bonus for such period shall be based on Executive's base salary earned during the partial performance period. Executive's target bonus may be increased in the sole discretion of the Compensation Committee.

C. Retirement and Welfare Benefit Plans; Fringe Benefits. During the Employment Period, Executive (and, in the case of welfare benefit plans, his eligible dependents, as the case may be) shall be eligible for participation in the retirement, welfare, and fringe benefit plans, practices, policies and programs provided by the Company on terms consistent with those generally applicable to the Company's other senior executives and approved by the Compensation Committee.

D. Expenses. During the Employment Period, Executive shall be entitled to receive prompt reimbursement for all reasonable employment expenses (including the relocation and commuting expenses provided for in paragraph F below) incurred by him in accordance with the policies, practices and procedures as in effect generally with respect to other senior executives of the Company.

E. Vacation and Other Leave. During the Employment Period, Executive shall receive paid vacation in an amount determined by the Company's then-existing policies based upon Executive's years of service with the Company (and for these purposes, Executive's service with Viviti Technologies Ltd. shall be recognized as service with the Company). Such vacation shall be scheduled and taken in accordance with the Company's standard vacation policies applicable to Company executives. Executive shall also be entitled to all other holiday and leave pay generally available to other executives of the Company.

F. Relocation Benefits. Executive shall be entitled to receive prompt reimbursement (and in any event within seventy days after the expense is incurred) for all reasonable moving or other relocation related expenses incurred by him at any time prior to the second anniversary of the Effective Date, including reasonable commuting expenses from Executive's residence in the San Francisco area to the Company's Irvine headquarters. In order to be eligible for reimbursement for any such expenses, Executive must remain employed on the date the expense is incurred.

G. Modification. The Company reserves the right to modify, suspend or discontinue any and all of the above plans, practices, policies and programs at any time without recourse by Executive so long as such action is taken generally with respect to other senior executives of the Company and does not single out Executive.

4. LONG-TERM INCENTIVE COMPENSATION.

A. Long-Term Incentive Awards. During the Employment Period, the Executive shall be eligible to receive long-term incentive awards on a basis commensurate with the Executive's position and in accordance with the long-term incentive guidelines applicable to the Executive's position established by the Compensation Committee. Any long-term incentive awards will generally be granted by the Compensation Committee as part of its normal annual grant cycle applicable to other senior executives of the Company. However, for the Company's 2012 fiscal year, the Executive shall be eligible to receive long-term incentive awards at the first Compensation Committee meeting occurring after the Effective Date, provided that if the Executive's fiscal 2012 long-term incentive grant is made prior to the Company's normal fiscal 2012 annual grant cycle that is expected to occur in September 2011, the Executive shall not be eligible to receive an additional fiscal 2012 long-term incentive grant in the normal grant cycle (the "Fiscal 2012 LTI Award"). It will be recommended to the Compensation Committee that the grant value of the Fiscal 2012 LTI Award be no less than $4,000,000. The grant value of the Fiscal 2012 LTI Award will be allocated between stock options, restricted stock units and a long-term cash award in accordance with the Company's standard long-term incentive grant practices, which currently allocate 40% of the grant value to stock options, 30% of the grant value to restricted stock units and the remaining 30% of the grant value to a long-term cash award. Any long-term incentive awards granted to the Executive will be subject to the Company's customary terms and conditions (including vesting conditions), provided that any restricted stock units granted as part of the Fiscal 2012 LTI Award shall be scheduled to vest in three substantially equal annual installments.

B. Integration Performance Units. As part of the Company's integration bonus plan that will be established in connection with the closing of the transactions contemplated by the Stock Purchase Agreement, it will be recommended to the Compensation Committee that Executive receive a grant of performance restricted stock units equal to that number of units having a target value on the grant date equal to $2,000,000 (the "Integration Performance Units"). The Integration Performance Units are expected to be granted at the first Compensation Committee meeting occurring after the Effective Date. The actual number of Integration Performance Units that may become earned and payable will range from 0% to 200% of the target number of Integration Performance Units awarded on the grant date, with the actual number of Integration Performance Units becoming earned and payable to be based on the Company's achievement of the applicable performance milestones. The performance milestones applicable to the Integration Performance Units will be determined by the Compensation Committee in consultation with the Chief Executive Officer of the Company following the Effective Date. Subject to Executive's continued employment through the first anniversary of the Effective Date, fifty percent (50%) of the target number of Integration Performance Units shall become earned and payable within seventy days following the first anniversary of the Effective Date based on performance during the first year following the Effective Date. Subject to Executive's continued employment through the second anniversary of the Effective Date, the remaining fifty percent (50%) of the target number of Integration Performance Units shall become earned and payable within seventy days following the second anniversary of the Effective Date based on performance during the second year following the Effective Date. The integration bonus plan will provide that in the event Executive's employment is terminated under circumstances that give rise to the payment of severance payments under either the Company's

Executive Severance Plan or Amended and Restated Change of Control Severance Plan (in accordance with the terms of such plans and as each may be amended from time to time), then Executive shall be entitled to receive payment of the target number of his Integration Performance Units applicable to any in-progress or future portion of the applicable performance periods within seventy days following the date of such termination of employment (and for the avoidance of doubt, and not in any way in limitation of Executive's rights to earn the Integration Performance Units based on performance, if such a termination occurs after the first anniversary of the Effective Date, Executive shall not be entitled to receive by virtue of his termination of employment any Integration Performance Units attributable to the first year following the Effective Date to the extent not otherwise earned based on performance).

5. TERMINATION.

A. Death. This Agreement and Executive's employment shall terminate automatically on the death of Executive.

B. Disability. The Company, at its option, may terminate Executive's employment upon the Disability of Executive. For purposes of this Agreement, "Disability" shall mean physical or mental incapacity that renders Executive unable to perform the normal and customary duties of employment of Executive even with a reasonable accommodation for (A) 120 days in any twelve (12) month period or (B) for a period of ninety (90) successive days.

C. Cause. The Company may terminate Executive's employment for Cause. For purposes of this Agreement, "Cause" shall mean that the Company, acting in good faith based upon the information then known to the Company, determines that Executive has engaged in or committed: (i) willful misconduct, (ii) fraud, (iii) failure or refusal to perform the duties of President of the Company or (iv) a conviction of or a plea of nolo contendre to a felony.

D. Other than Cause, Death, or Disability. The Company may terminate Executive's employment at any time, with or without cause, upon 30 days' written notice.

E. Obligations of the Company Upon Termination.

(i) Termination for any Reason. If Executive's employment is terminated for any reason during the Employment Period, Executive shall be entitled to receive timely payment of the sum of (i) Executive's annual base salary through the date of termination to the extent not theretofore paid and (ii) any compensation previously deferred by Executive in accordance with the Company's deferred compensation plans (together with any accrued interest or earnings thereon pursuant to the terms of the applicable plan) and any accrued vacation pay, in each case to the extent not theretofore paid (the sum of the amounts described in clauses (i) and (ii) shall be hereinafter referred to as the "Accrued Obligations").

(ii) Executive Severance Plan and Change of Control Severance Plan. During the Employment Period, Executive shall be entitled to participate in the Company's Executive Severance Plan and Amended and Restated Change of Control Severance Plan in accordance with the terms of such plans and as each may be amended from time to time. Subject to the preceding sentence, the Executive shall be entitled to receive "Tier I" benefits under each of the Severance Plan and the Amended and Restated Change of Control Severance Plan. Any benefits becoming payable under the Severance Plan or the Amended and Restated Change of Control Severance Plan as a result of the termination of the Executive's employment shall be in addition to the Accrued Obligations, provided that to the extent Executive becomes entitled to receive payments or benefits included within the Accrued Obligations under either such plan, Executive shall not be entitled to any duplication of benefits.

F. Exclusive Remedy. Executive agrees that the payments and benefits contemplated by this Agreement shall constitute the exclusive and sole remedy for any termination of his employment, and Executive covenants not to assert or pursue any other remedies, at law or in equity, with respect to any termination of employment.

6. CONFIDENTIALITY AND INVENTION.

On or prior to the Effective Date, Executive shall execute the Company's Employee Invention and Confidentiality Agreement ("Invention Agreement"), which shall be incorporated herein as if fully set forth. In the event of an inconsistency between a provision of this Agreement and a provision of the Invention Agreement, the provision of this Agreement controls.

7. NON-INTERFERENCE.

Executive promises and agrees that during the term of this Agreement, and for a period of twenty-four (24) months thereafter, he will not influence or attempt to influence any customer, supplier, or distributor of the Company to alter or reduce its business relationship with the Company.

8. LITIGATION ASSISTANCE.

Executive agrees to cooperate with the Company in any actual or threatened litigation that arises against or brought by the Company at any time during or after the Employment Period, including but not limited to participating in interviews with the Company's counsel to assist the Company in any such litigation.

9. ARBITRATION.

Any controversy arising out of or relating to Executive's employment, this Agreement, its enforcement or interpretation, or because of an alleged breach, default, or misrepresentation in connection with any of its provisions, shall be submitted to arbitration in Orange County, California, before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., Orange County, California, or its successor ("JAMS"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from ADR Services, Inc., and shall be conducted in accordance with the provisions of California Civil Procedure Code Sections 1280 et seq. as the exclusive remedy of such dispute; provided, however, that provisional injunctive relief may, but need not, be sought in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the arbitrator. Final resolution of any dispute through arbitration may include any remedy or relief which the arbitrator deems just and equitable. Any award or relief granted by the arbitrator hereunder shall be final and binding on the parties hereto and may be enforced by any court of competent jurisdiction. The parties agree that they are hereby waiving any rights to trial by jury in any action, proceeding or counterclaim brought by either of the parties against the other in connection with any matter whatsoever arising out of or in any way connected with this Agreement or Executive's employment.

10. SUCCESSORS.

A. This Agreement is personal to Executive and shall not, without the prior written consent of the Company, be assignable by Executive.

B. This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns and any such successor or assignee shall be deemed substituted for the Company under the terms of this Agreement for all purposes. As used herein, "successor" and "assignee" shall include any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly acquires the stock of the Company or to which the Company assigns this Agreement by operation of law or otherwise.

11. WAIVER.

No waiver of any breach of any term or provision of this Agreement shall be construed to be, nor shall be, a waiver of any other breach of this Agreement. No waiver shall be binding unless in writing and signed by the party waiving the breach.

12. MODIFICATION.

This Agreement shall not be modified by any oral agreement, either express or implied, and all modifications hereof shall be in writing and signed by the parties hereto.

13. SAVINGS CLAUSE.

If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

14. COMPLETE AGREEMENT.

This Agreement (and all other agreements, exhibits, and schedules referred to in this Agreement, including without limitation the Invention Agreement) constitutes and contains the entire agreement and final understanding concerning Executive's employment with the Company and the other subject matters addressed herein between the parties. It is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes and replaces all prior negotiations and all agreements proposed or otherwise, whether written or oral, concerning the subject matter hereof. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either party. This is a fully integrated agreement.

15. GOVERNING LAW.

This Agreement shall be deemed to have been executed and delivered within the County of Orange, State of California and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws.

16. CONSTRUCTION.

Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party on the basis that the party was the drafter. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect.

17. COMMUNICATIONS.

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or if mailed by registered or certified mail, postage prepaid, addressed to Executive at Western Digital Corporation, 3355 Michelson Drive, Suite 100, Irvine, California 92612, or addressed to the Company at: Western Digital Corporation, Attn. Corporate Secretary, 3355 Michelson Drive, Suite 100, Irvine, California 92612. Either party may change the address at which notice shall be given by written notice given in the above manner.

18. SECTION 409A.

To the extent that any reimbursements pursuant to paragraph D of Section 3 are taxable to Executive, any reimbursement payment due to Executive pursuant to such provision shall be paid to Executive on or before the last day of Executive's taxable year following the taxable year in which the related expense was incurred. The reimbursements pursuant to paragraph D of Section 3 are not subject to liquidation or exchange for another benefit and the amount of such reimbursements that Executive receives in one taxable year shall not affect the amount of such reimbursements that Executive receives in any other taxable year.

19. EXECUTION AND EFFECTIVE DATE.

This Agreement is being executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Photographic copies of such signed counterparts may be used in lieu of the originals for any purpose. This Agreement shall become effective on the Effective Date. If the transactions contemplated by the Stock Purchase Agreement fail to close for any reason, or if the Stock Purchase Agreement terminates for any reason without the transactions contemplated thereby closing, this Agreement shall automatically terminate and be of no force and effect. Effective on the Effective Date, this Agreement shall supersede and replace any employment, severance, change in control or similar agreement Executive may have been a party to with Viviti Technologies Ltd. (each, a "Prior Employment Agreement"), and each Prior Employment Agreement shall automatically terminate and be of no force and effect on the Effective Date, provided that payment of any benefits that have become payable or to which Executive has become entitled prior to the Effective Date (including immediately prior to the Effective Date) shall be paid or provided pursuant to the terms of such Prior Employment Agreement and shall not be superseded by this Agreement.

[Signatures on the following page.**]**

In witness whereof, the parties hereto have executed this Agreement as of the date first above written.

THE COMPANY:

By: /s/ John F. Coyne
Name: John F. Coyne
Title: Chief Executive Officer

EXECUTIVE:

By: /s/ Stephen Dwight Milligan
Name: Stephen Dwight Milligan

[Signature Page to Milligan Employment Agreement]

WESTERN DIGITAL CORPORATION
EXECUTIVE SEVERANCE PLAN

1. PURPOSE

The purpose of the Plan is to provide severance benefits to certain Executives whose employment with the Company or a Subsidiary terminates under certain circumstances as described more fully herein.

2. EFFECTIVE DATE

All of the policies and practices of the Company and its Subsidiaries regarding severance benefits or similar payments upon employment termination with respect to Executives in the United States, other than written employment, separation or equity award agreements with the Company or a Subsidiary that provide severance benefits or the Company's Amended and Restated Change of Control Severance Plan, are hereby superseded by the Plan, which shall be known as the Western Digital Corporation Executive Severance Plan, effective as of the Effective Date. The Plan was initially approved by the Board on February 16, 2006 and most recently amended and restated on February 16, 2012.

3. DEFINITIONS

"Administrator" means the Committee or any delegate of such committee acting within the authority delegated to it pursuant to Section 9.1.

"Base Pay" means the employee's wages earned on a monthly basis, determined as of the employment termination date, excluding bonuses and commissions.

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

"Cause" means the occurrence or existence of any of the following with respect to an Executive:

(a) the Executive's conviction by, or entry of a plea of guilty or *nolo contendere* in, a court of competent jurisdiction for any crime involving moral turpitude or any felony punishable by imprisonment in the jurisdiction involved;

(b) whether prior or subsequent to the Effective Date, the Executive's willful engaging in dishonest or fraudulent actions or omissions;

(c) failure or refusal to perform his or her duties as reasonably required by the Company and/or a Subsidiary that employs the Executive;

(d) negligence, insubordination, violation by the Executive of any duty (of loyalty or otherwise) owed to the Company and/or a Subsidiary, or any other misconduct on the part of the Executive;

(e) repeated non-prescription use of any controlled substance, or the repeated use of alcohol or any other non-controlled substance which in the Administrator's (or its delegate's or delegates') reasonable determination interferes with the Executive's service as an officer or employee of the Company and/or a Subsidiary;

(f) sexual harassment by the Executive that has been reasonably substantiated and investigated;

(g) involvement in activities representing conflicts of interest with the Company and/or a Subsidiary;

(h) improper disclosure of confidential information;

(i) conduct endangering, or likely to endanger, the health or safety of another employee;

(j) falsifying or misrepresenting information on the records of the Company and/or a Subsidiary;

(k) the Executive's physical destruction or theft of substantial property or assets of the Company and/or a Subsidiary;

(l) breach of any policy of, or agreement with, the Company and/or a Subsidiary applicable to the Executive or to which the Executive is otherwise bound.

Review of any determination that a termination is for Cause shall be by the Administrator, in its sole and exclusive judgment and discretion, in accordance with the provisions of Section 8 herein.

"Change in Control" has the meaning ascribed to such term in the Company's Amended and Restated Change of Control Severance Plan; provided, however, that a transaction shall not constitute a Change in Control unless it is a "change in the ownership or effective control" of the Company, or a change "in the ownership of a substantial portion of the assets" of the Company within the meaning of Section 409A of the Code.

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

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

"Company" means Western Digital Corporation, a Delaware corporation.

"Effective Date" means February 16, 2006.

"Eligible Employee" means any person classified by the Company or a Subsidiary, in its sole discretion, as a non-temporary, full-time or part-time, salaried or hourly employee (specifically excluding any individual who is not classified by the Company or a Subsidiary as a common law employee, such as an independent contractor or an individual working through a third-party provider, such as Kelly Services, without regard to the characterization or recharacterization of such individual's status by any court or governmental agency), who is paid from the United States payroll of the Company or a Subsidiary; provided, however, that in no event shall any employee who as of the Effective Date is a party to a written employment agreement with the Company or a Subsidiary (other than an agreement providing for at-will employment by the Company or a Subsidiary and for no specified term) be an Eligible Employee.

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

"Executive" means an Eligible Employee who has been designated by the Board or the Committee as a Tier I Executive, Tier II Executive or Tier III Executive for purposes of participation in the Plan.

"Participant" means an Executive who is entitled, based on the provisions hereof, to severance benefits under Section 6.

"Plan" means this Western Digital Corporation Executive Severance Plan, as set forth in this instrument as it may be amended from time to time.

"Separation from Service," with respect to an Executive, shall mean that the Executive dies, retires, or otherwise has a termination of employment with the Company that constitutes a "separation from service" within the meaning of Treasury Regulation Section 1.409A-1(h)(1), without regard to the optional alternative definitions available thereunder.

"Subsidiary" means any corporation or other entity a majority of whose outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company.

4. TERM

The Plan shall commence on the Effective Date and shall continue in effect through December 31, 2008; provided, however, that on December 31, 2006 and each anniversary of such date thereafter, the term of the Plan shall extend automatically for one additional year, unless the Committee (or the Board) causes the Company to deliver written notice prior to the end of such term (or extended term, as applicable) to each Executive then covered by the Plan that the term of the Plan will not be extended (or further extended, as the case may be), and if such notice is timely given the Plan shall terminate at the end of the term then in progress.

5. PARTICIPATION

Upon approval of the Plan, the Committee shall designate the Executives initially covered by the Plan. The Committee may, from time to time, designate additional Eligible Employees as Executives for purposes of participation in the Plan; provided that the Committee shall limit the group of all persons eligible to participate in the Plan to a "select group of management or highly compensated employees" within the meaning of 29 C.F.R. 2520-104-23 or any similar successor provision. The Committee may, in its sole discretion, remove an Executive from participation in the Plan and from time to time approve modifications to the Tier to which one or more Executives have been designated.

6. SEVERANCE BENEFITS

6.1 Severance Benefits to Executives. An Executive whose employment with the Company or a Subsidiary is terminated by the Company or such Subsidiary, as applicable, without Cause shall become, subject to the conditions set forth in Section 7, a Participant under the Plan and entitled to the benefits set forth in this Section 6. The severance benefits provided under Sections 6.2, 6.3, 6.5 and 6.6 of the Plan shall be the obligations of, and shall be provided to the Executive by, the entity (the Company or a Subsidiary, as applicable) that employs the Executive immediately prior to the Executive's termination of employment. For avoidance of doubt, in no event shall an Executive become entitled to or receive any payment hereunder if the Executive's employment with the Company or a Subsidiary is terminated voluntarily by the Executive (for any reason), by the Company or a Subsidiary, as applicable, for Cause, or on account of the Executive's death or disability (as defined in Section 22(e)(3) of the Code). Notwithstanding anything else contained herein to the contrary, an Executive shall not be deemed to have terminated employment if his or her employment by the Company or a Subsidiary terminates but he or she continues as an employee of the Company or another Subsidiary.

6.2 Cash Severance Payment. A Participant shall receive a severance payment equal to the Participant's monthly rate of Base Pay multiplied by the number of months set forth below:

(a) Tier I Executive: 24 months

(b) Tier II Executive: 18 months

(c) Tier III Executive: 12 months

Subject to the following provisions of this paragraph, the severance benefit shall be paid to the Participant in substantially equal installments in accordance with the Company's standard payroll practices over a period equal to the applicable number of months set forth above in this Section 6.2, with the first installment payable in the month following the month in which the Participant's Separation from Service occurs. (For purposes of clarity, each such installment shall equal the applicable fraction of the aggregate severance payment so that, for example, if such installments were to be made on a monthly basis over twelve months, each installment would equal one-twelfth ($1/12^{th}$) of the aggregate severance payment.) However, in the event that a Participant's employment has terminated and the Participant is entitled to receive severance payments under the Plan and a Change in Control occurs before all such severance payments have been made, any severance payments otherwise due to the Participant under the Plan after the date of the Change in Control shall be paid to the Participant in a single non-discounted lump sum upon or within ten (10) business days following the date of such Change in Control (but in no event earlier than the month following the month in which the Participant's Separation from Service occurs). In addition, in the event that a Participant's employment terminates upon or within one year following the occurrence of a Change in Control and the Participant is entitled to receive severance payments under the Plan, the severance payments due to the Participant under the Plan shall be paid to the Participant in a single non-discounted lump sum in the month following the month in which the Participant's Separation from Service occurs in lieu of the installments otherwise provided for above. The payment rules of this paragraph are subject to Section 6.7.

6.3 Bonus. A Participant shall receive a payment equal to a pro-rata portion of the Participant's bonus opportunity under the Company's (or a Subsidiary's) bonus program in which the Participant participates for the bonus cycle in which the Participant's date of termination occurs (with such pro-rata portion based on the number of days in the applicable bonus cycle during which the Participant was employed (not to exceed six (6) months) and assuming 100% of the performance target(s) subject to the bonus award are met regardless of actual funding by the Company or a Subsidiary). The payment shall be paid in one lump-sum cash payment in the month following the month in which the Participant's Separation from Service occurs.

6.4 Equity Awards. Notwithstanding anything in the applicable stock incentive plan and/or award agreement to the contrary, upon a Participant's termination of employment, the Participant's then outstanding stock options and restricted stock or stock unit awards that are subject to time-based vesting will vest and become exercisable or payable, as applicable, as if the Participant had remained employed with the Company or a Subsidiary for an additional six (6) months. For avoidance of doubt, the foregoing is not intended to apply to any equity awards held by the Participant that are subject to performance-based vesting (which shall continue to be governed by the plan and/or award agreement applicable to such awards) or to supersede any more favorable provision in any stock incentive plan and/or award agreement regarding accelerated vesting in the event of the Participant's termination of employment. Notwithstanding anything to the contrary herein, the post-termination exercisability of the Participant's then outstanding stock options shall continue to be governed by the stock incentive plan and stock option agreement applicable to such options.

6.5 Outplacement Services. A Participant shall be eligible for outplacement services, provided by a vendor chosen by the Company or applicable Subsidiary and at the Company's or applicable Subsidiary's expense, after the Participant's termination of employment for up to the number of months set forth below:

(a) Tier I Executive: 12 months

(b) Tier II Executives: 12 months

(c) Tier III Executive: 12 months

6.6 Continued Health Care Coverage. If the Participant elects COBRA continuation coverage within the applicable election period, the Company or applicable Subsidiary, subject to applicable tax withholding, shall reimburse the Participant for the applicable COBRA premium payments following the expiration of the Participant's company-provided medical, dental, and/or vision coverage existing as of the Participant's termination date for the number of months set forth below:

(a) Tier I Executive: 18 months

(b) Tier II Executives: 12 months

(c) Tier III Executive: 12 months

Notwithstanding anything in the Plan to the contrary, there shall be no obligation to reimburse the Participant for such COBRA premium payments if the Participant otherwise becomes eligible for equivalent coverage under another employer's plan. To the extent that the payment or reimbursement of any benefits pursuant to Section 6.5 or this Section 6.6 is taxable to the Participant, any such payment or reimbursement shall be made to the Participant on or before the last day of the Participant's taxable year following the taxable year in which the related expense was incurred. The Participant's right to payment of such benefit is not subject to liquidation or exchange for another benefit and the amount of such benefits that the Participant receives in one taxable year shall not affect the amount of such benefits that the Participant receives in any other taxable year.

6.7 Specified Employees. The provisions of this Section 6.7 shall apply if any severance payments hereunder constitute "deferred compensation" (within the meaning of Section 409A of the Code) payable upon the Participant's Separation from Service and, in such event, such provisions shall apply only to the extent required to avoid the imputation of any tax, penalty or interest pursuant to Section 409A of the Code. It is the Company's intent that severance payments hereunder should not constitute "deferred compensation" payable upon a Separation from Service (because such payments should constitute a "short-term deferral" within the meaning of Code Section 409A or otherwise) based on the guidance available as of the date hereof and, accordingly, should not be subject to the delayed-payment provisions set forth in this Section 6.7. Notwithstanding any other provision of the Plan to the contrary, if the Participant is a "specified employee" within the meaning of Treasury Regulation Section 1.409A-1(i) as of the date of the Participant's Separation from Service, the Participant shall not be entitled to any severance payments hereunder until the earlier of (i) the date which is six (6) months after the Participant's Separation from Service for any reason other than death, or (ii) the date of the Participant's death. Any amounts otherwise payable to the Participant upon or in the six (6) month period following the Participant's Separation from Service that are not so paid by reason of this Section 6.7 shall be paid (without interest) as soon as practicable (and in all events within thirty (30) days) after the date that is six (6) months after the Participant's Separation from Service (or, if earlier, as soon as practicable, and in all events within thirty (30) days, after the date of the Participant's death).

7. CONDITIONS TO SEVERANCE BENEFITS

7.1 Release. Notwithstanding anything to the contrary contained herein, the Company's or applicable Subsidiary's obligation to pay benefits to a Participant under Section 6 is subject to the condition precedent that the Participant execute a valid and effective release of any and all claims in a form and manner acceptable to the Company, and such release is received by the Company no earlier than, and no later than fourteen (14) days (or such other period as required by law) after, the Participant's termination date and is not revoked by the Participant (pursuant to any revocation rights afforded by applicable law) or otherwise rendered unenforceable by the Participant. Notwithstanding anything else contained herein to the contrary, the Company or applicable Subsidiary will have no obligation to pay any benefit to the Participant under the Plan unless and until that Participant's release (in such form) has been fully executed by the Participant (and the Participant's spouse, to the extent required by the Company), has been received by the Company, and has become effective and irrevocable by the Participant.

7.2 Departure and Entitlement Procedure. As a condition to becoming a Participant and receiving the severance benefits described in Section 6, the Executive must return and deliver to the Administrator or his or her designee all Company and Subsidiary property within seven (7) days of the Executive's termination date. In addition, except as otherwise provided by the Company, if an Executive resigns prior to his/her scheduled termination date, then he/she shall not be entitled to any severance payments or any other severance benefits provided herein.

7.3 Other Employment. Subject to the next sentence, a Participant shall not be required to mitigate the amount of any payments provided for by the Plan by seeking employment or otherwise. If a Participant is or becomes entitled to benefits under the Plan, the Company and its Subsidiaries will (unless the Administrator, in its sole discretion, expressly provides otherwise at the time the related event occurs) cease making the severance payments contemplated by Section 6.2 to the Participant, and cease providing any of the benefits contemplated by Sections 6.5 and 6.6, and they shall have no further obligation to pay or provide such benefits to the Participant on and after the date the Participant is or becomes any of the following after the Participant's Separation from Service: self-employed, or a partner or officer of, joint venturer with, employee of, or otherwise provides services (whether as a consultant, contractor, director or otherwise) for compensation (whether current, deferred, contingent or otherwise) to, any person or entity. Each Participant agrees to immediately notify the Company if he or she is or becomes so employed, provides such services, or otherwise has such a position or relationship. All severance payments under the Plan shall be subject to legal deductions, and the Company and/or applicable Subsidiary reserves the right to offset the benefits payable under the Plan by any advanced monies the Participant owes the Company or a Subsidiary. The benefits and amounts payable under the Plan shall be reduced (but not below zero) by any severance pay or benefits to which a Participant is or becomes entitled under any other severance pay plan, policy, agreement or arrangement. In addition, in no event shall a Participant become entitled to a duplication of benefits under the Plan and any other severance plan or program of the Company or a Subsidiary. Without limiting the generality of the foregoing, in no event shall a Participant receive benefits under the Plan in connection with his or her termination of employment if such Participant is entitled to benefits under the Company's Amended and Restated Change of Control Severance Plan in connection with such termination of employment. Notwithstanding any provision of the Plan to the contrary, to the extent that any Participant is entitled to any period of paid notice under Federal or state law including, but not limited to, the Worker Adjustment Retraining Notification Act, 29 U.S.C. Sections 2101 et seq., the benefits and amounts payable under the Plan shall be reduced (but not below zero) by the Base Pay received by the Participant during the period of such paid notice.

7.4 Limitation On Employee Rights. The Plan shall not give any employee the right to be retained in the service of the Company or to interfere with or restrict the right of the Company or applicable Subsidiary to discharge any employee at any time, with or without Cause.

8. RESOLUTION OF DISPUTES

8.1 Claim. If a Participant or any other individual (herein referred to as a "Claimant") believes that benefits under the Plan are being wrongfully denied, that the Plan is not being operated properly, that fiduciaries of the Plan have breached their duties, or that the Claimant's legal rights are being violated with respect to the Plan, the Claimant must file a formal claim with the Administrator. Any such claim for benefits must be filed in writing within 90 days of the date upon which the Participant first knew or should have known the facts upon which the claim is based.

8.2 Claim Decision. If any claim for benefits under the Plan is denied, in whole or in part, the Claimant shall be so notified by the Administrator within thirty (30) calendar days of the date such person's claim is delivered to the Administrator. At the same time, the Administrator shall notify the Claimant of his or her right to a review by the Administrator and shall set forth, in a manner calculated to be understood by the Claimant, specific reasons for such decision, specific references to pertinent Plan provisions on which the decision is based, a description of any additional material or information necessary for the Claimant to perfect his or her request for review, an explanation of why such material or information is necessary, and an explanation of the Plan's review procedure.

8.3 Request for Review. Any Claimant or duly authorized representative may appeal from such decision by submitting to the Administrator within sixty (60) calendar days after the date of such notice of its decision a written statement:

(a) requesting a review of the claim for benefits by the Administrator;

(b) setting forth all of the grounds upon which the request for review is based and any facts in support thereof; and

(c) setting forth any issues or comments which the Claimant deems relevant to the claim.

The Administrator shall act upon such appeal within sixty (60) calendar days after the latter of receipt of the Claimant's request for review by it or receipt of all additional materials reasonably requested by it from such Claimant.

8.4 Review of Decision. The Administrator shall make a full and fair review of an appeal and all written materials submitted by the Claimant in connection therewith and may require the Claimant to submit, within ten (10) calendar days of written notice by the Administrator, such additional facts, documents or other evidence as the Administrator, in its sole discretion, deems necessary or advisable in making such a review. On the basis of its review, the Administrator shall make an independent determination of the Claimant's eligibility for an allowance and the amount of such allowance, if any, under this Plan. The decision of the Administrator on any appeal shall be final and conclusive upon all persons if supported by substantial evidence in the record.

8.5 Denial on Review. If on review of a decision, the Administrator denies a claim in whole or in part, it shall give written notice of its decision to the Claimant setting forth, in a manner calculated to be understood by the Claimant, the specific reasons for such denial and specific references to the pertinent Plan provisions on which its decision was based. If a Claimant believes that the Administrator's determination on appeal is incorrect, the Claimant or duly authorized representative may invoke the arbitration procedures described in Section 8.6 or file suit related to such determination; provided that any legal action must be taken by the Claimant within ninety (90) days after the date upon which the Administrator's written decision on review was sent to the Claimant.

8.6 Arbitration. A Claimant who has followed the procedures in Sections 8.1 through 8.5, but who has not obtained full relief on his or her claim for benefits, may, within ninety (90) days following his or her receipt of the Administrator's written decision on review pursuant to Section 8.5, apply in writing to the Administrator for expedited and binding arbitration of his or her claim in Orange County, California, before a sole arbitrator selected from Judicial Arbitration and Mediation Services, Inc., Orange County, California, or its successor ("JAMS"), or if JAMS is no longer able to supply the arbitrator, such arbitrator shall be selected from the American Arbitration Association, and shall be conducted in accordance with the provisions of California Code of Civil Procedure §§ 1280 et seq. as the exclusive forum for the resolution of such dispute. Pursuant to California Code of Civil Procedure § 1281.8, provisional injunctive relief may, but need not, be sought by the Company, a Subsidiary or an Executive in a court of law while arbitration proceedings are pending, and any provisional injunctive relief granted by such court shall remain effective until the matter is finally determined by the Arbitrator. Final resolution of any dispute through arbitration may include any remedy or relief which the Arbitrator deems just and equitable, including any and all remedies provided by applicable state or federal statutes. At the conclusion of the arbitration, the Arbitrator shall issue a written decision that sets forth the essential findings and conclusions upon which the Arbitrator's award or decision is based. Any award or relief granted by the Arbitrator hereunder shall be final and binding on the parties hereto and may be enforced by any court of competent jurisdiction. Any rights to trial by jury in any action, proceeding or counterclaim brought by any of the Company, a Subsidiary or an Executive in connection with any matter whatsoever arising out of or in any way connected with the Plan are hereby waived. The Company or applicable Subsidiary shall be responsible for payment of the forum costs of any arbitration hereunder, including the Arbitrator's fee. In any proceeding to enforce the terms of the Plan, the prevailing party shall be entitled to its or his reasonable attorneys' fees and costs (other than forum costs associated with the arbitration) incurred by it or him in connection with resolution of the dispute in addition to any other relief granted.

8.7 Legal Fees and Expenses. If any dispute arises between the parties with respect to the interpretation or performance of the Plan, the prevailing party in any arbitration or proceeding shall be entitled to recover from the other party its attorneys' fees, arbitration or court costs and other expenses incurred in connection with any such proceeding. Amounts, if any, paid to the Executive under this Section 8.7 shall be in addition to all other amounts due to the Executive pursuant to the Plan.

9. ADMINISTRATION

9.1 Administrator. Except as provided herein, the Plan shall be administered and operated by the Administrator. The Administrator is empowered to construe and interpret the provisions of the Plan and to decide all questions of eligibility for benefits under the Plan and shall make such determinations in its sole and absolute discretion. The Administrator may at any time delegate to any other named person or body, or reassume therefrom, any of its responsibilities or administrative duties with respect to the Plan.

9.2 Experts; Rules. The Administrator may contract with one or more persons to render advice with regard to any responsibility it has under the Plan. Subject to the limitations of the Plan, the Administrator shall from time to time establish such rules for the administration of the Plan as it may deem desirable.

9.3 Indemnity. The Company shall, to the extent permitted by law, by the purchase of insurance or otherwise, indemnify and hold harmless the Administrator and each other fiduciary with respect to the Plan for liabilities or expenses they and each of them incur in carrying out their respective duties under the Plan, other than for any liabilities or expenses arising out of such fiduciary's gross negligence or willful misconduct.

10. AMENDMENT

The Committee (or the Board) reserves the right to amend, suspend and/or terminate the Plan at any time in its sole discretion. No amendment, suspension or termination shall diminish benefits to which a Participant is currently entitled under the Plan. Any modification or other amendment of the Plan shall be in writing, signed by either the Company's Chief Executive Officer or Vice President, Human Resources.

11. TAXES

Each Participant shall be solely responsible for his or her own tax liability with respect to participation in this Plan. The Company may withhold (or cause there to be withheld, as the case may be) from any amounts otherwise due or payable under or pursuant to this Plan such federal, state and local income, employment, or other taxes as may be required to be withheld pursuant to any applicable law or regulation. Notwithstanding anything else contained herein to the contrary, nothing in this Plan is intended to constitute, nor does it constitute, tax advice, and in all cases, each Participant should obtain and rely solely on the tax advice provided by the Participant's own independent tax advisors (and not this Plan, the Company, any of the Company's affiliates, or any officer, employee or agent of the Company or any of its affiliates).

12. GENERAL

12.1 Assignment by Participants. None of the benefits, payments, proceeds or claims of any Executive or Participant shall be subject to any claim of any creditor and, in particular, the same shall not be subject to attachment or garnishment or other legal process by any creditor, nor shall any such Executive have any right to alienate, anticipate, commute, pledge, encumber or assign any of the benefits or payments or proceeds that he or she may expect to receive, contingently or otherwise, under the Plan. Notwithstanding the foregoing, benefits that are in pay status may be subject to a court order of garnishment or wage assignment, or similar order, or a tax levy. The Plan shall inure to the benefit of and be enforceable by each Participant's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees. If a Participant dies while any amount would still be payable to him or her hereunder had he or she continued to live, all such amounts, unless otherwise provided herein, shall be paid to the Participant's beneficiary in accordance with the terms of the Plan.

12.2 Binding Effect. The Company or applicable Subsidiary will require any successor (whether by purchase of assets, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company or applicable Subsidiary to expressly assume and agree to perform all of the obligations of the Company or applicable Subsidiary under the Plan (including the obligation to cause any subsequent successor to also assume the obligations of the Plan) unless such assumption occurs by operation of law. For avoidance of doubt, in the event that a successor of a Subsidiary (whether by purchase of assets, merger, consolidation or otherwise) assumes the Subsidiary's obligations under the Plan, the Company will have no obligations under the Plan with respect to the Executives employed by such Subsidiary.

12.3 No Waiver. No waiver of any term, provision or condition of the Plan, whether by conduct or otherwise, in any one or more instances shall be deemed or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of the Plan.

12.4 Expenses; Unsecured General Creditor. The benefits and costs of the Plan shall be paid by the Company and/or a Subsidiary out of its general assets. The status of a claim against the Company or a Subsidiary with respect to the benefits provided hereunder shall be same as the status of a claim against the Company or applicable Subsidiary by any general or unsecured creditor.

12.5 ERISA. The Plan is an unfunded compensation arrangement for a select group of management or highly compensated employees of the Company or a Subsidiary and any exemptions under ERISA applicable to such an arrangement shall be applicable to the Plan.

12.6 Section 409A. The Plan is intended to comply with Section 409A of the Code (including the Treasury regulations and other published guidance relating thereto) so as not to subject any Participant to payment of any interest or additional tax imposed under Code Section 409A. The provisions of the Plan shall be construed and interpreted to avoid the imputation of any such additional tax, penalty or interest under Code Section 409A yet preserve (to the nearest extent reasonably possible) the intended benefit payable to the Participant.

12.7 WARN Act. Benefits payable under the Plan are intended to satisfy, where applicable, any Company obligations under the Federal Worker Adjustment and Retraining Notification Act and any similar obligations that the Company or its Subsidiaries may have under any successor or other severance pay statute.

12.8 Construction. The masculine pronoun shall include the feminine pronoun and the feminine pronoun shall include the masculine pronoun and the singular pronoun shall include the plural pronoun and the plural pronoun shall include the singular pronoun, unless the context clearly indicates otherwise.

12.9 Governing Law. The Plan shall be construed according to the laws of the State of California, except to the extent such laws are preempted by federal law.

12.10 Severability. If any provision of the Plan is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under the Plan will not be materially and adversely affected hereby, (i) such provision will be fully severable, (ii) the Plan will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of the Plan will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of the Plan a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

12.11 Notices. Any notice required or permitted by the Plan shall be in writing, delivered by hand, or sent by registered or certified mail, return receipt requested, or by recognized courier service (regularly providing proof of delivery), addressed as follows:

(a) if to the Company or, where applicable, the Administrator:

Western Digital Corporation
20511 Lake Forest Drive
Lake Forest, California 92630
Attention: Vice President, Human Resources

With a copy to:

Western Digital Corporation
20511 Lake Forest Drive
Lake Forest, California 92630
Attention: General Counsel

(b) if to the Executive or Participant, at the address set forth on the records of the Company or applicable Subsidiary, as the case may be, or to such other address or addresses most recently communicated to the Company or applicable Subsidiary by the Executive or Participant.

Each such notice shall be effective (i) if given by mail, three days after being deposited in the mails or (ii) if given personally or by other means when actually delivered at such address.

INVESTOR RIGHTS AGREEMENT

This Investor Rights Agreement (the "Agreement") is made as of this 8th day of March, 2012, among Western Digital Corporation, a Delaware corporation (the "Company"), and Hitachi, Ltd., a company incorporated under the laws of Japan (the "Investor").

WHEREAS, the Company, Western Digital Ireland, Ltd., a corporation organized under the laws of the Cayman Islands and an indirect wholly owned subsidiary of the Company (the "Buyer"), the Investor, and Viviti Technologies Ltd., a company incorporated under the laws of the Republic of Singapore and a wholly-owned subsidiary of the Investor ("Viviti"), are parties to that certain Stock Purchase Agreement, dated as of March 7, 2011 (as amended, through the date hereof, the "Stock Purchase Agreement"), pursuant to which the Investor will receive from the Buyer on the Closing Date Twenty Five Million (25,000,000) shares of the Company's Common Stock (the "Shares") as a portion of the consideration for the sale of the Investor's stock in Viviti; and

WHEREAS, in connection with the Stock Purchase Agreement and the transfer of the Shares to the Investor, the parties desire to enter into this Agreement in order to establish certain rights and restrictions relating to the Investor's ownership of the Shares.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valid consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 **Definitions**. The following terms shall have the following meanings:

"13D Group" means any partnership, limited partnership, syndicate or other group, as those terms are used within the meaning of Section 13(d)(3) of the Exchange Act.

"Action" means any action, suit, proceeding, hearing, order, charge, complaint, claim, arbitration or investigation at Law or in equity, or before any Governmental Entity.

"Affiliate" means any Person now or hereafter controlling, controlled by or under common control with another Person.

"Agreement" has the meaning set forth in the Preamble.

"Beneficial Owner," "Beneficial Ownership," "Beneficially Own" or "Beneficially Owned" shall refer to the concept of "beneficial ownership" in Rule 13d-3 promulgated under the Exchange Act.

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

"brokers' transaction" has the meaning ascribed to such term under Rule 144(g) under the Securities Act.

"Business Day" means a day, other than Saturday, Sunday or public holidays in the United States of America.

"Buyer" has the meaning set forth in the Recitals.

"Change of Control" means the existence or occurrence of any of the following: (i) the sale, conveyance or disposition by the Company of more than fifty percent (50%) of the Company's assets; (ii) the consolidation, merger or other business combination of the Company with or into any other entity, unless, immediately after such consolidation, merger or other business combination, shareholders of the Company immediately prior to the consummation of the transaction continue to own Equity Securities representing, directly or indirectly, more than fifty percent (50%) of the aggregate voting rights of such new or surviving entity; or (iii) the acquisition by any Person, whether singly or as part of a 13D Group, as a result of one transaction or a series of transactions over time, of Equity Securities representing, directly or indirectly, more than fifty percent (50%) of the aggregate voting rights of the Company. For purposes of this definition, a sale of more than fifty percent (50%) of the Company's assets includes a sale of more than fifty percent (50%) of the aggregate value of the assets of the Company and its Affiliates or the sale of equity interests of one or more of the Company's Affiliates with an aggregate value in excess of fifty percent (50%) of the aggregate value of the Company and its Affiliates or any combination of methods by which more than fifty percent (50%) of the aggregate value of the Company and its Affiliates is sold.

"Closing" has the meaning set forth in the Stock Purchase Agreement.

"Closing Date" has the meaning set forth in the Stock Purchase Agreement.

"Common Stock" means the Common Stock of the Company, par value 0.01 United States dollars.

"Company" has the meaning set forth in the Preamble.

"Company Indemnitees" has the meaning set forth in Section 4.06(b).

"Company Supported Distribution" means a public underwritten offering by the Company of Registrable Securities that is designated by the Investor as a "Company Supported Distribution" in the applicable Shelf Take-Down Notice or Demand Notice.

"Competitors" has the meaning set forth in Section 3.03(b)(i).

"Competitor List Letter" has the meaning set forth in Section 3.03(b)(i).

"Competitor Transferees" has the meaning set forth in Section 3.03(b)(i).

"Demand Notice" has the meaning set forth in Section 4.02(a).

"Demand Registration" has the meaning set forth in Section 4.02(a).

"Demand Registration Statement" has the meaning set forth in Section 4.02(a).

"Election Meetings" has the meaning set forth in **Error! Reference source not found**.

"Equity Securities" of the Company means any capital stock or other equity interests of the Company, any securities convertible into, exercisable for or exchangeable for capital stock or other equity interests of the Company, and any other rights, warrants or options to acquire any of the foregoing securities.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor federal statute, and the rules and regulations thereunder, all as the same shall be in effect from time to time.

"Existing Shelf Registration Statement" has the meaning set forth in Section 4.01(a).

"FINRA" means the Financial Industry Regulatory Authority.

"FIRPTA Certificate" has the meaning set forth in Section 3.03(e).

"Governmental Entity" means any supranational, foreign, domestic, federal, territorial, state, county, city, township or other local governmental authority, or any regulatory, self-regulatory, administrative or other agency, instrumentality, court, government organization, quasi-governmental organization, mediator, arbitrator or arbitral forum (whether public or private), commission, tribunal thereof, or any political or other subdivision, department or branch of any of the foregoing, or any private body exercising any tax, regulatory or governmental or quasi-governmental authority.

"Indemnified Party" has the meaning set forth in Section 4.06(c).

"Indemnifying Party" has the meaning set forth in Section 4.06(c).

"Investor" has the meaning set forth in the Preamble.

"Investor Designee Termination Event" has the meaning set forth in Section 2.06.

"Investor Designee" and "Investor Designees" have the meanings set forth in Section 2.01.

"Investor Indemnitees" has the meaning set forth in Section 4.06(a).

"Law" means any foreign or domestic constitutional provision, act, statute or other law, ordinance, rule, regulation or interpretation of any Governmental Entity and any binding and enforceable decree, injunction, judgment, order, ruling, assessment, writ, doctrine, assessment or arbitration award or similar form of decision or determination issued by a Governmental Entity.

"Lockup Period" means, with respect to the Shares Beneficially Owned by the Investor, the period commencing on the date of this Agreement and ending on the day that is one (1) year from the date of this Agreement.

"Losses" shall have the meaning set forth in Section 4.06(a).

"Other Securities" means the Common Stock or other securities of the Company which the Company is registering pursuant to a Registration Statement covered by ARTICLE 4.

"Permitted Acquisition" has the meaning set forth in Section 3.01(a).

"Permitted Transfer" has the meaning set forth in Section 3.03(d).

"Person" means any individual, sole proprietorship, partnership, limited liability company, corporation, association, joint stock company, trust, joint venture, unincorporated organization, any other business organization or entity, or Governmental Entity.

"Piggyback Notice" has the meaning set forth in Section 4.03(a).

"Piggyback Registration" has the meaning set forth in Section 4.03(a).

"Prospectus" means the prospectus included in any Registration Statement, as amended or supplemented by any prospectus supplement and by all other amendments thereto, including post-effective amendments, and all material incorporated by reference into such prospectus.

"Registrable Securities" means the Shares acquired by the Investor pursuant to the Stock Purchase Agreement, as well as any shares of Common Stock or other securities issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange generally for, or in replacement generally of, such Shares or other Registrable Securities and any securities issued in exchange for such Shares or other Registrable Securities in any merger, reorganization, consolidation, share exchange, recapitalization, restructuring or other comparable transaction of the Company. As to any particular Registrable Securities, once issued such securities shall cease to be Registrable Securities when (i) a Registration Statement with respect to the sale by the Investor has been declared or deemed effective by the SEC and such securities have been disposed of pursuant to such effective Registration Statement, (ii) such securities have been otherwise Transferred (other than pursuant to Section 3.03(d)(i) and in accordance with Section 6.04), (iii) such securities shall have ceased to be outstanding or (iv) such securities have been or could all be sold in a single transaction without volume or other limitations pursuant to Rule 144 (or any similar provisions then in force) under the Securities Act.

"Registration Expenses" has the meaning set forth in Section 4.04(a).

"Registration Statement" means any registration statement of the Company under the Securities Act which permits the public offering of any of the Registrable Securities pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and any successor federal statute, and the rules and regulations thereunder, all as the same shall be in effect from time to time.

"Shares" has the meaning set forth in the Preamble.

"Shelf Date" has the meaning set forth in Section 4.01(a).

"Shelf Registration Statement" has the meaning set forth in Section 4.01(a).

"Shelf Take-Down Notice" has the meaning set forth in Section 4.01(b).

"Significant Subsidiary" means a significant subsidiary (as defined under the Exchange Act) of the Company.

"Standstill Period" means the period commencing on the Closing Date and continuing until the earlier to occur of (i) a Change of Control or (ii) the date which is 90 days following the termination of the Investor's rights pursuant to Section 2.06.

"Stock Purchase Agreement" has the meaning set forth in the Recitals.

"Suspension Period" has the meaning set forth in Section 4.05(a)(ii).

"Transfer" means (i) sell, assign, give, pledge, encumber, hypothecate, mortgage, exchange or otherwise dispose, (ii) grant to any Person any option, right or warrant to purchase or otherwise receive, or (iii) enter into any swap or other agreement that transfers, in whole or in part, any of the economic consequences or other rights of ownership.

"Viviti" has the meaning set forth in the Recitals.

ARTICLE 2
BOARD REPRESENTATION

Section 2.01 **Investor Designee Appointment and Nomination Right**. The Investor shall have the right, but not the obligation, to designate two nominees to serve as directors of the Company (each, an "Investor Designee" and, together, the "Investor Designees"). In the event the Investor determines to designate the initial Investor Designees, the Investor shall notify the Company in writing of the names of the initial Investor Designees. Promptly following receipt by the Company of all documentation reasonably requested by the Company in connection with the appointment of the initial Investor Designees, the Company shall increase the size of the Board by two, and fill the resulting vacancies with the initial Investor Designees in accordance with the Company's Bylaws. Thereafter, the Company shall (a) include the Investor Designees in its slate of nominees for election to the Board of Directors at each annual or special meeting of

stockholders of the Company following the Closing at which directors are to be elected and at which the seats held by the Investor Designees are subject to election (such annual or special meetings, the "Election Meetings") and (b) recommend that the Company's stockholders vote in favor of the election of the Investor Designees, support the Investor Designees for election in a manner no less favorable than the manner in which the Company supports its other nominees, and otherwise use commercially reasonable efforts to cause the election of the Investor Designees to the Board of Directors at each of the Election Meetings. The foregoing appointment and nomination rights will be subject to the Investor Designees satisfying the Company's Board Qualifications (as defined in Section 2.03); provided that, if an Investor Designee does not meet the Board Qualifications, (i) the Company will not nominate a replacement candidate in place of the rejected Investor Designee (unless the Investor does not nominate a replacement candidate pursuant to its rights in the following clause (ii) within the time period stated in such clause), and (ii) the Investor shall have the right (if exercised as promptly as reasonably practicable and in any event within 30 days) to nominate a replacement candidate in place of the rejected Investor Designee until such time as an Investor Designee that meets the Board Qualifications is put forward by the Investor.

Section 2.02 **Vacancies**. At any time prior to an Investor Designee Termination Event, if an Investor Designee who has been duly elected to the Board resigns from the Board, is removed (with or without cause) pursuant to applicable Law or the Company's Bylaws, fails to satisfy the Board Qualifications, dies or otherwise cannot or is not willing to stand for reelection or to continue to serve as a member of the Board, the Company shall use commercially reasonable efforts to cause the vacancy to be filled by a new Investor Designee prior to or concurrent with any further meeting or action by the Board.

Section 2.03 **Board Qualifications**. Each Investor Designee shall, at the time of nomination and at all times thereafter until such individual's service on the Board of Directors ceases, (a) meet any applicable requirements under applicable Law, stock exchange rules or the Company's corporate governance policies to be a member of the Board of Directors, (b) be an executive officer or former executive officer of the Investor, (c) not be an officer or director of any Competitor or Competitor Transferee, and (d) prior to being nominated, agree to comply with the requirements of this Section 2.03 (the "Board Qualifications"). The Company shall not revise or amend the Board Qualifications in a manner that has the intent or effect of adversely affecting the nomination or election of an Investor Designee (by for instance, adding requirements that all directors meet citizenship or independence requirements that would disqualify Persons known by the Company to be the Investor's probable designees).

Section 2.04 **Compensation, Indemnification and Insurance**. Investor Designees shall be entitled to the same retainer, equity compensation or other fees or compensation, including travel and expense reimbursement, paid to the non-employee directors of the Company for their services as a director, including any service on any committee of the Board. For so long as an Investor Designee continues to serve as a director and for a period of six (6) years thereafter, the Company shall, to the extent permitted by applicable Laws, indemnify such Investor Designees and shall maintain in full force and effect directors' and officers' liability insurance in reasonable amounts from established and reputable insurers to the same extent it now indemnifies and provides insurance for the non-executive members of the Board of Directors. In all directors' and officers' insurance policies, each Investor Designee shall be covered as an insured in such a manner as to provide the Investor Designee with rights and benefits under such insurance policies no less favorable than provided to the other non-executive directors of the Company.

Section 2.05 **Committees**. Unless otherwise agreed to by the Board of Directors, the Investor Designees shall not be appointed to or otherwise gain membership on any of the Board committees.

Section 2.06 **Termination of Investor Designee Rights**. Notwithstanding the foregoing:

(a) the Investor's rights under this ARTICLE 2 with respect to one of the Investor Designees shall terminate automatically at the end of the second full calendar year following the Closing Date; and

(b) all of the Investor's rights under this ARTICLE 2 shall terminate automatically (in the case of (i) and (ii)) or following written notice from the Company (in the case of (iii)) upon the earliest to occur of:

(i) the Investor ceasing to Beneficially Own at least fifty percent (50%) of the Shares received pursuant to the Stock Purchase Agreement;

(ii) if the Investor has first sold at least ten percent (10%) of the Shares received pursuant to the Stock Purchase Agreement, the Investor ceasing to Beneficially Own at least five percent (5%) of the total issued and outstanding Common Stock; or

(iii) any (A) breach by the Investor of the provisions of ARTICLE 3 of this Agreement or (B) material breach by the Investor of the Non-Competition Agreement between the parties entered into upon the Closing of the transactions contemplated by the Stock Purchase Agreement, provided that in the case of (B), if such breach is a Remediable Breach (as such term is defined in the Non-Competition Agreement) and such breach is cured pursuant to the dispute resolution procedures set forth in Section 4 thereof, then such breach shall not be an Investor Designee Termination Event (as defined below) hereunder.

(each of the events described in subsections (a) and (b) of this Section 2.06 are referred to as an "Investor Designee Termination Event"). The Investor shall cause any applicable Investor Designee to tender his resignation from the Board of Directors promptly upon the occurrence of an Investor Designee Termination Event.

Section 2.07 **Non-Transferability**. The Investor may not Transfer to any Person all or any portion of its rights under this ARTICLE 2 under any circumstances, notwithstanding the Transfer of all or any portion of the Shares.

ARTICLE 3
INVESTOR RESTRICTIONS

Section 3.01 **Standstill**. During the Standstill Period and unless otherwise approved by the Board of Directors (excluding any Investor Designees), the Investor will not, and will cause each of its Affiliates, directors, officers or employees not to, directly or indirectly, acting alone or as part of a 13D Group:

(a) acquire or agree, offer, seek or propose, whether by purchase, tender or exchange offer, by joining any 13D Group or otherwise, to acquire ownership of any, (x) of the businesses or material assets of the Company or any Significant Subsidiary (except for any transaction in the ordinary course of business), (y) any Equity Securities or any equity securities of any Significant Subsidiary, or (z) rights or options to acquire such ownership other than (i) the delivery of the Shares pursuant to the Stock Purchase Agreement, (ii) the acquisition of the Company's securities as a result of any stock splits, stock dividends or other distributions or recapitalizations or offerings made available by the Company to holders of Common Stock, including rights offerings, (iii) any acquisition of the Company's securities approved by the Board of Directors (excluding any Investor Designees), or (iv) any acquisition of the Company's securities pursuant to a Permitted Transfer (each event listed in clauses (i) through (iv), a "Permitted Acquisition");

(b) engage in any "solicitation" (within the meaning of the Exchange Act) of proxies or consents relating to the election of directors with respect to the Company, or become a "participant" in any "election contest" (both within the meaning of the Exchange Act) seeking to elect directors not nominated by the Board of Directors, other than the Investor Designees, or call, or seek or propose to call, any meeting of the Company's shareholders in connection therewith;

(c) in any manner, agree, attempt, seek or propose to deposit any securities of the Company or any rights to acquire (whether currently, upon lapse of time, following the satisfaction of any conditions, upon the occurrence of any event or any combination of the foregoing) any Equity Securities of the Company in any voting trust or similar arrangement;

(d) form or join in the formation of a 13D Group (other than a 13D Group consisting only of the Investor and its Affiliates) with respect to any Equity Securities or equity securities of any Significant Subsidiary, or grant to any Person any proxy with respect to the exercise of voting rights with respect to the Shares; or

(e) publicly announce any intention, plan or arrangement or finance (or arrange financing for) any Person in connection with any of the foregoing.

Section 3.02 **Permitted Actions**.

(a) The restrictions set forth in Section 3.01(a) – Section 3.01(e) shall cease to have effect if any of the following occurs (provided, that if any event described in this Section 3.02 occurs and, during the following 12 months, none of the transactions described below has been consummated, then the restrictions set forth in Section 3.01 shall thereafter resume and continue to apply in accordance with their terms):

(i) in the event that the Company enters into a definitive agreement for a merger, consolidation or other business combination transaction as a result of which the stockholders of the Company immediately prior to the consummation of such transaction would not own (including Beneficial Ownership) more than fifty percent (50%) of the aggregate voting rights of the surviving entity;

(ii) in the event that a tender offer or exchange offer for more than 50% of the Common Stock is commenced by any Person (and not involving any breach of Section 3.01) which tender offer or exchange offer, if consummated, would result in a Change of Control, and the Board of Directors recommends that the stockholders of the Company tender their shares in response to such offer within ten (10) Business Days after the commencement thereof or such longer period as shall then be permitted under U.S. federal securities Laws; or

(iii) in the event that the Company makes any public announcement indicating that it is actively pursuing a Change of Control, and such announcement is not disavowed by the Company pursuant to a public announcement made within two Business Days of such first announcement.

(b) Notwithstanding the foregoing, this Section 3.02 shall not restrict or otherwise apply to the activities of any Investor Designee in such Person's capacity as a director of the Company, acting in good faith and in satisfaction of such Person's duties to the Company in such capacity.

Section 3.03 **Dispositions**.

(a) Lockup Period. The Investor agrees that during the Lockup Period, without the prior written consent of the Company, the Investor shall not, and shall not authorize, permit or direct its subsidiaries or Affiliates to, directly or indirectly, Transfer any of the Shares.

(b) Competitor Transferees.

(i) During the term of this Agreement, the Investor agrees that it shall not, and shall not allow any of its Affiliates to, Transfer, directly or indirectly, any of the Shares knowingly to any Person identified in that certain competitor list letter (the "Competitor List Letter"), dated as of the Closing Date, and provided to the Investor at the Closing, as such letter may be amended from time to time in accordance with Section 3.03(b)(ii) (collectively, "Competitors"), or to any Affiliate of any such Person (Competitors and their respective Affiliates collectively, "Competitor Transferees"), and any such Transfer shall be null and void; provided, however, that the foregoing shall not prohibit any sale of Shares through brokers' transactions to a Person who the Investor has no reason to believe is a competitor (and, for the avoidance of doubt, Investor shall have no duty of inquiry in connection with such brokers' transactions).

(ii) The Competitor List Letter identifies the Competitors as of the date hereof. The Company may amend the Competitor List Letter following the date hereof to add or remove Competitors from such Competitor List Letter, each such amendment to be effective upon delivery of written notice thereof to the Investor, provided that (x) any Person so added to the Competitor List Letter as a Competitor must be a material direct competitor of the Company in one of its principal lines of business, as determined in good faith by the Company, (y) there shall not be more than ten (10) Competitors in total identified on the Competitor List Letter at any time, and (z) the Company may not amend the Competitor List Letter (A) prior to the six month anniversary of the Closing, or (B) more than twice per each twelve-month period thereafter.

(c) 5% Threshold. During the term of this Agreement, the Investor agrees that it shall not, and shall not allow any of its Affiliates to, Transfer, directly or indirectly, any of the Shares knowingly to any member of a 13D Group and any such Transfer shall be null and void; provided, however, that the foregoing shall not prohibit any sale of Shares through brokers' transactions to a Person who the Investor has no reason to believe is a member of a 13D Group (and, for the avoidance of doubt, Investor shall have no duty of inquiry in connection with such brokers' transactions).

(d) Permitted Transfers. Notwithstanding the foregoing, the following Transfers of the Shares shall be permitted at any time (each a "Permitted Transfer"):

(i) by the Investor to any of its Affiliates and by any Affiliate of the Investor to any other Affiliate of the Investor, provided that prior to and as a condition to any such Transfer, (A) the Company is furnished with written notice of the name and address of such Affiliate and the Shares Transferred, and (B) such Affiliate agrees in writing to be bound by and subject to the terms and conditions of this Agreement; and provided, further, that, with respect to any Transfer of registration rights under ARTICLE 4 in connection with any Permitted Transfer under this Section 3.03(d)(i) prior to and as a condition to any such Transfer, such Affiliate agrees to designate the Investor as its exclusive representative, agent and attorney-in-fact to exercise all of its rights thereunder pursuant to a written agreement in form reasonably satisfactory to the Company; or

(ii) by the Investor to a third party pursuant to a tender offer, exchange offer, merger, consolidation or other transaction (A) which is recommended to the stockholders of the Company by the Board of Directors; or (B) in the case of a merger or other business combination transaction, which has been approved by the stockholders of the Company.

(e) Real Property Interests. In connection with a subsequent disposition of Shares, the Investor may request a certification, in accordance with applicable Treasury Regulations, to the effect that (i) any interests in the Company do not constitute "U.S. real property interests" within the meaning of section 897(c)(1) of the Internal Revenue Code of 1986, as amended and (ii) the Company is not, and has not been during the shorter of (A) the 5 years preceding the date of the certification or (B) the Investor's holding period for the Shares, a United States real property holding corporation within the meaning of section 897(c)(2) of the Code (a "FIRPTA Certificate"). Upon the request of a FIRPTA Certificate by the Investor, the Company agrees to execute and deliver such FIRPTA Certificate within 10 days of such request, unless the Company determines, after reasonable diligence, that it cannot execute the certification because it cannot certify as to the information contained in clauses (i) or (ii). The Company's obligation under this Section 3.03(e) shall continue until such time as the Investor has disposed of all of the Shares received pursuant to the Stock Purchase Agreement.

ARTICLE 4
REGISTRATION RIGHTS

Section 4.01 **Shelf Registration**.

(a) On or before the expiration of the Lockup Period (the "Shelf Date"), so long as the Company is eligible to do so, the Company shall file with the SEC a Registration Statement providing for registration and resale, on a continuous or delayed basis pursuant to Rule 415 under the Securities Act, as such rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC, of all of the Registrable Securities, provided that such obligation shall be satisfied if the Company shall have in effect an automatically effective shelf registration statement on Form S-3ASR (or any comparable or successor form or forms then in effect) (an "Existing Shelf Registration Statement") as of the Shelf Date (any such registration statement, a "Shelf Registration Statement") that covers resale of the Registrable Securities; provided, further, that for the avoidance of doubt, the existence of an Existing Shelf Registration Statement shall not have any effect on the restrictions set forth in Section 3.03. The Shelf Registration Statement shall be on Form S-3 (or any comparable or successor form or forms then in effect) under the Securities Act; provided, however, that if the Company is a well-known seasoned issuer (as defined in Rule 405 under the Securities Act) at the time of filing of the Shelf Registration Statement with the SEC, such Shelf Registration Statement shall be designated by the Company as an automatic shelf registration statement (as defined in Rule 405 under the Securities Act). The Company shall use its commercially reasonable efforts to keep the Shelf Registration Statement continuously effective under the Securities Act until the Investor no longer holds any Registrable Securities. If the Shelf Registration Statement is not on Form S-3ASR, the Company shall use commercially reasonable efforts to cause the Shelf Registration Statement to become effective, as promptly as practicable, but in no event later than one hundred twenty (120) days following the filing of the Shelf Registration Statement.

(b) The Investor agrees that if it wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so in accordance with this Section 4.01(b) and Section 4.05. In the event the Investor wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, whether in an underwritten offering or otherwise that would require action by the Company pursuant to Section 4.01(b)(i), the Investor agrees to notify the Company of such intent (a "Shelf Take-Down Notice") and shall deliver a Shelf Take-Down Notice at least twenty (20) Business Days prior to any intended distribution of Registrable Securities under the Shelf Registration Statement, it being agreed that if the Investor intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall reasonably cooperate with the Investor to facilitate such distribution, including the actions required pursuant to Section 4.05(a)(viii) and, if a Company Supported Distribution is requested, Section 4.05(a)(xiv). From and after the date the Shelf Registration Statement is declared or deemed effective, the Company shall, as promptly as practicable after the date of the Shelf Take-Down Notice:

(i) if required by applicable Law, file with the SEC a post-effective amendment to the Shelf Registration Statement or prepare and, if required by applicable Law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Investor is named as a selling security holder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit the Investor to deliver or be deemed to have delivered such Prospectus to purchasers of Registrable Securities in accordance with applicable Law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use commercially reasonable efforts to cause such post-effective amendment to be declared or deemed effective under the Securities Act as promptly as practicable;

(ii) provide the Investor copies of any documents filed pursuant to Section 4.01(b)(i); and

(iii) notify the Investor as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 4.01(b)(i); provided, however, that if such Shelf Take-Down Notice is delivered during a Suspension Period, the Company shall so inform the Investor and shall take the actions set forth in clauses (i) and (ii) above promptly upon expiration of the Suspension Period in accordance with Section 4.05; provided, further, that the Investor shall not be entitled to deliver to the Company more than one (1) Shelf Take-Down Notice in any twelve (12) month period and each Shelf Take-Down Notice may only be made if the sale of the Registrable Securities covered thereby is reasonably expected to result in aggregate gross cash proceeds in excess of Fifty Million Dollars ($50,000,000) (without regard to any underwriting discount or commission) and, provided, further, that the Investor shall not be entitled to request more than three (3) Company Supported Distributions in the aggregate. A Shelf Take-Down Notice may not be made without the Company's prior written consent (not to be unreasonably withheld, delayed or conditioned) if the sale of the Registrable Securities covered thereby is reasonably expected to exceed the greater of (i) the value of twelve million five hundred thousand (12,500,000) Shares at the time of the sale or (ii) Five Hundred Million Dollars ($500,000,000).

(c) If any of the Registrable Securities to be sold pursuant to a Shelf Registration Statement are to be sold in a firm commitment underwritten offering which underwritten offering was initially requested by the Investor pursuant to a Shelf Take-Down Notice, and the managing underwriter of such underwritten offering advises the Investor that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with any Other Securities proposed to be included by the Company or holders thereof which are entitled to include securities in such Registration Statement, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included, together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, the Registrable Securities for which inclusion in such underwritten offering was requested by the Investor; and

(ii) second, among the Company and any holders of Other Securities, pro rata, based on the number of Other Securities proposed to be included in such underwritten offering by the Company and the number of Other Securities Beneficially Owned by each such holder of Other Securities;

(d) The Investor shall have the right to notify the Company that it has determined that the Shelf Take-Down Notice be abandoned or withdrawn, in which event the Company shall promptly abandon or withdraw all activities undertaken in connection with such offering with respect to Registrable Securities, and such withdrawn Shelf Take-Down Notice shall not count against the limit of Shelf Take-Down Notices or Company Supported Distributions, as applicable; provided, however, that the Company shall not be required to pay for expenses of any registration proceeding begun pursuant to Section 4.01(a), which has been subsequently abandoned or withdrawn pursuant to this Section 4.01(d) at the request of the Investor, and shall be reimbursed by the Investor for reasonable and documented out-of-pocket expenses (including legal fees and printing expenses) so incurred, unless the withdrawal is based upon material adverse information concerning the Company that the Company has not publicly disclosed in compliance with applicable securities Laws at least five (5) Business Days prior to the Company's receipt of such withdrawal request.

(e) In the event that the SEC sets forth a limitation on the securities that may be registered on a particular Shelf Registration Statement, the Company may reduce the number of securities to be registered on such Shelf Registration Statement to such number of securities as allowed by the SEC.

Section 4.02 **Demand Registration**.

(a) At any time following the expiration of the Lockup Period, if the Company is unable to file, cause to be effective or maintain the effectiveness of a Shelf Registration Statement as required under Section 4.01, the Investor shall have the right, by delivering a written notice to the Company (a "Demand Notice"), to require the Company to register under and in accordance with the provisions of the Securities Act the number of Registrable Securities Beneficially Owned by the Investor and requested by such Demand Notice to be so registered (a "Demand Registration"); provided, however, that the Company shall not be required to effect more than three (3) Demand Registrations for underwritten offerings pursuant to this Section 4.02(a); provided, further, that the Investor shall not be entitled to deliver to the Company more than two (2) Demand Registrations in any twelve (12) month period; and provided, further, that a Demand Registration may not be made until at least one hundred and twenty (120) days after the date of a prior Demand Registration, and, in any event, a Demand Notice may only be made if the sale of the Registrable Securities requested to be registered by the Investor is reasonably expected to result in aggregate gross cash proceeds in excess of Fifty Million Dollars ($50,000,000) (without regard to any underwriting discount or commission); and provided, further, that the Investor shall not be entitled to request more than three (3) Company Supported Distributions in the aggregate (including underwritten Demand Registrations). A Demand Registration may not exceed the greater of (i) the value of twelve million five hundred thousand (12,500,000) Shares or (ii) Five Hundred Million Dollars ($500,000,000) without the Company's prior written consent (not to be unreasonably withheld, delayed or conditioned). A Demand Notice shall also specify the expected method or methods of disposition of the applicable

Registrable Securities. Following receipt of a Demand Notice, the Company shall use commercially reasonable efforts to file, as promptly as reasonably practicable, but not later than ninety (90) Business Days after receipt by the Company of such Demand Notice, a Registration Statement relating to the offer and sale of the Registrable Securities requested to be included therein by the Investor in accordance with the methods of distribution elected (a "Demand Registration Statement") and shall use commercially reasonable efforts to cause such Registration Statement to be declared effective under the Securities Act as promptly as practicable after the filing thereof, but in no event later than one hundred twenty (120) days following the date of filing the Registration Statement, it being agreed that if the Investor intends to distribute any Registrable Securities by means of an underwritten offering it shall promptly so advise the Company and the Company shall cooperate with the Investor to facilitate such distribution, including the actions required pursuant to Section 4.05(a)(viii) and, if a Company Supported Distribution is requested, Section 4.05(a)(xiv).

(b) If any of the Registrable Securities registered pursuant to a Demand Registration are to be sold in a firm commitment underwritten offering, and the managing underwriter of such underwritten offering advises the Investor in writing that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with any Other Securities proposed to be included by the Company or holders thereof which are entitled to include securities in such Registration Statement, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, the Registrable Securities for which inclusion in such underwritten offering was requested by the Investor; and

(ii) second, among the Company and any holders of Other Securities, pro rata, based on the number of Other Securities proposed to be included in such underwritten offering by the Company and the number of Other Securities Beneficially Owned by each such holder of Other Securities;

(c) In the event of a Demand Registration, the Company shall be required to maintain the continuous effectiveness of the applicable Registration Statement for a period of at least thirty (30) days after the effective date thereof or such shorter period in which all Registrable Securities included in such Registration Statement have actually been sold.

(d) The Investor shall have the right to notify the Company that it has determined that the Registration Statement relating to a Demand Registration be abandoned or withdrawn with respect to Registrable Securities, in which event the Company shall promptly abandon or withdraw such Registration Statement with respect to Registrable Securities and such abandoned or withdrawn registration shall not count against the limit of Demand Registrations or Company Supported Distributions, as applicable; provided, however, that the Company shall not be

required to pay for expenses of any registration proceeding begun pursuant to Section 4.02(a), which has been subsequently abandoned or withdrawn pursuant to this Section 4.02(d) at the request of the Investor, and shall be reimbursed by the Investor for reasonable and documented out-of-pocket expenses (including legal fees and printing expenses) so incurred, unless the withdrawal is based upon material adverse information concerning the Company that the Company has not publicly disclosed at least five (5) Business Days prior to the Company's receipt of such withdrawal request.

(e) Notwithstanding anything contained herein to the contrary, with the prior written consent of the Investor (which consent shall not be unreasonably withheld, conditioned or delayed), the Company shall be entitled to coordinate (but not in violation of Section 4.02) any offerings under this Section 4.02 with any offerings to be effected pursuant to similar agreements with the holders of Other Securities, including, if practicable, by filing one Registration Statement for all Other Securities.

(f) The Investor may not make a Demand Registration in the event that a Shelf Registration Statement is effective and covers the number of Registrable Securities that the Investor wishes to sell.

(g) In the event that the SEC sets forth a limitation on the number of securities to be registered in a particular Demand Registration, the Company may reduce the number of securities to be registered in such Demand Registration to such number of securities as allowed by the SEC.

Section 4.03 **Piggyback Registration**.

(a) At any time following the expiration of the Lockup Period, if the Company proposes to file a registration statement under the Securities Act with respect to an offering (i) by the Company for its own account (other than a registration statement (A) on Form S-4, Form S-8 or any successor forms thereto, (B) filed solely in connection with any employee benefit, dividend reinvestment, or any other similar plan or (C) for the purpose of effecting a rights offering afforded to all holders of the Shares) or (ii) for the account of any of its security holders, the Company will give the Investor written notice of such filing at least ten (10) Business Days' prior to the anticipated filing date (the "Piggyback Notice"). The Piggyback Notice shall offer the Investor the opportunity to include in such registration statement the number of Registrable Securities (for purposes of this Section 4.03, "Registrable Securities" shall be deemed to mean solely securities of the same type as those proposed to be offered for the account of the Company or its security holders) as they may request (a "Piggyback Registration"). Subject to Section 4.03(b), the Company shall include in each such Piggyback Registration all Registrable Securities with respect to which the Company has received a written request from the Investor for inclusion therein within five (5) Business Days after notice has been given to the Investor. The Company shall be required to maintain the effectiveness of the Registration Statement for a Piggyback Registration for a period of at least thirty (30) days after the effective date thereof or such shorter period in which all Registrable Securities included in such Registration Statement have actually been sold.

(b) If any of the securities to be registered pursuant to the registration giving rise to the Investor's rights under this Section 4.03 are to be sold in an underwritten offering, the Investor shall be permitted to include all Registrable Securities requested to be included in such registration in such offering on the same terms and conditions as the securities of the Company or its security holders included therein; provided, however, that if such offering involves a firm commitment underwritten offering and the managing underwriter of such underwritten offering advises the Investor in writing that it is their good faith opinion that the total number or dollar amount of Registrable Securities proposed to be sold in such offering, together with all Other Securities that the Company and any other Persons having rights to participate in such registration intend to include in such offering, exceeds the total number or dollar amount of such securities that can be sold without having an adverse effect on the price, timing or distribution of the Registrable Securities to be so included together with all such Other Securities, then there shall be included in such firm commitment underwritten offering the number or dollar amount of Registrable Securities and such Other Securities that in the opinion of such managing underwriter can be sold without so adversely affecting such offering, and such number of Registrable Securities and Other Securities shall be allocated for inclusion as follows:

(i) first, all Other Securities being sold by the Company or by any Person (other than the Investor) exercising a contractual right to demand registration pursuant to which such registration statement was filed;

(ii) second, to the Investor, and

(iii) third, among any other holders of Other Securities.

(c) The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 4.03 prior to the effectiveness of the related Registration Statement and shall have no obligation to register any Registrable Securities in connection with such registration, except to the extent provided herein. The Registration Expenses of such withdrawn Piggyback Registration shall be borne by the Company in accordance with Section 4.04. The Investor shall have the right to withdraw its request for inclusion of its Registrable Securities in any Piggyback Registration by giving written notice to the Company of its request to withdraw at least two (2) Business Days prior to the planned effective date of the related Registration Statement; provided, however, that the Company shall not be required to pay for expenses relating to the proposed inclusion of the Investor's Registrable Securities in such Piggyback Registration, and shall be reimbursed by the Investor for reasonable and documented out-of-pocket expenses (including legal fees and printing expenses) so incurred, unless the withdrawal is based upon material adverse information concerning the Company that the Company has not publicly disclosed in compliance with applicable securities Laws at least five (5) Business Days prior to the Company's receipt of such withdrawal request.

(d) In the event that the SEC sets forth a limitation on the number of securities that may be registered in a particular Piggyback Registration, the Company may reduce the number of securities to be registered in such Piggyback Registration to such number of securities as allowed by the SEC.

Section 4.04 **Registration Expenses**.

(a) Expenses of the Company. Except to the extent otherwise provided herein, in connection with registrations pursuant to Section 4.01, Section 4.02, or Section 4.03, the Company shall pay all of the registration expenses incurred in connection with the registration thereunder (the "Registration Expenses"), including, without limitation, all: (i) reasonable registration and filing fees, (ii) Financial Industry Regulatory Authority, Inc. fees, (iii) printing expenses, (iv) fees and disbursements of the Company's counsel, (v) blue sky fees and expenses, (vi) expenses of the Company's independent accountants in connection with any regular or special reviews or audits incident to or required by any such registration, (vii) expenses incurred in connection with making road show presentations and holding meetings with potential investors and (viii) up to fifty thousand dollars ($50,000) of reasonable fees and disbursements of one firm of attorneys acting as counsel of the Investor.

(b) Expenses of the Investor. The Investor shall be responsible for (i) any allocable underwriting fees, discounts or commissions, (ii) any allocable commissions of brokers and dealers, (iii) fees and disbursements of the Investor's counsel other than as provided in Section 4.04(a), and (iv) capital gains, income and transfer taxes, if any, relating to the sale of Registrable Securities of the Investor.

Section 4.05 **Registration Procedures**.

(a) In connection with the registration of any Registrable Securities pursuant to this Agreement, the Company will keep the Investor advised in writing as to the initiation of each such registration and the Company will:

(i) Use commercially reasonable efforts to keep each Registration Statement continuously effective during the period such Registration Statement is required to remain effective pursuant to the terms of this Agreement; upon the occurrence of any event that would cause the Registration Statement or the Prospectus contained therein (A) to contain a material misstatement or omission or (B) not to be effective and usable for resale of Registrable Securities during the period such Registration Statement is required to remain effective pursuant to the terms of this Agreement, the Company shall file promptly an appropriate amendment to the Registration Statement, a supplement to the Prospectus or a report filed with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, in the case of clause (A), correcting any such misstatement or omission, and, in the case of either clause (A) or (B), the Company shall use commercially reasonable efforts to cause such amendment to be declared or deemed effective and the Registration Statement and the related Prospectus to become usable for their intended purposes as soon as practicable thereafter.

(ii) Notwithstanding anything to the contrary contained herein, the Company may delay filing or suspend the effectiveness of a Registration Statement and the Investor's right to sell thereunder (each such period, a "Suspension Period") if (A) the Company is pursuing an acquisition, merger, reorganization, disposition or similar transaction and the Company determines in good faith that the Company's ability to pursue or consummate such a transaction would be materially adversely affected by any required disclosure of such transaction in the registration statement, or (B) the Company has experienced some other material non-public event the disclosure of which at such time could reasonably be expected to materially adversely affect the Company; provided that the Company may not take any action pursuant to this Section 4.05(a) for a period of time in excess of 120 days in the aggregate in any twelve (12) month period.

(iii) Prepare and file with the SEC such amendments and post-effective amendments to each Registration Statement as may be necessary to keep such Registration Statement effective during the period provided herein.

(iv) Advise the Investor, promptly (which notice pursuant to clauses (B) through (D) below shall be accompanied by an instruction to suspend the use of the Prospectus until the Company shall have remedied the basis for such suspension and promptly thereafter notified the Investor of such remediation):

(A) when the Prospectus or any Prospectus supplement or post-effective amendment is proposed to be or has been filed, and, with respect to the Registration Statement or any post-effective amendment thereto, when the same has become effective;

(B) of any request by the SEC or any other Governmental Entity received by the Company for amendments to the Registration Statement or amendments or supplements to the Prospectus or for additional information relating thereto;

(C) of the issuance by the SEC of any stop order received by the Company suspending the effectiveness of the Registration Statement under the Securities Act or of the suspension by any state securities commission of the qualification of the Registrable Securities for offering or sale in any jurisdiction, or the threatening or initiation of any proceeding for any of the preceding purposes;

(D) of the receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose; or

(E) of the existence of any fact or the happening of any event, during the pendency of a distribution of Registrable Securities pursuant to a Registration Statement, that makes any statement of a material fact made in such Registration Statement, the Prospectus, any amendment or supplement thereto, or any document incorporated by reference therein untrue, or that requires the making of any additions to or changes in the Registration Statement or the Prospectus in order to make the statements therein not misleading.

(v) Unless any Registrable Securities shall be in book-entry form only, cooperate with the Investor to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends (unless required by applicable securities Laws), and enable such Registrable Securities to be in such denominations and registered in such names as the Investor may request at least two (2) Business Days before any sale of Registrable Securities.

(vi) Use commercially reasonable efforts to promptly register or qualify any Registrable Securities under such other securities or blue sky laws of such jurisdictions within the United States as any Investor reasonably requests and which may be reasonably necessary or advisable to enable such Investor to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investor, keep such registrations or qualifications in effect for so long as the applicable Registration Statement is required to remain in effect and do any and all other acts and things which may be reasonably necessary or advisable to enable such Investor to consummate the disposition in such jurisdictions of the Registrable Securities owned by such Investor; provided, however, that the Company will not be required to (A) qualify generally to do business in any jurisdiction where it would not otherwise be required to qualify but for this Agreement, (B) subject itself to taxation in any jurisdiction where it would not otherwise be subject to taxation but for this Agreement or (C) consent to general service of process in any jurisdiction where it would not otherwise be subject to such service but for this Agreement.

(vii) Use commercially reasonable efforts to promptly cause any Registrable Securities covered by a Registration Statement to be registered with or approved by such other Governmental Entity within the United States as may be necessary to enable the Investor to consummate the disposition of such Registrable Securities in accordance with the intended methods of disposition set forth in such Registration Statement.

(viii) In the event that the Investor advises the Company that the Investor intends to distribute any Registrable Securities by means of an underwritten offering, whether pursuant to Section 4.01 or Section 4.02, enter into an underwriting agreement in customary form, scope and substance (including customary representations, warranties, covenants and indemnifications) and take all such other actions reasonably requested by the Investor or by the managing underwriter, if any, to expedite or facilitate the underwritten disposition of such Registrable Securities and deliver such documents and certificates as may be reasonably requested by the Investor, its counsel and the managing underwriter, if any.

(ix) Use its commercially reasonable efforts to prevent, or obtain the withdrawal of, any stop order or other order suspending the use of any Prospectus.

(x) Deliver to the Investor and each underwriter, if any, without charge, as many copies of the applicable Prospectus and any amendment or supplement thereto as the Investor or underwriter may reasonably request.

(xi) Cooperate with the Investor and the underwriters, if any, of such Registrable Securities and their respective counsel in connection with any filings required by Law to be made with FINRA.

(xii) Obtain opinions of counsel to the Company and updates thereof addressed to the Investor and the underwriters or initial purchasers, if any, covering matters as are customarily requested in opinions covering secondary resale offerings of companies of comparable size, maturities and lines of business as the Company.

(xiii) Obtain "comfort" letters and updates thereof from the Company's independent certified public accountants, such letters covering matters as are customarily requested in comfort letters covering secondary resale offerings of companies of comparable size, maturities and lines of business as the Company.

(xiv) Only in the case of a Company Supported Distribution, as requested by the managing underwriter in any such underwritten offering, provide reasonable assistance with the marketing of any such offering, including causing members of the Company's management team to participate in a reasonable and customary number of conference calls, investor meetings and due diligence sessions, in each case and, to the extent to be in-person, to take place in the continental United States; provided, that any such requested assistance shall not be required if it would, in the Company's reasonable judgment, interfere with the normal business operations of the Company in any substantial respect.

(b) The Investor agrees by acquisition of a Registrable Security that the Investor shall not be entitled to sell any of such Registrable Securities pursuant to a Registration Statement, or to receive a Prospectus relating thereto, unless the Investor has furnished the Company with the information set forth in the next sentence at least five (5) Business Days prior to the filing of the applicable Registration Statement or Prospectus. The Company may require the Investor pursuant to a Registration Statement to furnish to the Company such customary information regarding the Investor and the distribution of such Shares as the Company may reasonably require for inclusion in such Registration Statement. The Investor agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by the Investor not misleading. Any sale of any Registrable Securities by the Investor shall constitute a representation and warranty by the Investor that the information relating to the Investor and its plan of distribution is as set forth in the Prospectus delivered in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact provided by the Investor and that such Prospectus does not as of the time of such sale omit to state any material fact provided by the Investor necessary to make the statements in such Prospectus, in light of the circumstances under which they were made, not misleading. The Company may exclude from such Registration Statement the Registrable Securities of the Investor if the Investor fails to furnish such information within a reasonable time after receiving such request. The Company shall not include in any Registration Statement any information regarding, relating to or referring to the Investor or its plan of distribution without the approval of the Investor in writing. Notwithstanding any other provision of this Agreement, the Investor shall also provide the Company as a condition to including Registrable Securities in a Registration Statement, such information as is reasonably requested by the Company in response to the Company's customary questionnaire seeking the information required by the Securities Act and the rules and regulations promulgated thereunder.

(c) The Investor shall not use any free writing prospectus (as defined in Rule 405 under the Securities Act) in connection with the sale of Registrable Securities.

(d) Any single offering of Registrable Securities pursuant to any Shelf Registration Statement or any Demand Registration that is reasonably expected to result in aggregate cash proceeds in excess of One Hundred Million Dollars ($100,000,000) shall be made pursuant to an underwritten offering. The Investor shall determine the managing underwriters for any offering initiated by the Investor, subject to the consent of the Company (which shall not be unreasonably withheld, conditioned or delayed). The Company shall determine the managing underwriters in any Piggyback Registration, subject to the consent of the Company (which shall not be unreasonably withheld, conditioned or delayed).

Section 4.06 **Indemnification**.

(a) The Company shall indemnify and hold harmless, to the fullest extent permitted by Law, (1) the Investor if the Registrable Securities are covered by a Registration Statement or Prospectus, (2) each of the Investor's Affiliates, officers, directors, shareholders, employees, advisors, agents, (3) each underwriter (including the Investor if deemed to be an underwriter pursuant to any SEC comments or policies), if any, and (4) each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter (collectively, "Investor Indemnitees"), from and against all losses, claims, damages, liabilities, penalties, judgments, suits, costs and expenses (including reasonable legal fees and disbursements, which shall be reimbursed periodically as incurred) (collectively, "Losses") in connection with any sale of Registrable Securities pursuant to a Registration Statement under this Agreement arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any such Registration Statement or any Prospectus (including preliminary or final) relating to the registration of such Registrable Securities or any amendment or supplement thereto or any document incorporated by reference therein or any omission or (ii) or any alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, and will reimburse to each of the Persons listed above, for any legal or any other expenses reasonably incurred in connection with investigating and defending any such Losses; provided, however, that the Company shall not be liable to such Investor Indemnitee in any such case to the extent that any such Loss, claim, damage, liability or expense arises out of or is based upon (A) an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, including any such preliminary or final Prospectus contained therein or any such amendments or supplements thereto, or contained in any free writing prospectus (as such term is defined in Rule 405 under the Securities Act) prepared by the Company or authorized by it in writing for use by such Investor Indemnitee (or any amendment or supplement thereto), in reliance upon and in conformity with information regarding such Investor Indemnitee or its plan of distribution or ownership interests which was furnished in writing to the Company expressly for use in connection with such Registration Statement, including any such preliminary or final Prospectus contained therein or any such amendments or supplements thereto (B) offers or sales effected by or on behalf of such Investor Indemnitee "by means of" (as defined in Rule 159A under the Securities Act) a "free writing prospectus" (as defined in Rule 405 under the Securities Act) or (C) the failure of any Investor Indemnitee to deliver or make available to a purchaser of Registrable Securities a copy of any Registration Statement, including any preliminary or final Prospectus contained therein or any amendments or supplements thereto (if the same was required by applicable Law to be delivered or made available); provided that the Company shall have delivered or made available to such Investor Indemnitee such Registration Statement, including such preliminary or final Prospectus contained therein and any amendments or supplements thereto.

(b) In connection with any Registration Statement in which the Investor is participating by registering Registrable Securities, the Investor agrees to indemnify and hold harmless, to the fullest extent permitted by Law, the Company, its Affiliates, the officers, directors, shareholders, advisors, agents, representatives or other employees of the Company, each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) the Company, each underwriter, if any, and each Person who controls (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) such underwriter (collectively, "Company Indemnitees"), from and against all Losses, as incurred, arising out of or based on any untrue or alleged untrue statement of a material fact contained in any such Registration Statement or preliminary or final Prospectus relating to the registration of such Registrable Securities or any amendment or supplement thereto or any document incorporated by reference therein, or any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances in which they were made, not misleading, in each case solely to the extent that such untrue or alleged untrue statement or omission or alleged omission is made in such Registration Statement or in any preliminary or final Prospectus contained therein or any such amendments or supplements thereto or contained in any free writing prospectus (as such term is defined in Rule 405 under the Securities Act) in reliance upon and in conformity with written information furnished to the Company by such Selling Investor expressly for inclusion in such document; provided, however, that in no event shall the liability of the Investor hereunder be greater in amount than the dollar amount of the net proceeds received by the Investor upon the sale of the Registrable Securities under the Registration Statement giving rise to such indemnification obligation.

(c) If any Person shall be entitled to indemnity hereunder (an "Indemnified Party"), such Indemnified Party shall give prompt notice to the party from which such indemnity is sought (the "Indemnifying Party") of any claim or of the commencement of any Action with respect to which such Indemnified Party has actual notice and seeks indemnification or contribution pursuant hereto; provided, however, that the delay or failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any obligation or liability except to the extent that the Indemnifying Party has been actually prejudiced by such delay or failure. The Indemnifying Party shall have the right, exercisable by giving written notice (including an acknowledgement of its obligation to indemnify the Indemnified Party therefor on the terms set forth herein) to an Indemnified Party promptly after the receipt of written notice from such Indemnified Party of such claim or Action, to assume, at the Indemnifying Party's expense, the defense of any such Action, with counsel reasonably satisfactory to such Indemnified Party; provided, however, that an Indemnified Party shall have the right to employ separate counsel in any such Action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless: (i) the Indemnifying Party agrees to pay such fees and expenses; (ii) the Indemnifying Party fails promptly to assume, or in the event of a conflict of interest cannot assume, the defense of such Action or fails to employ counsel reasonably satisfactory to such Indemnified Party, in which case the Indemnified Party shall also have the right to employ counsel and to assume the defense of such Action or (iii) in the Indemnified Party's reasonable judgment a conflict of interest between such Indemnified Party and Indemnifying Party may exist in respect of such Action; provided, further, that the Indemnifying Party shall not, in connection with any one such Action or separate but substantially similar or related Actions in the same jurisdiction, arising out of the same general allegations or circumstances, be liable for the fees and expenses of more than one firm of attorneys (together with appropriate local counsel) at any time for all of the Indemnified Parties, or for fees and expenses that are not reasonable.

(d) Neither party shall settle, compromise, discharge or consent to an entry of judgment with respect to a claim or liability subject to indemnification under this Section 4.06 without the other party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed); provided that the Indemnifying Party may agree without the prior written consent of the Indemnified Party solely to any settlement, compromise, discharge or consent to an entry of judgment, in each case that relates only to money damages and by its terms obligates the Indemnifying Party to pay the full amount of the liability in connection with such claim and which unconditionally releases the Indemnified Party from all liability in connection with such claim.

(e) If the indemnification provided for in this Section 4.06 is unavailable to hold harmless each of the Indemnified Parties against any losses, claims, damages, liabilities and expenses to which such parties may become subject under the Securities Act, then the Indemnifying Party shall, in lieu of indemnifying each party entitled to indemnification hereunder, contribute to the amount paid or payable by such party as a result of such losses, claims, damages, liabilities or expenses in such proportion as is appropriate to reflect (i) the relative benefits received by the Indemnifying Party, on the one hand, and the Indemnified Parties, on the other hand, from the offering or (ii) if the allocation provided by clause (i) above is not permitted by applicable Law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Indemnifying Party, on the one hand, and such Indemnified Parties, on the other hand, in connection with the statements or omissions or alleged statements or omissions that resulted in such losses, claims, damages, liabilities or expenses. The relative fault of such parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact, or omission or alleged omission to state a material fact, relates to information supplied by or concerning the Indemnifying Party on the one hand, or by such Indemnified Party on the other, and such party's relative intent, knowledge, access to information and opportunity to have corrected or prevented such statement or omission. No Person guilty of fraudulent misrepresentation (within the meaning of the Securities Act) shall be entitled to contribution from any Person that is not guilty of such fraudulent misrepresentation.

Section 4.07 **Miscellaneous**.

(a) With a view to making available the benefits of certain rules and regulations of the SEC which may at any time permit the sale of the Registrable Securities to the public without registration, the Company agrees, so long as there are outstanding Registrable Securities, to use its commercially reasonable efforts to file with the SEC in a timely manner all reports and other documents as the SEC may prescribe under Section 13(a) or 15(d) of the Exchange Act at any time while the Company is subject to such reporting requirements of the Exchange Act; and

(b) Subject to the provisions hereof, in the event that the Company proposes to enter into an underwritten public offering, to the extent requested by the managing underwriters, and provided that the Company and all executive officers (as defined under the Exchange Act) and directors of the Company are also so bound, the Investor agrees to enter into a customary agreement with the managing underwriters not to effect any sale or distribution of equity securities of the Company, or any securities convertible, exchangeable or exercisable for or into such securities, without the consent of the managing underwriters, during the period beginning upon receipt of notice hereunder that the Company intends to conduct an offering of its securities in accordance with the terms hereof and ending ninety (90) Business Days following the effective date of such offering, except pursuant to such offering in accordance with the terms hereof; provided, however, that if any executive officer or director is released by such managing underwriters from its lockup obligations herein, then the Investor shall be so released on a pro rata basis (with the percentage of the Investor's Registrable Securities so released being equal to the percentage of shares so released for the executive officer or director having the highest percentage of released shares among all of the executive officers or directors). The Company may impose stop-transfer restrictions with respect to the securities subject to the foregoing restriction until the end of the required stand-off period and shall lift such stop-transfer restrictions immediately upon the end of such period.

(c) The registration rights granted to the Investor under this Agreement shall terminate on the date on which the Investor no longer owns Registrable Securities.

(d) Except for this Agreement, the Company is not party to any agreement granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities. From and after the date hereof, the Company shall not, without the prior written consent of the Investor, enter into any agreement granting any holder or prospective holder of any securities of the Company registration rights with respect to such securities unless such new registration rights, including with respect to underwriters' "cutbacks" and "standoff" obligations, do not conflict with, the registration rights granted to Investor hereunder.

ARTICLE 5
TERMINATION

Section 5.01 **Termination**. Other than the termination provisions applicable to particular Sections of this Agreement that are specifically provided elsewhere in this Agreement, this Agreement shall terminate (a) at any time upon the mutual written agreement of the Company and the Investor and (b) at such time as the Investor ceases to Beneficially Own any Registrable Securities.

ARTICLE 6
MISCELLANEOUS

Section 6.01 **Amendment and Modification**. This Agreement may not be amended, modified or supplemented except by written agreement of the Company and the Investor.

Section 6.02 **Titles and Subtitles; Interpretation**. Unless otherwise indicated herein, with respect to any reference made in this Agreement to a Section (or Article, Subsection, Paragraph, Subparagraph or Clause), such reference shall be to a section (or article, subsection, paragraph, subparagraph or clause) of, or an exhibit or schedule to, this Agreement. The table of contents and any article, section, subsection, paragraph or subparagraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any reference made in this Agreement to a statute or statutory provision shall mean such statute or statutory provision as it has been amended through the date as of which the particular portion of the Agreement is to take effect, or to any successor statute or statutory provision relating to the same subject as the statutory provision so referred to in this Agreement, and to any then applicable rules or regulations promulgated thereunder. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed, as the context indicates, to be followed by the words "but (is/are) not limited to." The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole, unless the context clearly indicates to the contrary. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context indicates is appropriate. Where specific language is used to clarify or illustrate by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict the construction of the general statement which is being clarified or illustrated.

Section 6.03 **Extension; Waiver**. At any time prior to the Closing Date, a party to this Agreement may (a) extend the time for the performance of any of the obligations or acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered pursuant hereto, (c) waive compliance with any of the agreements of the other party contained herein or (d) waive any condition to its obligations hereunder. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in a written instrument signed by such party. Except as otherwise expressly provided herein, no failure to exercise, delay in exercising, or single or partial exercise of any right, power or remedy by any party, and no course of dealing among the parties, shall constitute a waiver of any such right, power or remedy.

Section 6.04 **Binding Nature; Assignment**. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, Transferred or delegated by the Investor without prior written consent of the Company, and any attempt to make any such assignment, Transfer or delegation without such consent shall be null and void; provided that the Investor may assign its registration rights under ARTICLE 4 in connection with any Permitted Transfer under Section 3.03(d)(i).

Section 6.05 **Severability**. Any provision of this Agreement that is invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provision of this Agreement invalid, illegal or unenforceable in any other jurisdiction.

Section 6.06 **Notices and Addresses**. All notices, requests, consents, waivers and other communications hereunder shall be in writing and shall be deemed given: (a) when delivered if delivered personally (including by courier); (b) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (c) on the day after mailing if sent by a nationally recognized overnight delivery service that maintains records of the time, place, and recipient of delivery; or (d) upon receipt of a confirmed transmission, if sent by telex, telecopy or facsimile transmission or e-mail, in each case to the other parties at the following addresses, facsimile numbers or e-mail addresses or to such other addresses as may be furnished in writing by one party to the others:

(a) if to the Investor to:

Hitachi, Ltd., Business Development Office
6-6 Marunouchi 1-chome
Chiyoda-ku
Tokyo 100-8280, Japan
Attention: General Manager
Facsimile: 81-3-4564-6260

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

Morrison & Foerster LLP
Shin-Marunouchi Building, 29th Floor
5-1, Marunouchi 1-chome
Chiyoda-ku, Tokyo 100-6529
Japan
Attention: Kenneth A. Siegel, Esq.
Facsimile: 011-81-3-3214-6512
E-mail: KSiegel@mofo.com

(b) if to the Company:

Western Digital Corporation
3355 Michelson Drive, Suite 100
Irvine, California 92612
Attention: General Counsel
Facsimile: (949)672-9612
E-mail: Michael.Ray@wdc.com

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

O'Melveny & Myers LLP
610 Newport Center Drive, Suite 1700
Newport Beach, California 92660
Attention: J. Jay Herron, Esq.
Facsimile: (949) 823-6994
E-mail: jherron@omm.com

Section 6.07 **Governing Law**. This Agreement and the legal relations among the Parties shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to any Law or rule that would cause the Laws of any jurisdiction other than the State of Delaware to be applied.

Section 6.08 **Complete Agreement.** This document and the documents referred to herein contain the complete agreement between the parties and supersede any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

Section 6.09 **No Third-Party Beneficiaries.** This Agreement is intended and agreed to be solely for the benefit of the parties hereto, and no third party shall accrue any benefit, claim or right of any kind whatsoever pursuant to, under, by or through this Agreement, except as otherwise contemplated by Section 6.04.

Section 6.10 **Counterparts and Signatures**. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

Section 6.11 **Further Assurances**. Each party shall cooperate and take such action as may be reasonably requested by another party in order to carry out the provisions and purposes of this Agreement and the transactions contemplated hereby.

Section 6.12 **Specific Performance**. The parties acknowledge and agree that irreparable damage would be caused in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached and money damages may not be an adequate remedy for any such failure to perform or breach. Accordingly, the parties agree that, in addition to any other remedy to which each party may be entitled at Law or in equity or under this Agreement, each 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, and each party expressly waives the defense that a remedy in damages will be adequate.

Section 6.13 **Consent to Jurisdiction; Service of Process; Venue**. Each of the parties to this Agreement irrevocably and unconditionally submits to the exclusive jurisdiction of the Delaware Court of Chancery (and if jurisdiction in the Delaware Court of Chancery shall be unavailable, any Delaware State court and the Federal court of the United States of America sitting in the State of Delaware) for the purposes of any action or other proceeding arising out of this Agreement or any transaction contemplated hereby. Each of the parties further agree that, to the fullest extent permitted by applicable Law, service of any process, summons, notice or document by U.S. registered mail to such Person's respective address set forth in Section 6.06 above shall be effective service of process for any action or proceeding in the State of Delaware with respect to any matters to which it has submitted to jurisdiction as set forth above in the immediately preceding sentence. Each of the parties irrevocably and unconditionally waives (and agrees not to plead or claim), any objection to the laying of venue of any action or proceeding arising out of this Agreement or the transactions contemplated hereby in the Delaware Court of Chancery (and if the Delaware Court of Chancery shall be unavailable, in any Delaware State court or the Federal court of the United States of America sitting in the State of Delaware) or that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 6.14 **Waiver of Jury Trial.** Each of the parties to this Agreement hereby waives, to the fullest extent permitted by applicable Law, any right it may have to a trial by jury in respect of any suit, action or other proceeding directly or indirectly arising out of, under or in connection with this Agreement. Each party (a) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such party would not, in the event of any action or proceeding, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties have been induced to enter into this Agreement, by, among other things, the mutual waiver and certifications in this Section 6.14.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be duly executed by their respective authorized officers on the day and year first above written.

Western Digital Corporation

By: /s/ Michael C. Ray
Michael C. Ray
Senior Vice President, General Counsel and Secretary

Hitachi, Ltd.

By: /s/ Hiroaki Nakanishi
Name: Hiroaki Nakanishi
Title: Representative Executive Officer
President

March 2, 2012

Western Digital Corporation
Western Digital Technologies, Inc.
Western Digital Ireland, Ltd.
3355 Michelson Drive
Irvine, California 92612

Attention: Mr. Wolfgang Nickl, Senior Vice President and Chief Financial Officer

First Amendment to Commitment Letter Dated as of March 7, 2011

Ladies and Gentlemen:

Reference is made to that certain commitment letter dated as of March 7, 2011 (together with the Summary of Terms attached thereto, as amended hereby and as otherwise amended, restated, supplemented or otherwise modified from time to time, the "***Commitment Letter***"), among each of you, Bank of America, N.A. ("***Bank of America***") and Merrill Lynch, Pierce, Fenner & Smith Incorporated ("***MLPFS***") regarding the arrangement, underwriting and syndication of the Senior Credit Facilities (as defined in the Commitment Letter).

Unless otherwise defined herein, capitalized terms shall have the same meanings as specified therefor in the Commitment Letter.

You have requested that we amend the Commitment Letter (including the Summary of Terms attached thereto) in order to extend the expiration date of our undertakings and commitments pursuant thereto, among other things. Subject to the terms and conditions set forth herein and the effectiveness of this amendment letter (this "***Commitment Letter Amendment***") in accordance with its terms, the parties hereto agree as follows:

I. Amendments to Commitment Letter

1. The second sentence of the last paragraph of the Commitment Letter shall be amended by replacing clause (a) thereof with the following:

"(a) May 7, 2012, unless definitive documentation for the Senior Credit Facilities is executed and delivered prior to such date,"

2. The "**CLOSING DATE**" section of the Summary of Terms attached as Exhibit A to the Commitment Letter shall be amended in its entirety by replacing such section with the following:

"**CLOSINGDATE**: The execution of definitive loan documentation to occur on or before May 7, 2012 (the "***Closing Date***")."

II. Miscellaneous

Except as specifically amended hereby, the Commitment Letter is hereby confirmed and ratified in all respects and shall be and remain in full force and effect according to its terms. For the avoidance of doubt, the confidentiality provisions of the Commitment Letter shall apply to this Commitment Letter Amendment as if it were part of the Commitment Letter, it being understood that you may disclose this Commitment Letter Amendment (but not the Fee Letter Second Amendment (defined below)) in filings with the Securities and Exchange Commission and other applicable regulatory authorities and stock exchanges. All references to the "Commitment Letter" in the Commitment Letter, the Fee Letter or any related documents shall be deemed to refer to the Commitment Letter after giving effect to this Commitment Letter Amendment.

This Commitment Letter Amendment shall be effective upon the receipt by Bank of America and MLPFS of a duly executed counterpart to (a) this Commitment Letter Amendment from each of the parties hereto and (b) the second amendment to the Fee Letter dated as of the date hereof (the "***Fee Letter Second Amendment***") from each of the parties thereto. This Commitment Letter Amendment may be executed in counterparts which, taken together, shall constitute an original. Delivery of an executed counterpart of this Commitment Letter Amendment by telecopier, facsimile or other electronic transmission (*i.e.*, a "pdf" or "tif") shall be effective as delivery of a manually executed counterpart thereof.

If the foregoing is in accordance with your understanding, please sign and return this Commitment Letter Amendment to us.

Very truly yours,

BANK OF AMERICA, N.A.

By: /s/ Sugeet Manchanda Madan
Name: Sugeet Manchanda Madan
Title: Director

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ Andrew M. Hensley
Name: Andrew M. Hensley
Title: Director

ACCEPTED AND AGREED TO
AS OF THE DATE FIRST ABOVE WRITTEN:

WESTERN DIGITAL CORPORATION

By: /s/ Wolfgang Nickl
Name: Wolfgang Nickl
Title: Senior Vice President
and Chief Financial Officer

WESTERN DIGITAL TECHNOLOGIES, INC.

By: /s/ Wolfgang Nickl
Name: Wolfgang Nickl
Title: Senior Vice President
and Chief Financial Officer

WESTERN DIGITAL IRELAND, LTD.

By: /s/ Wolfgang Nickl
Name: Wolfgang Nickl
Title: Director and
Chief Financial Officer

EXHIBIT 10.6

Published CUSIP Number: 95810FAD8
Revolver CUSIP Number: 95810FAE6
Term A-1 CUSIP Number: 95810FAF3

CREDIT AGREEMENT

Dated as of March 8, 2012

among

WESTERN DIGITAL TECHNOLOGIES, INC.
and
WESTERN DIGITAL IRELAND, LTD.,
as the Borrowers,

WESTERN DIGITAL CORPORATION,
as Holdings,

BANK OF AMERICA, N.A.,
as Administrative Agent, Swing Line Lender
and
L/C Issuer,

and

The Other Lenders Party Hereto

and

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as
Sole Lead Arranger and Sole Bookrunner

and

THE BANK OF NOVA SCOTIA,
UNION BANK, N.A.,
HSBC BANK USA, NATIONAL ASSOCIATION, and
JPMORGAN CHASE BANK, N.A.,
as
Co-Syndication Agents

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SCHEDULES

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CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of March 8**,** 2012, among WESTERN DIGITAL TECHNOLOGIES, INC., a Delaware corporation (the "US Borrower"), WESTERN DIGITAL IRELAND, LTD., an exempted company incorporated under the laws of the Cayman Islands (the "Cayman Borrower" and together with the US Borrower, the "Borrowers"), WESTERN DIGITAL CORPORATION, a Delaware corporation ("Holdings"), each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

Holdings and the Borrowers have requested that the Lenders provide credit facilities and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

1.01 Defined Terms. As used in this Agreement, the following terms shall have the meanings set forth below:

"Acquisition" means the acquisition by the Cayman Borrower of all of the outstanding equity interests of the Target pursuant to the Acquisition Agreement.

"Acquisition Agreement" means that certain Stock Purchase Agreement dated as of March 7, 2011 by and among Holdings, the Cayman Borrower, the Seller and the Target.

"Acquisition Agreement Material Adverse Effect" means any event, condition, change, effect, omission or occurrence which, individually or together with any other event, condition, change, effect, omission or occurrence occurring or coming into being after the date of the Acquisition Agreement that, (a) has had a material adverse effect or material adverse change on the assets, liabilities, properties, business, financial condition or results of operations of the applicable person and its subsidiaries, taken as a whole; except if due to (i) changes that adversely affect either the United States or global economy generally or the industry in which Holdings or the Target and their respective subsidiaries operate, except to the extent that such changes have a materially disproportionate effect on Holdings or the Target, as the case may be, and its subsidiaries, taken as a whole, as compared to the impact on their principal competitors; (ii) the announcement, pendency or consummation of the transactions contemplated by the Acquisition Agreement, including, any resulting shortfalls or declines in unit sales, revenue, margins or profitability, loss of employees, cancellations of or delays in work for customers or other adverse customer reactions to the Acquisition Agreement; (iii) any decrease in the market price or trading volume of Holdings' common stock, in and of itself (it being understood that the underlying cause of any such decrease may be taken into consideration); (iv) any failure to meet published analyst estimates of revenue, earnings or results of operations or failure to meet internal budgets, projects or forecasts of revenue, earnings or other financial performance or results of operations (it being understood that the underlying cause of any such failure may be taken into consideration); (v) acts of war or terrorism, which do not have a materially disproportionate impact on Holdings or the Target, as the case may be, and its subsidiaries, taken as a whole, as compared to the impact on its principal competitors; (vi) any changes in GAAP, changes in the interpretation of GAAP, or changes in any laws; (vii) the failure of the Cayman Borrower to consent to any of the actions proscribed in Section 6.1 of the Acquisition Agreement where such failure to consent would be a breach by the Cayman Borrower of Section 6.1 of the Acquisition Agreement or (ix) the performance of the Acquisition Agreement (including compliance with the covenants therein) or the failure to take any action prohibited by the Acquisition Agreement; or (b) has materially impaired the ability of the applicable person and/or its subsidiaries to consummate the transactions contemplated by the Acquisition Agreement.

"Administrative Agent" means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

"Administrative Agent's Office" means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 11.02, or such other address or account as the Administrative Agent may from time to time notify to the Borrowers and the Lenders.

"Administrative Questionnaire" means an Administrative Questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

"Affiliate" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

"Aggregate Commitments" means, at any time, the Commitments of all the Lenders in effect at such time.

"Aggregate Revolving Credit Commitments" means, as of any date of determination, the Revolving Credit Commitments of all the Lenders on such date. The initial amount of the Aggregate Revolving Credit Commitments in effect as of the Closing Date is $500,000,000.

"Agreement" means this Credit Agreement.

"Agreement Currency" has the meaning specified in Section 11.17.

"Applicable Percentage" means (a) in respect of a Term Loan Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of such Term Loan Facility represented by (i) on or prior to the Closing Date, such Term Lender's Term Commitment with respect to such Term Loan Facility at such time and (ii) thereafter, the principal amount of such Term Lender's Term Loans under such Term Loan Facility at such time, and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender's Revolving Credit Commitment at such time. If the commitment of each Revolving Credit Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Rate" means the following percentages per annum, based upon the Consolidated Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Sections 6.09(a) or 6.09(b):

Applicable Rate

Pricing Level	Consolidated Leverage Ratio	Commitment Fee	Eurodollar Rate + Letters of Credit	Base Rate +
1	≤0.50:1.00	0.25%	1.50%	0.50%
2	>0.50:1.00 but ≤1.25:1.00	0.35%	2.00%	1.00%
3	>1.25:1.00 but ≤2.00:1.00	0.40%	2.25%	1.25%
4	>2.00:1.00	0.50%	2.50%	1.50%

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.09(a) or 6.09(b); provided that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 4 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. The Applicable Rate in effect from the Closing Date until the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.09(a) or 6.09(b) shall be determined based upon the Consolidated Leverage Ratio as calculated in the certificate delivered pursuant to Section 4.01(a)(viii)(D).

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b).

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Arranger" means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole book manager.

"Asset Sale" means a sale, lease or sub-lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, transfer or other disposition to, or any exchange of property with, any Person (other than Holdings or any of its Subsidiaries), in one transaction or a series of transactions, of all or any part of Holdings' or any of its Subsidiaries' businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, including, without limitation, the Equity Interests of any of Holdings' Subsidiaries, other than (i) inventory (or other assets) sold or leased in the ordinary course of business (excluding any such sales by operations or divisions discontinued or to be discontinued), (ii) licenses and sublicenses of intellectual property rights in the ordinary course of business, (iii) cash or cash equivalents, (iv) sales, assignments, transfers or dispositions of accounts in the ordinary course of business for purposes of compromise or collection, (v) leases of real property, and (vi) sales of other assets for aggregate consideration of less than $50,000,000.

"Assignee Group" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed by the same investment advisor.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form approved by the Administrative Agent.

"Attributable Indebtedness" means, on any date, (a) in respect of any capital lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"Audited Financial Statements" means the audited consolidated balance sheet of Holdings and its Subsidiaries for the fiscal year ended July 1, 2011, and the related consolidated statements of income and cash flows for such fiscal year of Holdings and its Subsidiaries, including the notes thereto.

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(b)(iii).

"Availability Period" means, with respect to the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Credit Commitments pursuant to Section 2.06, and (c) the date of termination of the Revolving Credit Commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

"Bank of America" means Bank of America, N.A. and its successors.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its "prime rate," and (c) the Eurodollar Rate plus 1.00%. The "prime rate" is a rate set by Bank of America based upon various factors including Bank of America's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

"Base Rate Loan" means a Revolving Credit Loan or a Term Loan that bears interest based on the Base Rate.

"Borrowers" has the meaning specified in the introductory paragraph hereto.

"Borrower Materials" has the meaning specified in Section 6.09.

"Borrowing" means a Revolving Credit Borrowing, a Term Borrowing or a Swing Line Borrowing, as the context may require.

"Business Day" means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located and, if such day relates to any Eurodollar Rate Loan, means any such day that is also a London Banking Day.

"Cash Collateralize" means to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the Administrative Agent, L/C Issuer or Swing Line Lender (as applicable) and the Lenders, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to (a) the Administrative Agent and (b) the L/C Issuer or the Swing Line Lender (as applicable). "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"Cash on Hand Consideration" means the consideration for the Acquisition in the form of cash on hand of the Cayman Borrower in accordance with the Acquisition Agreement.

"Cayman Borrower" has the meaning specified in the introductory paragraph hereto.

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith, shall be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Closing Date" means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

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

"Commitment" means a Term Commitment or a Revolving Credit Commitment, as the context may require.

"Compliance Certificate" means a certificate substantially in the form of Exhibit D.

"Consolidated Debt for Borrowed Money" means, as at any date of determination for Holdings and its Subsidiaries on a consolidated basis, all items of Debt that, in accordance with GAAP, would be classified as indebtedness on a consolidated balance sheet of Holdings and its Subsidiaries. For the avoidance of doubt, notwithstanding the foregoing, Consolidated Debt for Borrowed Money does not include obligations under Hedge Agreements or any Debt, or direct or indirect guaranties of or security for Debt, of the type described in clause (f) of the definition of such term, except to the extent of any unreimbursed drawings thereunder.

"Consolidated EBITDA" means, for any period for Holdings and its Subsidiaries on a consolidated basis, net income (or net loss) for such period plus (a) the sum of the following, to the extent deducted in determining net income for such period, without duplication: (i) interest expense, (ii) income tax expense, (iii) depreciation expense, (iv) amortization expense, (v) extraordinary losses, (vi) other non-cash items reducing net income (other than any such non-cash item to the extent it represents an accrual of or reserve for cash expenditures in any future period or amortization of a prepaid cash charge that was paid in a prior period), and (vii) all merger, integration, restructuring and transaction costs payable by Holdings or any of its Subsidiaries in connection with the Transactions in an aggregate amount under this clause (vii) not to exceed $350,000,000, as such amount may be increased with the approval of the Administrative Agent and minus, (b) the sum of the following, to the extent added in determining consolidated net income for such period, without duplication: (i) any extraordinary gains, (ii) non-cash gains increasing net income (excluding any such non-cash gain to the extent it represents the reversal of an accrual or reserve for potential cash gain in any prior period), and (iii) interest income, in each case determined in accordance with GAAP. For purposes of determining compliance with the covenants set forth in Sections 7.09(a) and 7.09(b), Consolidated EBITDA for the fiscal quarters of Holdings ended closest to June 30, 2011, September 30, 2011 and December 31, 2011 will be deemed to be equal the amounts set forth for such fiscal quarters on Schedule 1.01(a), and Consolidated EBITDA for the period from the earlier of (A) the first day of the most recently ended fiscal quarter immediately preceding the Closing Date, if Consolidated EBITDA for such fiscal quarter is not set forth on Schedule 1.01(a), or (B) otherwise, the first day of the fiscal quarter during which the Closing Date occurs, through the Closing Date will be computed as if the Acquisition had been consummated on the first day of such period in a manner similar to the calculation of the amounts set forth on Schedule 1.01(a) for the periods provided therein, as determined in good faith by Holdings and reasonably acceptable to the Administrative Agent.

"Consolidated Interest Expense" means, for any period, the excess of (a) total interest expense (including that portion attributable to capital leases in accordance with GAAP and capitalized interest) of Holdings and its Subsidiaries for such period, on a consolidated basis with respect to all outstanding Consolidated Debt for Borrowed Money, including all commissions, discounts, and other fees and charges owed with respect to letters of credit over (b) the sum of the following, without duplication, to the extent included in such consolidated interest expense for such period: (i) any amount not payable in cash and (ii) income (net of costs) under Hedge Agreements in respect of interest rates. For purposes of determining compliance with the covenants set forth in Sections 7.09(a) and 7.09(b), Consolidated Interest Expense for the fiscal quarters of Holdings ended closest to June 30, 2011, September 30, 2011 and December 31, 2011 will be deemed to be equal the amounts set forth for such fiscal quarters on Schedule 1.01(b), and Consolidated Interest Expense for the period from the earlier of (A) the first day of the most recently ended fiscal quarter immediately preceding the Closing Date, if Consolidated Interest Expense for such fiscal quarter is not set forth on Schedule 1.01(b), or (B) otherwise, the first day of the fiscal quarter during which the Closing Date occurs, through the Closing Date will be computed as if the Acquisition had been consummated on the first day of such period in a manner similar to the calculation of the amounts set forth on Schedule 1.01(b) for the periods provided therein, as determined in good faith by Holdings and reasonably acceptable to the Administrative Agent.

"Consolidated Interest Coverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the period of the four prior fiscal quarters ending on such date to (b) Consolidated Interest Expense for such period.

"Consolidated Leverage Ratio" means, as of any date of determination, the ratio of (a) Consolidated Debt for Borrowed Money as of such date to (b) Consolidated EBITDA for the period of the four fiscal quarters most recently ended.

"Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Credit Extension" means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

"Debt" of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person for the deferred purchase price of property or services (excluding (i) trade payables incurred in the ordinary course of business of such Person that are (A) not overdue by more than 90 days or (B) contested in good faith by appropriate proceedings and as to which appropriate reserves are maintained by such Person and (ii) any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP), (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, (d) all obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases, (f) all obligations, contingent or otherwise, of such Person as an account party or applicant in respect of acceptances, letters of credit or similar extensions of credit, (g) all net obligations of such Person in respect of Hedge Agreements entered into with a particular counterparty with respect to Debt referred to in clauses (a) through (e) above or clause (i) below (determined as of any date as the amount such Person would be required to pay to its counterparty in accordance with the terms thereof as if terminated on such date of determination), (h) all Debt of others referred to in clauses (a) through (g) above or clause (i) below (collectively, "Guarantied Debt") guarantied directly or indirectly in any manner by such Person, or in effect guarantied directly or indirectly by such Person through an agreement (1) to pay or purchase such Guarantied Debt or to advance or supply funds for the payment or purchase of such Guarantied Debt, (2) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Guarantied Debt or to assure the holder of such Guarantied Debt against loss, (3) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (4) otherwise to assure a creditor against loss, and (i) all Debt referred to in clauses (a) through (h) above (including Guarantied Debt) secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, whether or not such Person has not assumed or become liable for the payment of such Debt.

For all purposes hereof (A) the amount of any Debt that is only recourse to specific assets of such Person shall be deemed to be equal to the lesser of (x) the principal amount of such Debt and (y) the fair market value of the assets of such Person to which such Debt has recourse, (B) the Debt of any Person shall include the Debt of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Debt is expressly made non-recourse to such Person, (C) the amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date, and (D) the amount of any capital lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

"Debtor Relief Laws" means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Default" means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

"Default Rate" means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate, if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided that with respect to a Eurodollar Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

"Defaulting Lender" means, subject to Section 2.16(b), any Lender that, as determined by the Administrative Agent, (a) has failed to perform any of its funding obligations hereunder, including in respect of its Loans or participations in respect of Letters of Credit or Swing Line Loans, within three Business Days of the date required to be funded by it hereunder, unless such obligation is the subject of a good faith dispute, (b) has notified Holdings, either Borrower or the Administrative Agent that it does not intend to comply with its funding obligations or has made a public statement to that effect with respect to its funding obligations hereunder or generally under other agreements in which it commits to extend credit, (c) has failed, within three Business Days after request by the Administrative Agent, to confirm to the Administrative Agent in a reasonably satisfactory manner that it will comply with its funding obligations (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt by the Administrative Agent of such written confirmation), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had a receiver, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or a custodian appointed for it, or (iii) taken any action in furtherance of, or indicated its consent to, approval of or acquiescence in any such proceeding or appointment; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority.

"Dollar" and "$" mean lawful money of the United States.

"Domestic Subsidiary" means any Subsidiary that is organized under the laws of any political subdivision of the United States (other than a Subsidiary that is owned directly or indirectly by a controlled foreign corporation as defined in Section 957(a) of the Internal Revenue Code).

"Eligible Assignee" means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)).

"Environmental Action" means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement arising pursuant to or based upon any Environmental Law, Environmental Permit or Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"Environmental Law" means any civil or criminal, federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, safety or natural resources, including, without limitation, those relating to the manufacturing, use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

"Environmental Permit" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrowers, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

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

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of a Borrower's controlled group, or under common control with a Borrower, within the meaning of Section 414 of the Internal Revenue Code.

"ERISA Event" means (a) (i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC, or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA (without regard to subsection (2) of such Section) are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Borrower or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by any Borrower or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for the imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; (g) the provision of security to a Plan pursuant to Section 302 of ERISA or Section 436 of the Code; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan.

"Eurodollar Rate" means:

(a) for any Interest Period with respect to a Eurodollar Rate Loan, the rate per annum equal to (i) the British Bankers Association LIBOR Rate ("BBA LIBOR"), as published by Reuters (or such other commercially available source providing quotations of BBA LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to (i) BBA LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank Eurodollar market at their request at the date and time of determination.

"Eurodollar Rate Loan" means a Revolving Credit Loan or a Term Loan that bears interest at a rate based on clause (a) of the definition of "Eurodollar Rate."

"Event of Default" has the meaning specified in Section 8.01.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) Taxes imposed on or measured by its overall net income (however denominated), and franchise Taxes imposed on it by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or by any other jurisdiction solely as a result of a present or former connection between such recipient and such jurisdiction (or political subdivision thereof) imposing such tax (other than a connection arising from such recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction contemplated by, or enforced this Agreement or any other Loan Document) or, in the case of any Lender, in which its applicable Lending Office is located, (b) any branch profits Taxes imposed by the United States or any similar Tax imposed by any other jurisdiction described in clause (a) above, (c) in the case of a Lender (other than an assignee pursuant to a request by such Borrower under Section 11.13), any United States or Cayman Islands withholding Tax that (i) is required to be deducted or withheld from amounts payable to such Lender pursuant to the Laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office) or (ii) is attributable to such Lender's failure or inability (other than as a result of a Change in Law) to comply with Section 3.01(e), except to the extent that such Lender (or its assignor, if any) was entitled, at the time of designation of a new Lending Office (or assignment), to receive additional amounts from such Borrower with respect to such withholding Tax pursuant to Section 3.01(a) or Section 3.01(c), (d) any United States backup withholding Taxes, and (e) any Taxes imposed under FATCA (or any amended version of FATCA that is substantively comparable and not materially more onerous to comply with).

"Existing Credit Agreement" means that certain Credit Agreement dated as of February 11, 2008 (as amended, restated, supplemented or otherwise modified through the Closing Date) by and among the US Borrower, certain lenders party thereto and JPMorgan Chase Bank, N.A., as administrative agent.

"FASB ASC" means the Accounting Standards Codification of the Financial Accounting Standards Board.

"Facility" means a Term Loan Facility or the Revolving Credit Facility, as the context may require.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement, and any current or future regulations or official interpretations thereof.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

"Fee Letter" means the letter agreement, dated March 7, 2011, among the Borrowers, Holdings, the Administrative Agent and the Arranger.

"Foreign Lender" means any Lender that is organized under the Laws of a jurisdiction other than that in which the applicable Borrower is resident for tax purposes (including such a Lender when acting in the capacity of the L/C Issuer). For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Foreign Pension Plan" means any plan, fund (including, without limitation, any superannuation fund) or other similar program established, contributed to or maintained outside the United States by a Borrower or any one or more of the Material Subsidiaries primarily for the benefit of employees of such Borrower or any Material Subsidiary residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination or severance of employment.

"FRB" means the Board of Governors of the Federal Reserve System of the United States.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

"Guaranteed Cash Management Agreement" means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

"Guaranteed Hedge Agreement" means any Hedge Agreement permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank.

"Guaranteed Parties" means, collectively, the Administrative Agent, the Lenders, the L/C Issuer, the Hedge Banks, the Cash Management Banks, and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05.

"Guarantors" means, collectively, the Subsidiary Guarantors, Holdings and, in its capacity as guarantor of the obligations of the Cayman Borrower under Article X hereof, the US Borrower.

"Guaranty" means, individually or collectively, each of (a) the Guaranty of Holdings and the US Borrower made in Article X of this Agreement and (b) the Subsidiary Guaranty.

"Hazardous Materials" means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"Hedge Agreements" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, commodities or precious metal leasing, commodity linked or precious metal future or option contracts or any other commodity linked hedging agreements, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Hedge Bank" means any Person that, at the time it enters into a Hedge Agreement permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Hedge Agreement.

"Hedge Termination Value" means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

"Holdings" has the meaning specified in the introductory paragraph hereto.

"Honor Date" has the meaning specified in Section 2.03(c)(i).

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning specified in Section 11.04(b).

"Information" has the meaning specified in Section 11.07.

"Interest Payment Date" means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date.

"Interest Period" means, as to each Eurodollar Rate Loan, the period commencing on the date such Eurodollar Rate Loan is disbursed or converted to or continued as a Eurodollar Rate Loan and ending on the date one, two, three or six months thereafter, as selected by a Borrower in its Loan Notice; provided that:

(i) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

"IRS" means the United States Internal Revenue Service.

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

"Issuer Documents" means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and a Borrower or in favor of the L/C Issuer and relating to such Letter of Credit.

"Judgment Currency" has the meaning specified in Section 11.17.

"Laws" means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

"L/C Advance" means, with respect to each Revolving Credit Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage.

"L/C Borrowing" means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

"L/C Credit Extension" means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

"L/C Issuer" means Bank of America in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

"L/C Obligations" means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

"Lender" has the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Swing Line Lender.

"Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrowers and the Administrative Agent.

"Letter of Credit" means any standby letter of credit issued hereunder.

"Letter of Credit Application" means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

"Letter of Credit Expiration Date" means the day that is seven days prior to the Maturity Date then in effect (or, if such day is not a Business Day, the next preceding Business Day).

"Letter of Credit Fee" has the meaning specified in Section 2.03(h).

"Letter of Credit Sublimit" means an amount equal to $50,000,000. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

"Lien" means any mortgage, pledge, hypothecation, encumbrance, lien (statutory or other), charge, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Loan" means an extension of credit by a Lender to a Borrower under Article II in the form of a Term Loan, a Revolving Credit Loan or a Swing Line Loan.

"Loan Documents" means this Agreement, each Note, each Issuer Document, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.15 of this Agreement, the Fee Letter, and the Subsidiary Guaranty.

"Loan Notice" means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, each pursuant to Section 2.02(a), which, if in writing, shall be substantially in the form of Exhibit A.

"Loan Parties" means, collectively, Holdings, the Borrowers and each Guarantor.

"London Banking Day" means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Material Adverse Effect" means a material adverse effect on (a) the business, financial condition or operations of Holdings and its Subsidiaries taken as a whole, (b) the rights and remedies of the Administrative Agent or any Lender under this Agreement or any Loan Document or (c) the ability of any Loan Party to perform its obligations under this Agreement or any other Loan Document to which it is a party.

"Material Domestic Subsidiary" means a Domestic Subsidiary that is also a Material Subsidiary.

"Material Subsidiary" means (a) each Borrower and (b) each other Subsidiary of Holdings that, when consolidated with its Subsidiaries, either (i) generated 5% or more of the consolidated revenues of Holdings and its Subsidiaries on a consolidated basis or (ii) owns 5% or more of the consolidated total assets of Holdings and its Subsidiaries on a consolidated basis, in each case as measured pursuant to the financial statements delivered for the most recently ended fiscal quarter or fiscal year pursuant to Section 6.09.

"Maturity Date" means March 8, 2017; provided that if any such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA (other than a Foreign Pension Plan), to which Holdings or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA (other than a Foreign Pension Plan), that (a) is maintained for employees of any Borrower or any ERISA Affiliate and at least one Person other than a Borrower and the ERISA Affiliates or (b) was so maintained and in respect of which any Borrower or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"Non-Extension Notice Date" has the meaning specified in Section 2.03(b)(iii).

"Note" means a Term Note or a Revolving Credit Note, as the context may require.

"Obligations" means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Guaranteed Cash Management Agreement or Guaranteed Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

"Organization Documents" means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement; (c) with respect to any exempted company incorporated under the laws of the Cayman Islands, the certificate of incorporation, any certificates of incorporation on change of name and the memorandum and articles of association; and (d) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"Other Taxes" means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document (including, without limitation, any Cayman Islands stamp duty tax).

"Outstanding Amount" means (i) with respect to Term Loans, Revolving Credit Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of the Term Loans, Revolving Credit Loans and Swing Line Loans, as the case may be, occurring on such date; and (ii) with respect to any L/C Obligations on any date, the amount of such L/C Obligations on such date; after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts.

"Participant" has the meaning specified in Section 11.06(d)(i).

"Participant Register" has the meaning specified in Section 11.06(d)(iii).

"Patriot Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"Permitted Liens" means such of the following: (a) Liens for taxes, assessments and governmental charges or levies to the extent not required to be paid under Section 6.02 hereof or statutory Liens for taxes not yet due and payable, including pledges or deposits to secure obligations thereunder; (b) Liens imposed by law, such as materialmen's, mechanics', carriers', warehousemen's, workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business securing obligations that are not overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings and, if not bonded, for which any reserves required by GAAP have been established; (c) pledges or deposits to secure obligations under workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations or to secure public or statutory obligations; (d) easements, rights of way and other encumbrances on title to real property that do not render title to the property encumbered thereby unmarketable or materially adversely affect the use of such property for its present purposes; (e) Liens to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business; (f) landlords' Liens under leases to which such Person is a party; (g) Liens consisting of leases, subleases, licenses or sublicenses (including with respect to intellectual property and software) granted to others and not interfering in any material respect with the business of Holdings and its Subsidiaries, taken as a whole, and any interest or title of a lessor, sublessor or licensor under any lease, sublease or license, as applicable; (h) Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; (i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(f) or securing appeal or other surety bonds related to such judgments; and (j) restrictions on funds held for payroll customers pursuant to obligations to such customers.

"Permitted Receivables Financing" means any transaction or series of transactions that may be entered into by Holdings or any Subsidiary pursuant to which it sells, conveys or contributes to capital or otherwise transfers (which sale, conveyance, contribution to capital or transfer may include or be supported by the grant of a security interest in) Receivables or interests therein and all collateral securing such Receivables, all contracts and contract rights, purchase orders, security interests, financing statements or other documentation in respect of such Receivables, any guarantees, indemnities, warranties or other obligations in respect of such Receivables, any other assets that are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving receivables similar to such Receivables and any collections or proceeds of any of the foregoing (collectively, the "Related Assets"), all of which such sales, conveyances, contributions to capital or transfers shall be made by the transferor for fair value as reasonably determined by Holdings (calculated in a manner typical for such transactions including a fair market discount from the face value of such Receivables) (a) to a trust, partnership, corporation or other Person (other than Holdings or any Subsidiary other than any Receivables Financing Subsidiary), which transfer is funded in whole or in part, directly or indirectly, by the incurrence or issuance by the transferee or any successor transferee of Indebtedness, fractional undivided interests or other securities that are to receive payments from, or that represent interests in, the cash flow derived from such Receivables and Related Assets or interests in such Receivables and Related Assets, or (b) directly to one or more investors or other purchasers (other than any Borrower or any Subsidiary), it being understood that a Permitted Receivables Financing may involve (i) one or more sequential transfers or pledges of the same Receivables and Related Assets, or interests therein (such as a sale, conveyance or other transfer to any Receivables Financing Subsidiary followed by a pledge of the transferred Receivables and Related Assets to secure Indebtedness incurred by the Receivables Financing Subsidiary), and all such transfers, pledges and Indebtedness incurrences shall be part of and constitute a single Permitted Receivables Financing, and (ii) periodic transfers or pledges of Receivables and/or revolving transactions in which new Receivables and Related Assets, or interests therein, are transferred or pledged upon collection of previously transferred or pledged Receivables and Related Assets, or interests therein, provided that any such transactions shall provide for recourse to such Subsidiary (other than any Receivables Financing Subsidiary) or any Borrower (as applicable) only in respect of the cash flows in respect of such Receivables and Related Assets and to the extent of breaches of representations and warranties relating to the Receivables, dilution of the Receivables, customary indemnities and other customary securitization undertakings in the jurisdiction relevant to such transactions.

The "amount" or "principal amount" of any Permitted Receivables Financing shall be deemed at any time to be (1) the aggregate principal or stated amount of the Debt, fractional undivided interests (which stated amount may be described as a "net investment" or similar term reflecting the amount invested in such undivided interest) or other securities incurred or issued pursuant to such Permitted Receivables Financing, in each case outstanding at such time, or (2) in the case of any Permitted Receivables Financing in respect of which no such Debt, fractional undivided interests or securities are incurred or issued, the cash purchase price paid by the buyer (other than any Receivables Financing Subsidiary) in connection with its purchase of Receivables less the amount of collections received by the Borrower or any Subsidiary in respect of such Receivables and paid to such buyer, excluding any amounts applied to purchase fees or discount or in the nature of interest.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Platform" has the meaning specified in Section 6.09.

"Pro Forma Basis" means, with respect to compliance with any test or covenant hereunder, compliance with such test or covenant after giving effect to (i) any acquisition other than the Acquisition, (ii) any incurrence or repayment of Debt or (iii) any Asset Sale (including (a) *pro forma* adjustments arising out of events which are directly attributable to any proposed acquisition, any incurrence or repayment of Debt or any Asset Sale, are factually supportable and are expected to have a continuing impact, in each case as determined on a basis consistent with Article 11 of Regulation S-X of the Securities Act of 1933, as amended, as interpreted by the staff of the Securities and Exchange Commission, (b) *pro forma* adjustments determined in good faith by Holdings or a Borrower that are consented to by the Administrative Agent (such consent not to be unreasonably withheld) arising out of operating and other expense reductions attributable to such transaction being given *pro forma* effect that (1) have been realized or (2) will be implemented following such transaction and are supportable and quantifiable and, in each case, including, but not limited to, (A) reduction in personnel expenses, (B) reduction of costs related to administrative functions, (C) reduction of costs related to leased or owned properties and (D) reductions from the consolidation of operations and streamlining of corporate overhead, and (c) such other adjustments as determined in good faith by Holdings or a Borrower that are consented to by the Administrative Agent (such consent not to be unreasonably withheld), in each case as certified by an officer of Holdings or a Borrower) using, for purposes of determining such compliance, the historical financial statements of all entities or assets so acquired and the consolidated financial statements of Holdings and its Subsidiaries and assuming that all acquisitions (other than the Acquisition) that have been consummated during the period, any Asset Sale and any Debt or other liabilities repaid in connection therewith had been consummated and incurred or repaid at the beginning of such period (and assuming that such Debt to be incurred bears interest during any portion of the applicable measurement period prior to the relevant acquisition at the interest rate which is or would be in effect with respect to such Debt as at the relevant date of determination).

"Public Lender" has the meaning specified in Section 6.09.

"Receivables" means accounts receivable (including all rights to payment created by or arising from the sale of goods, leases of goods or the rendition of services, no matter how evidenced (including in the form of a chattel paper)).

"Receivables Financing Subsidiary" means any wholly owned Subsidiary of Holdings formed solely for the purpose of, and that engages only in, one or more Permitted Receivables Financings.

"Refinancing" means the refinancing of certain existing Debt of Holdings and its Subsidiaries (including Debt under the Existing Credit Agreement).

"Register" has the meaning specified in Section 11.06(c).

"Related Assets" has the meaning specified in the definition of "Permitted Receivables Financing".

"Related Parties" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees and advisors of such Person and of such Person's Affiliates.

"Request for Credit Extension" means (a) with respect to a Borrowing, conversion or continuation of Term Loans or Revolving Credit Loans, a Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

"Required Lenders" means, as of any date of determination, Lenders having more than 50% of the sum of (a) the Total Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition) plus (b) unless the commitments of the Revolving Lenders to make Loans and of the L/C Issuer to make L/C Credit Extensions shall have been terminated at such time pursuant to Section 8.02, the unused Aggregate Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders.

"Required Revolving Credit Lenders" means, as of any date of determination, Revolving Credit Lenders having more than 50% of the sum of (a) the Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition) plus (b) the unused Aggregate Revolving Credit Commitments; provided that the unused Revolving Credit Commitment of, and the portion of the Total Revolving Credit Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Revolving Credit Lenders.

"Responsible Officer" means (a) the chief executive officer, president, chief financial officer, treasurer, assistant treasurer, director or controller or any vice president of a Loan Party, (b) solely in the case of a Loan Party that is a limited liability company, any manager thereof appointed pursuant to the Organization Documents of such Loan Party and (c) solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Junior Payment" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Holdings now or hereafter outstanding; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Holdings now or hereafter outstanding; and (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Holdings now or hereafter outstanding; provided, in each case, that in no event shall Restricted Junior Payment include (x) a dividend payable solely in shares of that class of stock to the holders of that class or (y) any payment made in respect of any convertible notes or other convertible securities which constituted Debt at the time of issuance thereof and were permitted to be issued or incurred pursuant to Section 7.04, to the extent such payment is made prior to or contemporaneously with the conversion thereof into Equity Interests including, without limitation, in connection with the purchase, redemption, retirement, defeasance, acquisition, cancellation, termination, exchange or conversion of any such securities.

"Revolving Credit Commitment" means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01, (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Revolving Credit Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Facility" means, at any time, the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time.

"Revolving Credit Lender" means, at any time, any Lender that has a Revolving Credit Commitment at such time.

"Revolving Credit Loan" has the meaning specified in Section 2.01(c).

"Revolving Credit Note" means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit C-1.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

"Seller" means Hitachi, Ltd., a company incorporated under the laws of Japan.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA (other than a Foreign Pension Plan), that (a) is maintained for employees of any Borrower or any ERISA Affiliate and no Person other than the Borrowers and the ERISA Affiliates or (b) was so maintained and in respect of which such Borrower or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including, without limitation, contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Specified Acquisition Agreement Representations" means such of the representations made by the Target and/or the Seller with respect to the Target and/or its Subsidiaries in the Acquisition Agreement as are material to the interests of the Lenders.

"Specified Representations" means, collectively, (a) the representations and warranties set forth in Sections 5.01, 5.02(i), 5.02(ii), 5.04, 5.07 and 5.10(b)(ii) of this Agreement and (b) that the proceeds of the initial Credit Extension will be used in a manner consistent with Section 6.10.

"Stock Consideration" means the consideration for the Acquisition in the form of common equity of Holdings, which will be purchased from Holdings by the Cayman Borrower for cash in accordance with the Acquisition Agreement.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of Holdings.

"Subsidiary Guarantors" means each Subsidiary of Holdings that is a party to the Subsidiary Guaranty, whether on the Closing Date or as a result of compliance with Section 6.11; provided, however, that any Subsidiary that is not a Material Domestic Subsidiary shall not be required to be a Subsidiary Guarantor; provided, further, in the event that any Subsidiary Guarantor ceases to be a Material Domestic Subsidiary in or as a result of a transaction permitted hereby, upon the request of the Borrowers, such Subsidiary shall cease to be a Subsidiary Guarantor and the Administrative Agent may release such Person from the Subsidiary Guaranty pursuant to Section 9.10.

"Subsidiary Guaranty" means that certain Guaranty Agreement dated as of the date hereof entered into by the Subsidiary Guarantors in favor of the Administrative Agent and the Lenders substantially in the form of Exhibit F, along with any counterpart, joinder or supplement thereto delivered pursuant to Section 6.11.

"Swing Line Borrowing" means a borrowing of a Swing Line Loan pursuant to Section 2.04.

"Swing Line Lender" means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

"Swing Line Loan" has the meaning specified in Section 2.04(a).

"Swing Line Loan Notice" means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which, if in writing, shall be substantially in the form of Exhibit B.

"Swing Line Sublimit" means an amount equal to the lesser of (a) $20,000,000 and (b) the Aggregate Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

"Synthetic Lease Obligation" means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

"Target" means Viviti Technologies Ltd., a company organized under the laws of the Republic of Singapore.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"Term A-1 Borrowing" means a borrowing consisting of simultaneous Term A-1 Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term A-1 Lenders pursuant to Section 2.01(a).

"Term A-1 Commitment" means, as to each Term A-1 Lender, its obligation to make its Term A-1 Loan to the Cayman Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term A-1 Lender's name on Schedule 2.01 under the caption "Term A-1 Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Term A-1 Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate principal amount of the Term A-1 Commitments of all of the Term A-1 Lenders as in effect on the Closing Date is $2,300,000,000.

"Term A-1 Facility" means, at any time (a) on or prior to the Closing Date, the aggregate amount of the Term A-1 Commitments at such time and (b) thereafter, the aggregate principal amount of the Term A-1 Loans of all Term A-1 Lenders outstanding at such time

"Term A-1 Lender" means (a) at any time on or prior to the Closing Date, any Lender that has a Term A-1 Commitment and (b) at any time after the Closing Date any Lender that holds Term A-1 Loans at such time.

"Term A-1 Loan" means an advance made by any Term A-1 Lender under the Term A-1 Facility.

"Term A-1 Note" means a promissory note made by the Cayman Borrower in favor of a Term A-1 Lender evidencing the Term A-1 Loans made by such Term A-1 Lender, substantially in the form of Exhibit C-2.

"Term A-2 Borrowing" means a borrowing consisting of simultaneous Term A-2 Loans of the same Type and, in the case of Eurodollar Rate Loans, having the same Interest Period made by each of the Term A-2 Lenders pursuant to Section 2.01(b).

"Term A-2 Commitment" means, as to each Term A-2 Lender, its obligation to make its Term A-2 Loan to the US Borrower pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term A-2 Lender's name on Schedule 2.01 under the caption "Term A-2 Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such Term A-2 Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The aggregate principal amount of the Term A-2 Commitments of all of the Term A-2 Lenders as in effect on the Closing Date is $0.

"Term A-2 Facility" means, at any time (a) on or prior to the Closing Date, the aggregate amount of the Term A-2 Commitments at such time and (b) thereafter, the aggregate principal amount of the Term A-2 Loans of all Term A-2 Lenders outstanding at such time.

"Term A-2 Lender" means (a) at any time on or prior to the Closing Date, any Lender that has a Term A-2 Commitment and (b) at any time after the Closing Date any Lender that holds Term A-2 Loans at such time.

"Term A-2 Loan" means an advance made by any Term A-2 Lender under the Term A-2 Facility.

"Term A-2 Note" means a promissory note made by the US Borrower in favor of a Term A-2 Lender evidencing the Term A-2 Loans made by such Term A-2 Lender, substantially in the form of Exhibit C-2.

"Term Borrowing" means a Term A-1 Borrowing or a Term A-2 Borrowing, as the context may require.

"Term Commitment" means a Term A-1 Commitment or a Term A-2 Commitment, as the context may require.

"Term Lender" means a Term A-1 Lender or a Term A-2 Lender, as the context may require.

"Term Loan" means a Term A-1 Loan or a Term A-2 Loan, as the context may require.

"Term Loan Facility" means the Term A-1 Loan Facility or a Term A-2 Loan Facility, as the context may require.

"Term Note" means a Term A-1 Note or a Term A-2 Note, as the context may require.

"Total Outstandings" means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

"Total Revolving Credit Outstandings" means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and all L/C Obligations.

"Transactions" means, individually or collectively, the Acquisition (including the payment of all amounts, including the Stock Consideration and the Cash on Hand Consideration), the Refinancing, the entering into and funding of the Facilities and all related transactions.

"Type" means, with respect to a Loan, its character as a Base Rate Loan or a Eurodollar Rate Loan.

"United States" and "U.S." mean the United States of America.

"Unreimbursed Amount" has the meaning specified in Section 2.03(c)(i).

"US Borrower" has the meaning specified in the introductory paragraph hereto.

"Voting Stock" means, with respect to any Person, the Equity Interests of such Person the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

1.02 Other Interpretive Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "hereto," "herein," "hereof" and "hereunder," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms. (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the Audited Financial Statements, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Debt of Holdings and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrowers or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

1.04 Rounding. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

1.06 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 The Loans.

(a) The Term A-1 Loans. Subject to the terms and conditions set forth herein, each Term A-1 Lender severally agrees to make a single loan to the Cayman Borrower in Dollars on the Closing Date in an amount not to exceed such Lender's Term A-1 Commitment. The Term A-1 Borrowing shall consist of Term A-1 Loans made simultaneously by the Term A-1 Lenders in accordance with their respective Term A-1 Commitments. Amounts borrowed under this Section 2.01(a) and repaid or prepaid may not be reborrowed. Term A-1 Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. In no event shall the US Borrower be obligated or otherwise liable for any Term A-1 Loans except in its capacity as a Guarantor.

(b) The Term A-2 Loans. Subject to the terms and conditions set forth herein, each Term A-2 Lender severally agrees to make a single loan to the US Borrower in Dollars on the Closing Date in an amount not to exceed such Lender's Term A-2 Commitment. The Term A-2 Borrowing shall consist of Term A-2 Loans made simultaneously by the Term A-2 Lenders in accordance with their respective Term A-2 Commitments. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Term A-2 Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein. In no event shall the Cayman Borrower be obligated or otherwise liable for any Term A-2 Loans.

(c) The Revolving Credit Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a "Revolving Credit Loan") to the applicable Borrower requesting a Revolving Credit Loan in accordance herewith from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Revolving Credit Lender's Commitment; provided that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Aggregate Revolving Credit Commitments, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment. Within the limits of each Lender's Revolving Credit Commitment, and subject to the other terms and conditions hereof, each Borrower may borrow under this Section 2.01, prepay under Section 2.05, and reborrow under this Section 2.01(c). Revolving Credit Loans may be Base Rate Loans or Eurodollar Rate Loans, as further provided herein.

(d) Notwithstanding anything to the contrary in Sections 2.01(a), (b) and (c), the initial Credit Extensions on the Closing Date shall be Base Rate Loans except to the extent that the applicable Borrower, at least three Business Days prior to the Closing Date, shall have entered into an indemnity agreement covering the matters in Section 3.05, in form and substance reasonably satisfactory to the Administrative Agent, and provided a Loan Notice to the Administrative Agent.

(e) Notwithstanding anything herein or in any other Loan Document to the contrary, in no event will the Cayman Borrower be obligated or otherwise liable for any Term A-2 Loans, Revolving Loans or other Obligations of any nature of the US Borrower or any other Loan Party's guaranty of any such Obligations of the US Borrower or under any other Loan Document.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurodollar Rate Loans shall be made upon the applicable Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 1:00 p.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the applicable Borrower pursuant to this Section 2.02(a) must be confirmed promptly by delivery to the Administrative Agent of a written Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower. Each Borrowing of, conversion to or continuation of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Loan Notice (whether telephonic or written) shall specify (i) whether such Borrower is requesting a Borrowing, a conversion of Term Loans or Revolving Credit Loans from one Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) to the extent applicable, the principal amount of Revolving Credit Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Term Loans or Revolving Credit Loans are to be converted or continued, and (v) if applicable, the duration of the Interest Period with respect thereto. If a Borrower fails to specify a Type of Loan in a Loan Notice or if a Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Rate Loans. If a Borrower requests a Borrowing of, conversion to, or continuation of Eurodollar Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurodollar Rate Loan.

(b) Following receipt of a Loan Notice, the Administrative Agent shall promptly notify each Lender in writing under the applicable Facility of the amount of its Applicable Percentage of the applicable Term Loans or Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the applicable Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Term Borrowing or a Revolving Credit Borrowing, each applicable Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 3:00 p.m. on the Business Day specified in the applicable Loan Notice. Each Lender may, at its option, make any Loan available to the Cayman Borrower by causing any foreign or domestic branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Cayman Borrower to repay such Loan in accordance with the terms of this Agreement. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by such Borrower; provided that if, on the date the Loan Notice with respect to such Borrowing is given by such Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to such Borrower as provided above.

(c) Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of an Event of Default, no Loans may be requested as, converted to or continued as Eurodollar Rate Loans if the Administrative Agent has, or the Required Lenders in respect of such Facility have, determined in its or their sole discretion not to permit such request, conversion or continuation.

(d) The Administrative Agent shall promptly notify the Borrowers and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrowers and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than (i) ten Interest Periods in effect with respect to Revolving Credit Loan, (ii) ten Interest Periods in effect with respect to Term A-1 Loans or (iii) ten Interest Periods in effect with respect to Term A-2 Loans.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit for the account of any Borrower or its Subsidiaries, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of any Borrower or its Subsidiaries and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Revolving Credit Outstandings shall not exceed the Aggregate Revolving Credit Commitments, (y) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, each Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly any Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. In no event shall the US Borrower be obligated or otherwise liable for any Letter of Credit issued for the account of the Cayman Borrower except in its capacity as a Guarantor. In no event shall the Cayman Borrower be obligated or otherwise liable for any Letter Credit issued for the account of the US Borrower.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to Section 2.03(b)(iii), the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Credit Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date.

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than $100,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, reasonably satisfactory to the L/C Issuer (in its sole discretion) with the Borrowers or such Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion; or

(F) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) The L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of a Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of such Borrower. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 1:00 p.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day) and the Borrower for whose account the Letter of Credit will be issued; (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may reasonably require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail reasonably satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower requesting such Letter of Credit or amendment shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from such Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of such Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) (A) If any Borrower so requests in any applicable Letter of Credit Application, the L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an "Auto-Extension Letter of Credit"); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, such Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Revolving Credit Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the applicable Borrower that one or more of the applicable conditions specified in Section 4.02 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall notify the applicable Borrower and the Administrative Agent thereof. Not later than 2:00 p.m. on the date of any payment by the L/C Issuer under a Letter of Credit, if such Borrower has been so notified at or before 1:00 p.m. on such date, otherwise not later than 2:00 p.m. on the next Business Day (each such date, an "Honor Date"), the applicable Borrower that requested such Letter of Credit shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing. If such Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (the "Unreimbursed Amount"), and the amount of such Lender's Applicable Percentage thereof. In such event, the applicable Borrower that requested such Letter of Credit shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer at the Administrative Agent's Office in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 3:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the applicable Borrower that requested such Letter of Credit in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the applicable Borrower that requested such Letter of Credit shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the L/C Issuer.

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, the Borrowers or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by a Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the L/C Issuer in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower obligated with respect to such Unreimbursed Amount or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the applicable Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit requested by such Borrower and to repay each L/C Borrowing relating thereto shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that such Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrowers or any Subsidiary.

The applicable Borrower requesting any Letter of Credit shall promptly examine a copy of each Letter of Credit requested by such Borrower and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with such Borrower's instructions or other irregularity, such Borrower will immediately notify the L/C Issuer. The applicable Borrower requesting such Letter of Credit shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Credit Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the Borrowers' pursuing such rights and remedies as they may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (v) of Section 2.03(e); provided that anything in such clauses to the contrary notwithstanding, a Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to such Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by such Borrower which such Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason.

(g) Applicability of ISP. Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower requesting a Letter of Credit when a Letter of Credit is issued, the rules of the ISP shall apply to each Letter of Credit.

(h) Letter of Credit Fees. The Borrower requesting a Letter of Credit shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit requested by such Borrower equal to the Applicable Rate times the daily amount available to be drawn under such Letter of Credit; provided that any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral reasonably satisfactory to the L/C Issuer pursuant to this Section 2.03 shall be payable, to the maximum extent permitted by applicable Law, to the other Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.16(a)(iv), with the balance of such fee, if any, payable to the L/C Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(i) Fronting Fee and Processing Charges Payable to L/C Issuer. The applicable Borrower shall pay directly to the L/C Issuer for its own account a fronting fee with respect to each Letter of Credit requested by such Borrower, at the rate per annum specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.06. In addition, the applicable Borrower shall pay directly to the L/C Issuer for its own account the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect with respect to the Letter of Credit requested by such Borrower. Such customary fees and standard costs and charges are due and payable promptly on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the applicable Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit at such Borrower's request for the account of its Subsidiaries inures to the benefit of such Borrower, and that such Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, may in its sole discretion make loans (each such loan, a "Swing Line Loan") to any Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Revolving Credit Commitment; provided that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Aggregate Revolving Credit Commitments, and (ii) the aggregate Outstanding Amount of the Revolving Credit Loans of any Revolving Credit Lender, plus such Lender's Applicable Percentage of the Outstanding Amount of all L/C Obligations, plus such Lender's Applicable Percentage of the Outstanding Amount of all Swing Line Loans shall not exceed such Lender's Revolving Credit Commitment, and provided, further, that no Borrower shall use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, each Borrower may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan. In no event will the US Borrower be obligated or otherwise liable for any Swing Line Loan of the Cayman Borrower except in its capacity as a Guarantor. In no event will the Cayman Borrower be obligated or otherwise liable for any Swing Line Loans of the US Borrower.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon a Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 2:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $500,000 and integral multiples of $100,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of such Borrower. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 3:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 4:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the applicable Borrower at its office by crediting the account of such Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the applicable Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan that is a Revolving Credit Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the applicable Borrower with a copy of the applicable Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the applicable Borrower to repay Swing Line Loans borrowed by such Borrower, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Revolving Credit Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the applicable Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. Each Borrower shall make all payments of principal and interest in respect of the Swing Line Loans borrowed by such Borrower directly to the Swing Line Lender.

2.05 Prepayments.

(a) The Borrowers may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Administrative Agent not later than 1:00 p.m. (A) three Business Days prior to any date of prepayment of Eurodollar Rate Loans and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurodollar Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurodollar Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each applicable Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment (in respect of the relevant Facility). If such notice is given by a Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurodollar Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of Term Loans pursuant to this Section 2.05(a) shall be applied to the principal repayment installments thereof as directed by the applicable Borrower and, if not otherwise directed by the applicable Borrower, in forward order of maturity. Subject to Section 2.16, each such prepayment shall be paid to the applicable Lenders in accordance with their respective Applicable Percentages of the relevant Facility.

(b) Each Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans of such Borrower in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000 or, in each case, if less, the entire principal amount then outstanding. Each such notice shall specify the date and amount of such prepayment. If such notice is given by a Borrower, such Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(c) If for any reason the Total Revolving Credit Outstandings at any time exceed the Aggregate Revolving Credit Commitments then in effect, each Borrower shall promptly prepay its Revolving Credit Loans and/or Swing Line Loans, and/or Cash Collateralize the L/C Obligations, in an aggregate collective amount taking in to account all such payments, equal to such excess; provided that no Borrower shall be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(c) unless after the prepayment in full of the Revolving Credit Loans and the Swing Line Loans, the Total Revolving Credit Outstandings exceed the Aggregate Revolving Credit Commitments then in effect.

2.06 Termination or Reduction of Commitments.

(a) Optional. The Borrowers may, upon notice to the Administrative Agent, terminate the Aggregate Revolving Credit Commitments, or from time to time permanently reduce the Aggregate Revolving Credit Commitments; provided that (i) any such notice shall be received by the Administrative Agent not later than 1:00 p.m. three Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of $1,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce the Aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Aggregate Revolving Credit Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Credit Commitments, such Sublimit shall be automatically reduced by the amount of such excess. The Administrative Agent will promptly notify the Revolving Credit Lenders of any such notice of termination or reduction of the Aggregate Revolving Credit Commitments. Any reduction of the Aggregate Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Credit Commitments shall be paid on the effective date of such termination.

(b) Mandatory. The aggregate Term A-1 Commitments shall be automatically and permanently reduced to zero on the date of the Term A-1 Borrowing. The aggregate Term A-2 Commitments shall be automatically and permanently reduced to zero on the date of the Term A-2 Borrowing.

2.07 Repayment of Loans.

(a) The Borrowers shall repay to the Revolving Credit Lenders on the Maturity Date the aggregate principal amount of Revolving Credit Loans outstanding on such date.

(b) The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) the date ten Business Days after such Loan is made and (ii) the Maturity Date.

(c) Term A-1 Loan Facility. The Cayman Borrower shall repay to the Term A-1 Loan Lenders an amount equal to $57,500,000 on the last Business Day of each March, June, September and December, beginning on the first such date to occur after the Closing Date, which amount for any such payment date shall be adjusted to reflect prepayments made pursuant to Section 2.05 and any increase in the principal amount of the Term A-1 Loan Facility pursuant to Section 2.14. In addition, the aggregate outstanding principal amount of the Term A-1 Loans shall be paid in full on the Maturity Date.

(d) Term A-2 Loan Facility. The US Borrower shall repay to the Term A-2 Loan Lenders an amount equal to $0 on the last Business Day of each March, June, September and December, beginning on the first such date to occur after the Closing Date, which amount for any such payment date shall be adjusted to reflect prepayments made pursuant to Section 2.05 and any increase in the principal amount of the Term A-2 Loan Facility pursuant to Section 2.14. In addition, the aggregate outstanding principal amount of the Term A-2 Loans shall be paid in full on the Maturity Date.

2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurodollar Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurodollar Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate or such other rate per annum as shall be agreed to from time to time by the Swing Line Lender and the applicable Borrower.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by the Borrowers under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Percentage, a commitment fee equal to the Applicable Rate times the actual daily amount by which the Aggregate Revolving Credit Commitments exceed the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees. The Borrowers shall pay to (i) the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter and (ii) the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate. (a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of Holdings or for any other reason, the Borrowers, Holdings or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by Holdings as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, each Borrower shall be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to such Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid by such Borrower for such period over the amount of interest and fees actually paid by such Borrower for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(i) or 2.08(b) or under Article VIII. Each Borrower's obligations under this paragraph shall survive the termination of the Aggregate Revolving Credit Commitments and the repayment of all other Obligations hereunder.

2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, a Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans to such Borrower in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans to such Borrower and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a), each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans of each Borrower. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by any Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by any Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 4:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 4:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Revolving Credit Borrowing of Eurodollar Rate Loans (or, in the case of any Revolving Credit Borrowing of Base Rate Loans, prior to 2:00 p.m. on the date of such Revolving Credit Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Revolving Credit Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Revolving Credit Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Revolving Credit Lender has not in fact made its share of the applicable Revolving Credit Borrowing available to the Administrative Agent, then the applicable Revolving Credit Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to such Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans. If such Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Revolving Credit Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Revolving Credit Loan included in such Revolving Credit Borrowing. Any payment by a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the applicable Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that the applicable Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of the Administrative Agent to any Lender or the applicable Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the applicable Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the applicable Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrowers pursuant to and in accordance with the express terms of this Agreement (including (A) the application of funds arising from the existence of a Defaulting Lender and (B) any prepayments made pursuant to Section 3.01, 3.04 or 3.05), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to any Borrower or any Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Increase in Commitments.

(a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders), the applicable Borrower or Borrowers may, from time to time after the Closing Date, request an increase in the principal amount of either or both of the Term Loan Facilities or of the Aggregate Revolving Credit Commitments by an amount (for all such requests) not exceeding $500,000,000; provided that any such request for an increase shall be in a minimum amount of $100,000,000. At the time of sending such notice, the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Lenders).

(b) Lender Elections to Increase. Each Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its principal amount of the applicable Term Loans or its Revolving Credit Commitment, as applicable, and, if so, the amount of such requested increase it is willing to provide. Any Lender not responding within such time period shall be deemed to have declined to increase its principal amount of the applicable Term Loans or its Revolving Credit Commitment, as applicable.

(c) Notification by Administrative Agent; Additional Lenders. The Administrative Agent shall notify the Borrowers and each Lender of the Lenders' responses to each request made hereunder. To achieve the full amount of a requested increase and subject to the approval of the Administrative Agent and, if such increase is to the Aggregate Revolving Credit Commitments, the L/C Issuer and the Swing Line Lender (none of which such approvals shall be unreasonably withheld or delayed), the Borrowers may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the principal amount of either Term Loan Facility or the Aggregate Revolving Credit Commitments are increased in accordance with this Section, the Administrative Agent and the Borrowers shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrowers and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Borrowers shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrowers, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) as of such earlier date, and except that for purposes of this Section 2.14, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (b) and (a), respectively, of Section 6.09, and (B) no Default exists. Each applicable Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the principal of either Term Loan Facility or the Aggregate Revolving Credit Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

2.15 Cash Collateral.

(a) Certain Credit Support Events. Upon the request of the Administrative Agent or the L/C Issuer (i) if the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, or (ii) if, as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, the Borrower for whose account such Letter of Credit is issued shall, in each case, promptly Cash Collateralize the then Outstanding Amount of all such L/C Obligations or, in the case of any such L/C Borrowing, repay such L/C Borrowing. At any time that there shall exist a Defaulting Lender, promptly upon the request of the Administrative Agent, the L/C Issuer or the Swing Line Lender, the applicable Borrower shall deliver to the Administrative Agent Cash Collateral in an amount sufficient to cover all Fronting Exposure allocated to such Borrower (after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. Each Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lender), and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations of the applicable Borrower to which such Cash Collateral may be applied pursuant to Section 2.15(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent as herein provided, or that the total amount of such Cash Collateral allocable to such Borrower is less than the applicable Fronting Exposure allocable to such Borrower and other obligations secured thereby, such Borrower or the relevant Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.16 or 8.02 by any Borrower in respect of Letters of Credit or Swing Line Loans of such Borrower shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the Administrative Agent's good faith determination that there exists excess Cash Collateral; provided that (x) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default or Event of Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person (including the applicable Borrower) providing Cash Collateral and the L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(i) Waivers and Amendments. That Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in Section 11.01.

(ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of that Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise, and including any amounts made available to the Administrative Agent by that Defaulting Lender pursuant to Section 11.08), shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by that Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third*, if so determined by the Administrative Agent or requested by the L/C Issuer or Swing Line Lender, to be held as Cash Collateral for future funding obligations of that Defaulting Lender of any participation in any Swing Line Loan or Letter of Credit; *fourth*, as the Borrowers may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrowers, to be held in a non-interest bearing deposit account and released in order to satisfy obligations of that Defaulting Lender to fund Loans under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or Swing Line Lender against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to a Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against that Defaulting Lender as a result of that Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to that Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans or L/C Borrowings were made at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Borrowings owed to, all non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Borrowings owed to, that Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by that Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. That Defaulting Lender (x) shall not be entitled to receive any commitment fee pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender) and (y) shall be limited in its right to receive Letter of Credit Fees as provided in Section 2.03(h).

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. During any period in which there is a Defaulting Lender, for purposes of computing the amount of the obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit or Swing Line Loans pursuant to Sections 2.03 and 2.04, the "Applicable Percentage" of each non-Defaulting Lender shall be computed without giving effect to the Revolving Credit Commitment of that Defaulting Lender; provided that (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender (or any subsequent date on which the applicable Lender is a Defaulting Lender), no Default or Event of Default exists; and (ii) the aggregate obligation of each non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit and Swing Line Loans shall not exceed the positive difference, if any, of (1) the Revolving Credit Commitment of that non-Defaulting Lender minus (2) the aggregate Outstanding Amount of the Revolving Credit Loans of that Lender.

(b) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon that Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes. Any and all payments by or on account of any obligation of a Loan Party hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes; provided that if any applicable Law requires the deduction or withholding of any Tax from any payment hereunder or under any Loan Document, then (A) the Loan Party shall withhold or make such deductions as are determined by the Loan Party to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Loan Party shall timely pay the full amount withheld or deducted to the relevant Governmental Authority, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by such Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including withholding and deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or L/C Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by Borrowers. Without limiting, and without duplication for payments made pursuant to, the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Laws.

(c) Tax Indemnifications. (i) Without limiting, and without duplication for payments made pursuant to, the provisions of subsection (a) or (b) above, each Borrower shall, and does hereby, indemnify the Administrative Agent, each Lender and the L/C Issuer, and shall make payment in respect thereof within 30 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted on payments to, or paid by, the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the nature and amount of any such payment or liability delivered to the Loan Parties by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error.

(ii) Each Lender and L/C Issuer shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for any Taxes (but, with respect to Indemnified Taxes, only to the extent that the Loan Parties have not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so) attributable to such Lender or L/C Issuer that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the nature and amount of such payment or liability delivered to any Lender or any L/C Issuer by the Administrative Agent shall be conclusive absent manifest error. Each Lender and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

(d) Evidence of Payments. Upon request by the Borrowers or the Administrative Agent, as the case may be, after any payment of Taxes by a Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation. (i) Each Lender shall deliver to the Borrowers and to the Administrative Agent, when reasonably requested by a Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the Taxing authorities of any jurisdiction and such other reasonably requested information as will permit such Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of Tax withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of payments to be made to such Lender by such Borrower pursuant to this Agreement or otherwise to establish such Lender's status for withholding Tax purposes in the applicable jurisdiction. Notwithstanding anything to the contrary in the preceding sentence, (A) the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)) shall not be required if in the Lender's good faith judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender and (B) the completion, execution and submission of the documentation set forth in Section 3.01(e)(ii)(C) shall not be required if in the Lenders' good faith judgment such completion, execution or submission would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to such Borrower and the Administrative Agent executed originals of Internal Revenue Service Form W-9 and such other documentation or information prescribed by applicable Laws or reasonably requested by such Borrower or the Administrative Agent as will enable such Borrower or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of United States withholding tax with respect to payments hereunder or under any other Loan Document shall deliver to such Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of such Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(I) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(II) executed originals of Internal Revenue Service Form W-8ECI,

(III) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,

(IV) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a "bank" within the meaning of section 881(c)(3)(A) of the Code, (B) a "10 percent shareholder" of such Borrower within the meaning of section 881(c)(3)(B) of the Code, or (C) a "controlled foreign corporation" described in section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or

(V) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States Federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit such Borrower or the Administrative Agent to determine the withholding or deduction required to be made.

(C) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the applicable Borrower or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the applicable Borrower or the Administrative Agent as may be necessary for the applicable Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender shall promptly notify the Borrowers and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If the Administrative Agent, any Lender or the L/C Issuer determines, in its sole good faith discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by the Administrative Agent, such Lender or the L/C Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that such Borrower, upon the request of the Administrative Agent, such Lender or the L/C Issuer, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the L/C Issuer in the event the Administrative Agent, such Lender or the L/C Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the L/C Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrowers or any other Person.

3.02 Illegality. If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Rate, or to determine or charge interest rates based upon the Eurodollar Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrowers through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurodollar Rate Loans or to convert Base Rate Loans to Eurodollar Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurodollar Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrowers that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurodollar Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurodollar Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Rate Loan or a conversion to or continuation thereof that (a) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or in connection with an existing or proposed Base Rate Loan, or (c) the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrowers and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrowers may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans or, failing that, will be deemed to have converted such request into a request for a Revolving Credit Borrowing of Base Rate Loans in the amount specified therein.

3.04 Increased Costs; Reserves on Eurodollar Rate Loans.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

(ii) subject the Administrative Agent, any Lender or the L/C Issuer to any Taxes (other than Indemnified Taxes and Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by the Administrative Agent, such Lender or the L/C Issuer) on its Loans, loan principal, Letters of Credit, participations, Commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurodollar Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Eurodollar Rate (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender or the L/C Issuer within the time provided by subsection (c) below, the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrowers shall be conclusive absent manifest error. Each Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as owed by such Borrower on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that no Borrower shall be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the applicable Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Reserves on Eurodollar Rate Loans. Each Borrower shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurodollar Rate Loan for which such Borrower is liable equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided such Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest shall be due and payable 10 days from receipt of such notice.

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrowers; or

(c) any assignment of a Eurodollar Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrowers pursuant to Section 11.13;

including any loss of anticipated profits and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained. The Borrowers shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by a Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurodollar Rate Loan made by it at the Eurodollar Rate for such Loan by a matching deposit or other borrowing in the London interbank eurodollar market for a comparable amount and for a comparable period, whether or not such Eurodollar Rate Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or any Borrower is required to pay any additional amount to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. Each Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 11.13.

3.07 Survival. All of the Borrowers' obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date):

(i) executed counterparts of this Agreement and the Subsidiary Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrowers;

(ii) a Note executed by the applicable Borrower in favor of each Lender requesting a Note with respect to the applicable Facility;

(iii) such certificates of resolutions, written resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require and as are customary evidencing the identity, legal authority and legal capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require and as are customary to evidence that each Loan Party is duly incorporated, organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of (A) O'Melveny & Myers LLP, counsel to the Loan Parties and (B) Conyers Dill & Pearman, counsel to the Cayman Borrower, in each case, addressed to the Administrative Agent and each Lender, in substantially the form of Exhibits G-1 and G-2 annexed hereto concerning the Loan Parties and the Loan Documents (which opinions shall expressly permit, in a customary manner, reliance by successors and permitted assigns of the Administrative Agent and the Lenders);

(vi) evidence of receipt of all material governmental, shareholder and third party consents (including Hart-Scott-Rodino clearance) and approvals necessary in connection with the Transactions and expiration of all applicable waiting periods without any adverse action being taken by any competent authority; except, in any such case, that would not prevent or impose any material adverse conditions on Holdings, the Borrowers, the Target or their respective Subsidiaries taken as a whole or the consummation of the Transactions;

(vii) a *pro forma* consolidated balance sheet as of the end of the most recently ended fiscal year and fiscal quarter ended at least 45 days before the Closing Date and related statements of income and cash flows of Holdings and its Subsidiaries after giving effect to all elements of the Transactions to be effected on or before the Closing Date for the most recently ended fiscal year and fiscal quarter ended at least 45 days before the Closing Date, together with a certificate signed by the chief financial officer of Holdings to the effect that such statements accurately present in all material respects the pro forma financial position of Holdings and its Subsidiaries in accordance with GAAP (and in any event after giving effect to the Transactions);

(viii) a certificate signed by the chief financial officer of Holdings, certifying that:

(A) the Specified Representations are true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) as of the date of the initial Credit Extensions (except to the extent such representations and warranties relate to an earlier date, as of such earlier date);

(B) the Specified Acquisition Agreement Representations are true and correct, pursuant to the standards set forth in the Acquisition Agreement, except to the extent neither Holdings, the Cayman Borrower nor any of their Affiliates has the right to terminate the Acquisition Agreement as a result of the inaccuracy of any such Specified Acquisition Agreement Representation (determined without regard to whether any notice is required to be delivered by Holdings, the Cayman Borrower or either of their Affiliates);

(C) certifying that Holdings and its Subsidiaries on a consolidated basis (after giving effect to the Transactions and the incurrence and repayment of Debt related thereto) are Solvent; and

(D) that after giving *pro forma* effect to the Transactions, the Consolidated Leverage Ratio is not greater than 1.50 to 1.00, together with supporting calculations therefor;

(ix) all documentation and other information required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act, that has been reasonably requested by any Lender not less than five business days prior to the Closing Date;

(x) payment of all accrued reasonable fees and expenses of the Arranger, the Administrative Agent (including the reasonable fees and expenses of one lead counsel (and any reasonably necessary local counsel) for the Administrative Agent and the Arranger) to the extent a reasonably detailed invoice has been delivered to the Borrowers at least two business days prior to the scheduled Closing Date (except as otherwise reasonably agreed by the Borrowers); and

(xi) the audited consolidated balance sheets and related consolidated statements of income and cash flows of the Target and its Subsidiaries for the fiscal years ended December 31, 2008, 2009, 2010 and, if available, 2011, and, to the extent available, the unaudited consolidated balance sheets and related consolidated statements of income and cash flows of the Target and its subsidiaries for each fiscal quarter ended after December 31, 2010 but not less than 45 days prior to the Closing Date.

(b) The Acquisition shall have been, or substantially concurrently with the initial Credit Extensions shall be, consummated pursuant to the Acquisition Agreement, without giving effect to any amendments thereto or any consents or waivers that, in any such case, are materially adverse to the Lenders in their capacities as Lenders (it being understood that any modification or amendment to the definition of "Material Adverse Effect" or equivalent term in the Acquisition Agreement shall be deemed to be materially adverse to the Lenders in their capacities as Lenders), without the consent of the Arranger, such consent not to be unreasonably withheld or delayed.

(c) There shall not have occurred any circumstance, development, event, condition, effect or change (a) since July 2, 2010 that, individually or in the aggregate, has had an Acquisition Agreement Material Adverse Effect on Holdings or the Cayman Borrower or (b) since December 31, 2010 that, individually or in the aggregate, has had or could reasonably be expected to have an Acquisition Agreement Material Adverse Effect on the Target.

(d) Prior to or substantially concurrently with the Closing Date, the Refinancing, including the payment in full of all principal, interest, fees, expenses and other amounts outstanding under or in connection with the Existing Credit Agreement, shall have been consummated and all such obligations and indebtedness shall be terminated and any liens securing any such obligations shall have been terminated.

(e) Any fees required to be paid on or before the Closing Date pursuant to any Loan Document shall have been paid or be paid on the Closing Date.

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received written notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than with respect to (a) the initial Credit Extension on the Closing Date and (b) a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers and each other Loan Party contained in Article V or any other Loan Document shall be true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) as of such earlier date, and except that for purposes of this Section 4.02, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (b) and (a), respectively, of Section 6.09.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Rate Loans) submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES

Each of Holdings and the Borrowers represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence. Each Loan Party is duly incorporated, organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization.

5.02 Execution, Delivery and Performance. The execution, delivery and performance by each Loan Party of each Loan Document to be delivered by it, and the consummation of the transactions contemplated hereby and by each other Loan Document, are within such Loan Party's corporate or other organizational powers, have been duly authorized by all necessary corporate or other organizational action, and do not contravene (i) the terms of any of such Person's Organization Documents, (ii) applicable law or (iii) any other contractual restriction binding on or affecting any Loan Party or its Material Subsidiaries, other than violations described under clause (ii) or (iii) that could not reasonably be expected to result in a Material Adverse Effect or result in the imposition of any Lien on any asset of any Loan Party or any of its Material Subsidiaries other than Liens permitted hereunder.

5.03 Governmental Authorization; Other Consents. No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for the due execution, delivery and performance by any Loan Party of this Agreement or any other Loan Document, except for any actions, notices or filings that have been completed or are immaterial.

5.04 Binding Effect. This Agreement has been, and each of other Loan Documents, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement is, and each other Loan Document when delivered will be, the legal, valid and binding obligation of such Loan Party enforceable against each Loan Party that is a party thereto in accordance with their respective terms subject to (i) bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors and (ii) general principles of equity, regardless of whether applied in proceedings in equity or at law.

5.05 Financial Statements.

(a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein.

(b) The unaudited consolidated balance sheet of Holdings and its Subsidiaries dated as of December 30, 2011, and the related consolidated statements of income and cash flows of Holdings and its Subsidiaries for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present, in all material respects, the financial condition of Holdings and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.

5.06 Litigation. There is no pending or threatened action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, at law or in equity, affecting Holdings or any of its Material Subsidiaries before any court, governmental agency or arbitrator that (i) would have a Material Adverse Effect or (ii) could reasonably be expected to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby or thereby.

5.07 Margin Regulations; Investment Company Act.

(a) Neither Borrower is engaged in the business of purchasing or carrying, or extending credit for the purpose of purchasing or carrying, margin stock (within the meaning of Regulation U issued by the FRB). Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than 25% of the value of the assets of Holdings and its Subsidiaries on a consolidated basis will be margin stock (within the meaning of Regulation U of the FRB).

(b) Neither Holdings nor any of its Material Subsidiaries is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.08 Disclosure. No information, exhibit or report furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation and syndication of this Agreement or pursuant to the terms of this Agreement or any other Loan Document, taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made therein not misleading in light of the circumstances under which such statements were made; provided that with respect to any projected financial information, each of Holdings and the Borrowers represents only that such information was prepared in good faith based on assumptions believed to be reasonable at the time made, it being recognized by the Administrative Agent, L/C Issuer and the Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered thereby may differ from the projected results.

5.09 Solvency. Holdings and its Subsidiaries are Solvent on a consolidated basis.

5.10 Compliance with Laws.

(a) Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties (including all Environmental Laws), except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (ii) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(b) Without limiting clause (a) above, to the extent applicable, Holdings and each Borrower is in compliance, in all material respects, with the (i) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (ii) the Patriot Act. No part of the proceeds of any Credit Extension will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE VI.
AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (other than any contingent indemnification or similar contingent obligation not yet due and payable), Holdings shall:

6.01 Compliance with Laws. Comply, and cause each of its Material Subsidiaries to comply with all applicable Laws and all orders, writs, injunctions and decrees applicable to it or its business or property, such compliance to include, without limitation, compliance with ERISA, Laws governing Foreign Pension Plans, Environmental Laws and the Patriot Act, except, in each case, to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.02 Payment of Taxes, Etc. Pay and discharge, and cause each of its Material Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all material taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property except for Liens, otherwise permitted hereby, except, in each case, to the extent the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided, however, that, in any event, neither Holdings nor any of its Material Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves under GAAP are being maintained.

6.03 Maintenance of Insurance. Maintain, and cause each of its Material Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which Holdings or such Material Subsidiary operates; provided, however, that Holdings and its Material Subsidiaries may self-insure to the same extent as other companies engaged in similar businesses and owning similar properties in the same general areas in which Holdings or such Material Subsidiary operates and to the extent consistent with prudent business practice.

6.04 Preservation of Corporate Existence, Etc. Preserve and maintain, and cause each of its Material Subsidiaries to preserve and maintain, its legal existence, rights (charter and statutory) and franchises; provided, however, that either Borrower and its Subsidiaries may consummate any merger, consolidation, conveyance, transfer, lease or other disposition (including the disposition of Equity Interests of one or more Subsidiaries) in each case to the extent permitted under Section 7.02, and provided further that none of Holdings, any Borrower or any of its Material Subsidiaries shall be required to preserve any right or franchise, or the corporate existence of any Subsidiary, if the board of directors of Holdings, such Borrower or such Material Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of Holdings, such Borrower or such Material Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to Holdings, such Borrower, such Material Subsidiary or the Lenders.

6.05 Visitation Rights. At any reasonable time and from time to time upon reasonable prior notice, permit the Administrative Agent or any of the Lenders that request through the Administrative Agent or any reasonable number of agents or representatives thereof, in each case, at their own expense and organized through the Administrative Agent, to visit Holdings' or any Borrower's executive corporate offices in Irvine, California (or any successor executive corporate office) to examine and make copies of and abstracts from the records and books of account of, and if reasonably necessary to assess Holdings and the Borrowers' compliance with the material provisions of this Agreement, to visit the other properties of Holdings and any of its Material Subsidiaries, and to discuss the affairs, finances and accounts of Holdings and any of its Material Subsidiaries with any of their officers or directors and with their independent certified public accountants; provided that unless an Event of Default has occurred and is then continuing, the Administrative Agent and the Lenders shall make no more than one such visit organized through the Administrative Agent per calendar year.

6.06 Keeping of Books. Keep, and cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of Holdings and each such Subsidiary in accordance with, and to the extent required by, GAAP in effect from time to time (or local accounting requirements) and applicable laws.

6.07 Maintenance of Properties. Maintain and preserve, and cause each of its Material Subsidiaries to maintain and preserve, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, except to the extent that failure to comply with the foregoing could not reasonably be expected to have a Material Adverse Effect.

6.08 Transactions with Affiliates. Conduct, and cause each of its Material Subsidiaries to conduct, all material transactions otherwise permitted under this Agreement with any of their Affiliates on terms that are fair and reasonable and no less favorable to Holdings or such Material Subsidiary than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate, other than (a) transactions between Holdings and its Subsidiaries, or between two or more Subsidiaries, (b) loans or advances to officers, directors and employees in the ordinary course of business (including for travel, entertainment, relocation and similar expenses), (c) compensation, employment, termination, and other employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, executive officers or employees of Holdings or any Subsidiary, each in the ordinary course of business or as approved by the applicable board of directors or other governing body or the compensation committee thereof; (d) transactions incurred in the ordinary course of business with Persons that have directors who are also directors or executive officers of Holdings; (e)(i) any issuances of securities or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment agreements, stock options and stock ownership plans approved by Holdings' board of directors and (ii) any repurchases of any issuances, awards or grants issued pursuant to clause (i), in each case, to the extent permitted by Section 7.07; (f) employment arrangements entered into in the ordinary course of business between Holdings or any Subsidiary and any employee thereof; (g) any Restricted Junior Payment permitted by Section 7.07; and (h) the consummation of the Acquisition.

6.09 Financial Statements, Certificates and Other Information. Deliver to the Administrative Agent (for delivery to each Lender), in form and detail reasonably satisfactory to the Administrative Agent:

(a) as soon as available and in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Holdings, the consolidated balance sheet of Holdings and its Subsidiaries as of the end of such fiscal quarter and the related consolidated statements of income and cash flows of Holdings and its Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified (subject to year-end audit adjustments) by the chief financial officer of Holdings as having been prepared in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes) and a Compliance Certificate (signed by the chief executive officer, chief financial officer, treasurer or controller of Holdings) in reasonable detail as to compliance during and at the end of the applicable accounting periods with the restrictions contained in Section 7.09, and in the event of any change in GAAP used in the preparation of such financial statements, Section 1.03(b) shall apply.

(b) as soon as available and in any event within 90 days after the end of each fiscal year of Holdings, a copy of the annual audit report for such year for Holdings and its Subsidiaries, containing the consolidated balance sheet of Holdings and its Subsidiaries as of the end of such fiscal year and consolidated statements of income and cash flows of Holdings and its Subsidiaries for such fiscal year, in each case accompanied by an opinion by KPMG LLP or other independent public accountants of recognized national standing (that does not include any "going concern" or similar qualification, or any qualification as to the scope of their audit) and a Compliance Certificate (signed by the chief executive officer, chief financial officer, treasurer or controller of Holdings) in reasonable detail as to compliance during and at the end of the applicable accounting periods with the restrictions contained in Section 7.09, and in the event of any change in GAAP used in the preparation of such financial statements, Section 1.03(b) shall apply;

(c) as soon as possible and in any event within five days upon any Responsible Officer of Holdings obtaining actual knowledge of the occurrence of any Default continuing on the date of such statement, a statement of the chief financial officer of Holdings setting forth details of such Default and the action that Holdings and the Borrowers have taken and proposes to take with respect thereto;

(d) promptly after the sending or filing thereof, copies of all reports Holdings sends to its securityholders generally, and copies of all reports on Form 10-K, 10-Q or 8-K (other than pursuant to Rule 14a-12 of the Securities Exchange Act of 1934, as amended) and registration statements for the public offering (other than pursuant to employee Plans) of securities of Holdings that Holdings or any Subsidiary files with the SEC or any national securities exchange;

(e) promptly after the commencement thereof, notice of all actions and proceedings before any court, Governmental Authority or arbitrator affecting Holdings or any of its Material Subsidiaries of the type described in clause (i) or (ii) of Section 5.06; and

(f) promptly after the occurrence thereof, of any material change in accounting policies or financial reporting practices by Holdings or any Subsidiary; and

(g) promptly after any written request therefor, such other information with respect to Holdings or any of its Material Subsidiaries as any Lender, through the Administrative Agent, may from time to time reasonably request.

As to any information contained in materials furnished pursuant to Section 6.09(d), Holdings shall not be separately required to furnish such information under clause (a) or (b) above, but the foregoing shall not be in derogation of the obligation of Holdings to furnish the information and materials described in clauses (a) and (b) above at the times specified therein.

Documents required to be delivered pursuant to Section 6.09(a), (b) and (d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents, or provides a link thereto on Holdings' website on the Internet at the website address www.wdc.com or another website address provided by Holdings in a written notice to the Administrative Agent; (ii) on which such documents are posted on a publicly available website maintained by or on behalf of the SEC for access to documents filed in the EDGAR database (the "EDGAR Website"), or (iii) on which such documents are posted on behalf of Holdings on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) Holdings shall deliver paper copies of such documents to the Administrative Agent, for delivery by the Administrative Agent to any Lender that requests Holdings to deliver such paper copies, until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender (through the Administrative Agent) and (ii) except with respect to documents posted on the EDGAR Website, Holdings shall notify the Administrative Agent (by telecopier or electronic mail) of the posting of any such documents and, if requested by the Administrative Agent, provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents.

The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by any Loan Party with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it (through the Administrative Agent) or maintaining its copies of such documents.

Holdings and each Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of Holdings or a Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to Holdings or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Holdings and each Borrower hereby agree that (w) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," Holdings and the Borrowers shall be deemed to have authorized the Administrative Agent, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to Holdings, any Borrower or any of their securities for purposes of United States Federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information." Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials "PUBLIC."

6.10 Use of Proceeds. Use the proceeds of the Credit Extensions to pay a portion of the consideration for the Acquisition and for general corporate purposes not in contravention of any Law or of any Loan Document.

6.11 Additional Guarantors. Notify the Administrative Agent at the time that any Person that is not at such time a Guarantor is or becomes a Material Domestic Subsidiary, and promptly thereafter (and in any event within 60 days or such longer period acceptable to the Administrative Agent), cause such Material Domestic Subsidiary to (a) become a Guarantor by executing and delivering to the Administrative Agent a counterpart of the Subsidiary Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose and (b) deliver to the Administrative Agent documents of the types referred to in clauses (iii) and (iv) of Section 4.01(a) and, if requested by the Administrative Agent, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)), in form and substance reasonably satisfactory to the Administrative Agent.

ARTICLE VII.
NEGATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding (other than any contingent indemnification or similar contingent obligation not yet due and payable), Holdings shall not, directly or indirectly:

7.01 Liens. Create or suffer to exist, or permit any of its Material Subsidiaries (measured both before and after giving effect to any transaction in which a Lien is created or suffered to exist) to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Material Subsidiaries to assign, any right to receive income, other than:

(a) Permitted Liens;

(b) Liens securing Debt permitted pursuant to Section 7.04(e); provided that (x) such Liens attach at all times only to the assets so financed except for accessions to the property that is affixed or incorporated into the property covered by such Lien or financed with the proceeds of such Debt and the proceeds and the products thereof and (y) individual financings or leases of equipment provided by one lender or lessor may be cross collateralized to other financings of equipment provided by such lender or lessor;

(c) Liens existing on the Closing Date and described on Schedule 7.01 hereto;

(d) Liens on property of a Person existing at the time such Person is merged into or consolidated with Holdings or any Material Subsidiary of Holdings or becomes a Material Subsidiary of Holdings (with "Material Subsidiary" being determined measured after giving effect to such transaction); provided that such Liens were not created in contemplation of such merger, consolidation or acquisition and do not extend to any assets other than those of the Person so merged into or consolidated with Holdings or such Material Subsidiary or acquired by Holdings or such Material Subsidiary;

(e) Liens on cash collateral or government securities to secure obligations under Hedge Agreements, letters of credit and bank guaranties, provided that the aggregate value of any collateral so pledged does not exceed $100,000,000 in the aggregate at any time;

(f) Liens on precious metals or commodities to secure obligations under Hedge Agreements;

(g) assignments of the right to receive income effected as a part of the sale of a business unit or for collection purposes;

(h) Liens that are contractual rights of set-off (A) relating to the establishment of depository relations with banks and other financial institutions not given in connection with the issuance of Debt (other than as described in clause (i) of the definition thereof), (B) relating to pooled deposit, sweep accounts, reserve accounts or similar accounts of Holdings or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of Holdings and its Subsidiaries, (C) relating to purchase orders and other agreements entered into with customers, suppliers or service providers of Holdings or any of its Subsidiaries in the ordinary course of business or (D) relating to the credit cards and credit accounts of Holdings or any of its Subsidiaries in the ordinary course of business;

(i) Liens encumbering customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

(j) the replacement, extension or renewal of any Lien permitted by clause (c) or (d) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Debt secured thereby;

(k) Liens arising under any Permitted Receivables Financing permitted under Section 7.04(w).

(l) Liens in favor of any Loan Party or any Material Subsidiary, provided that the aggregate principal amount of Debt secured by all such Liens granted by the Loan Parties in favor of one or more Material Subsidiaries that are not Loan Parties shall not exceed $25,000,000 at any time outstanding;

(m) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(n) Liens solely on any cash earnest money deposits made by Holdings or any Material Subsidiary in connection with any letter of intent or purchase agreement in respect of any investment by Holdings or such Material Subsidiary;

(o) the prior rights of consignees and their lenders under consignment arrangements entered into in the ordinary course of business;

(p) Liens arising from precautionary Uniform Commercial Code financing statements or consignments entered into in connection with any transaction otherwise permitted under this Agreement;

(q) Liens granted by a Material Subsidiary on Equity Interests in any joint venture of such Material Subsidiary securing obligations of such joint venture;

(r) Liens securing insurance premiums financing arrangements, provided, that such Liens are limited to the applicable unearned insurance premiums; and

(s) other Liens securing Debt in an aggregate principal amount not to exceed the amount specified in Section 7.04(y) at any time outstanding.

7.02 Mergers, Etc. Merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired), to, any Person, or permit any of its Material Subsidiaries to do so, except that (i) any Material Subsidiary of Holdings (other than a Borrower) may merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of assets to, any other Subsidiary of Holdings, so long as, if any party to such transaction is a Material Domestic Subsidiary, the transferee or surviving corporation is a Material Domestic Subsidiary, (ii) any Material Subsidiary of Holdings (other than a Borrower) may merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of assets to, Holdings, (iii) any Material Subsidiary of Holdings (other than a Borrower) may merge or consolidate with or into, or convey, transfer, lease or otherwise dispose of all or substantially all of its assets (including Equity Interests in one or more of its Subsidiaries) to, any other Person so long as Holdings delivers to the Administrative Agent a certificate demonstrating compliance on a Pro Forma Basis with Section 7.09 after giving effect to such transaction, (iv) any Material Subsidiary of Holdings (other than a Borrower) may merge or consolidate with or into any other Person so long as such Material Subsidiary is the surviving corporation and (v) any Borrower may merge or consolidate with or into any other Person so long as such Borrower is the surviving corporation; provided, in the case of clauses (iii), (iv) or (v) above, that no Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom. Without limiting the generality of Section 6.11, if any Person shall, after giving effect to any transaction permitted by this Section 7.02, be or become a Material Domestic Subsidiary, it shall comply with the provisions of Section 6.11, and such Person shall constitute a Material Subsidiary with respect to the incurrence of Debt or Liens in connection with, or simultaneously with, such transaction.

7.03 Accounting Changes. Make or permit, or permit any of its Subsidiaries to make or permit, any change in accounting policies or reporting practices, except as required or permitted by GAAP.

7.04 Indebtedness. Create or suffer to exist, or permit any Material Subsidiary (measured both before and after giving effect to any transaction in which such Debt is created or suffered to exist) to create or suffer to exist, any Debt other than:

(a) Debt under the Loan Documents;

(b) Debt owed to Holdings or to a wholly owned (other than directors' qualifying shares) Subsidiary of Holdings;

(c) Debt existing on the Closing Date and described on Schedule 7.04 hereto (the "Existing Debt"), and any Debt extending the maturity of, or refunding or refinancing, in whole or in part, the Existing Debt, provided that the principal amount of such Existing Debt shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing, and the direct and contingent obligors therefor and ranking in right of payment of such Existing Debt shall not be improved for the benefit of the holders thereof, as a result of or in connection with such extension, refunding or refinancing (other than by increasing such amount by fees and expenses in connection with any refinancing);

(d) Debt of a Person existing at the time such Person is merged into or consolidated with any Material Subsidiary of a Borrower or becomes a Material Subsidiary of a Borrower (the "Assumed Debt") and any Debt extending the maturity of, or refunding or refinancing, in whole or in part, the Assumed Debt; provided that (A) such Debt was not created in contemplation of such merger, consolidation or acquisition and (B) the principal amount of such Assumed Debt shall not be increased above the principal amount thereof outstanding immediately prior to such extension, refunding or refinancing, and the direct and contingent obligors therefor shall not be changed (other than as expressly permitted hereunder), as a result of or in connection with such extension, refunding or refinancing (other than by increasing such amount by fees and expenses in connection with any refinancing);

(e) purchase money obligations or other similar obligations (including obligations in respect of mortgage, industrial revenue bond, industrial development bond, and similar financings) (x) in respect of capital leases or (y) incurred to finance the acquisition, construction or improvement of any fixed or capital assets, in each case, together with any modifications, extensions, renewals, refundings, replacements and extensions of any such Debt that do not increase the outstanding principal amount thereof;

(f) endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(g) Debt incurred by Holdings or any of its Subsidiaries arising from guaranties, letters of credit or bank guaranties, warehouse receipts or similar instruments in the ordinary course of business;

(h) Debt incurred by Holdings or any of its Subsidiaries in respect of surety, performance, statutory or appeal bonds or similar obligations (including those issued in respect of workers' compensation, unemployment insurance and other types of social security) in the ordinary course of business;

(i) Debt in respect of netting services, overdraft protections and otherwise in connection with deposit accounts;

(j) Debt existing or arising under any Hedge Agreement entered into in the ordinary course of business and not for speculative purposes;

(k) guaranties in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of Holdings and its Subsidiaries;

(l) guaranties by Holdings of Debt of any Subsidiary or guaranties by a Material Subsidiary of Holdings of Debt of Holdings or any Subsidiary with respect, in each case, to Debt otherwise permitted to be incurred pursuant to this Section 7.04;

(m) guaranties by Holdings or any of its Material Subsidiaries of the obligations under Hedge Agreements entered into in the ordinary course of business;

(n) customary indemnification and purchase price adjustment obligations incurred in connection with sales of assets and acquisitions;

(o) contingent obligations consisting of take or pay obligations contained in supply agreements, in each case incurred in the ordinary course of business;

(p) Debt representing deferred compensation to employees;

(q) Debt consisting of promissory notes issued to future, present or former directors, officers, members of management, employees or consultants of Holdings or any of its Subsidiaries or their respective estates, heirs, family members, spouses or former spouses to finance the purchase or redemption of Equity Interests of Holdings or any of its direct or indirect parent companies;

(r) Debt consisting of the financing of insurance premiums;

(s) Debt permitted under Section 7.05;

(t) Debt in respect of the credit cards and credit accounts of Holdings or any of its Subsidiaries in the ordinary course of business;

(u) warranty or indemnification obligations of Holdings or any of its Subsidiaries incurred in the ordinary course of business;

(v) obligations of Holdings or any of its Subsidiaries incurred in connection with rebate programs;

(w) Permitted Receivables Financing not to exceed $400,000,000 at any time outstanding;

(x) other unsecured Debt of any Loan Party; and

(y) other Debt in an amount not to exceed 5% of consolidated total assets of Holdings and its Subsidiaries at any time outstanding (determined as of the date such Debt was incurred).

7.05 Speculative Transactions. Engage, or permit any of its Material Subsidiaries to engage, in any transaction involving commodity options or futures contracts or Hedge Agreements except in the ordinary course of business and not for speculative purposes.

7.06 Change in Nature of Business. Make, or permit any of its Material Subsidiaries to make, any material change in the nature of the business carried on by Holdings and its Subsidiaries considered as a whole at the date hereof (after giving effect to the Acquisition) or that are reasonably related, incidental, ancillary or complementary thereto.

7.07 Restricted Junior Payments. Directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, or permit any of its Material Subsidiaries through any manner or means or through any other Person to directly or indirectly declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment except:

(a) Restricted Junior Payments made when the Consolidated Leverage Ratio, both before and after giving effect to such Restricted Junior Payment and any Debt incurred in connection therewith, is less than 2.0 to 1.0;

(b) Holdings may make Restricted Junior Payments to, purchase or redeem Equity Interests of Holdings (including related stock appreciation rights or similar securities) (A) held by then present or former directors, consultants, officers or employees of Holdings or any of its Subsidiaries or by any employee compensation and incentive arrangements upon such person's death, disability, retirement or termination of employment or under the terms of any such employee compensation and incentive arrangements or any other agreement under which such shares of stock or related rights were issued or (B) held by present or former officers, directors or employees of Holdings or any of its Subsidiaries at any time in order to provide liquidity to such officers in the ordinary course of business; provided that the aggregate amount of such purchases or redemptions under this clause (b) shall not exceed $100,000,000 per fiscal year (plus, the amount of net proceeds received by Holdings or its Subsidiaries during such fiscal year from (x) sales of Equity Interests of Holdings to directors, officers or employees of Holdings or any of its Subsidiaries in connection with employee compensation and incentive arrangements and (y) third-party insurers under key-man life insurance policies that were not already applied under this clause (b)) which, if not used in any year, may be carried forward to any subsequent fiscal year;

(c) repurchases of common stock of Holdings in open market transactions, pursuant to the existing stock repurchase program approved by the governing body of Holdings and in effect on April 15, 2011 in an aggregate amount not to exceed $416,000,000;

(d) noncash repurchases of Equity Interests deemed to occur upon exercise of stock options if such Equity Interests represent a portion of the exercise price of, and any required tax withholdings in respect of, such options;

(e) purchase, redeem or otherwise acquire Equity Interests issued by it with the proceeds received from the substantially concurrent issue of new shares of its common stock or other common Equity Interests; and

(f) other Restricted Junior Payments made, in an aggregate amount not to exceed $100,000,000;

provided, that, notwithstanding anything to the contrary foregoing, Holdings may pay dividends that were permitted under any provision of Section 7.07(a) through (f) above at the time of declaration thereof if, at the time of such declaration, no Default shall have occurred and then be continuing.

7.08 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in any manner that would violate Regulation T, U or X. If requested by the Administrative Agent or any Lender, the Borrowers will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirement of FR—Form G-3 or FR—Form U-1, as applicable, referred to in Regulation U.

7.09 Financial Covenants.

(a) Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio as of the last day of any fiscal quarter of Holdings, commencing with the last day of the fiscal quarter in which the Closing Date occurs, calculated on a Pro Forma Basis, to be greater than 2.5 to 1.0.

(b) Consolidated Interest Coverage Ratio. Permit the Consolidated Interest Coverage Ratio as of the last day of any fiscal quarter of Holdings, commencing with the last day of the fiscal quarter in which the Closing Date occurs, calculated on a Pro Forma Basis, to be less than 3.0 to 1.0.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. If any of the following events (each, an "Event of Default") shall occur and be continuing:

(a) Non-Payment. Any Borrower or any other Loan Party shall fail to pay (i) any principal of any Loan or L/C Obligation when the same becomes due and payable; or (ii) any interest on any Loan or any L/C Obligation, any fees or any other amounts payable under this Agreement or any other Loan Document within five days after the same becomes due and payable; or

(b) Representations and Warranties. Any representation or warranty made by any Loan Party herein or in any other Loan Document or by any Loan Party in connection with this Agreement or any other Loan Document shall prove to have been incorrect in any material respect (or, with respect to representations and warranties modified by materiality standards, in all respects) when made; or

(c) Specific Covenants. (i) Holdings or any Borrower shall fail to perform or observe any term, covenant or agreement contained in Section 6.04 (only with respect to the legal existence of Holdings and the Borrowers), 6.08 or 6.09(c) or in Article VII, or (ii) any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in this Agreement or any other Loan Document on its part to be performed or observed if such failure shall remain unremedied for 30 days after written notice thereof shall have been given to Holdings by the Administrative Agent or any Lender; or

(d) Cross-Default. (i) Holdings, any Borrower or any of their respective Material Subsidiaries shall fail to pay any principal of or premium or interest on any Debt that is outstanding in a principal or notional amount of at least $125,000,000 in the aggregate (but excluding Debt outstanding hereunder and Debt under Hedge Agreements) of Holdings, such Borrower or such Material Subsidiary (as the case may be), when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to cause, or to permit the holder or holders of that Debt (or a trustee on behalf of such holder or holders) to cause, that Debt to become or be declared due and payable (or redeemable) prior to the stated maturity thereof; or (ii) there occurs under any Hedge Agreement an Early Termination Date (as defined in such Hedge Agreement) resulting from (A) any event of default under such Hedge Agreement as to which Holdings, any Borrower or any Material Subsidiary is the Defaulting Party (as defined in such Hedge Agreement) or (B) any Termination Event (as so defined) under such Hedge Agreement as to which Holdings, any Borrower or any Material Subsidiary is an Affected Party (as so defined) and, in either event, the Hedge Termination Value owed by Holdings, such Borrower or such Material Subsidiary as a result thereof is greater than $125,000,000; or

(e) Inability to Pay Debts; Attachment. Holdings, any Borrower or any of their respective Material Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Holdings, any Borrower or any of their respective Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian, liquidator or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed, unbonded or unstayed for a period of 60 days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian, liquidator or other similar official for, it or for any substantial part of its property) shall occur; or Holdings, any Borrower or any of their respective Material Subsidiaries shall take any corporate action (including, without limitation, passing any resolutions or convening any meetings for the purposes of passing any such resolutions) to authorize any of the actions set forth above in this subsection (e); or

(f) Judgments. Judgments or orders for the payment of money in excess of $125,000,000 in the aggregate shall be rendered against Holdings, any Borrower and/or any of their respective Material Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect unless such judgment or order has been discharged or otherwise satisfied; provided, however, that any such judgment or order shall not be an Event of Default under this Section 8.01(f) if and for so long as (i) the amount of such judgment or order is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (ii) such insurer, which shall be rated at least “A” by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment or order; or

(g) Change of Control. (i) Any Person or two or more Persons acting in concert shall have acquired beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Securities Exchange Act of 1934), directly or indirectly, of Voting Stock of Holdings or any Borrower (or other securities convertible into such Voting Stock) representing 35% or more of the combined voting power of all Voting Stock of Holdings; or (ii) during any period of up to 24 consecutive months, commencing after the Closing Date, a majority of the members of the board of directors of Holdings cease to be composed of individuals (x) who were members of that board on the first day of such period, (y) whose election or nomination to that board was approved by individuals referred to in clause (x) above constituting at the time of such election or nomination at least a majority of that board or (z) whose election or nomination to that board was approved by individuals referred to in clauses (x) and (y) above constituting at the time of such election or nomination at least a majority of that board (excluding, in the case of both clause (x) and clause (y), any individual whose initial nomination for, or assumption of office as, a member of that board occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); or (iii) Holdings ceases to own 100% of the Equity Interests (other than directors’ qualifying shares) of either Borrower, directly or indirectly; or

(h) ERISA. Any one or more of the following shall have occurred and be continuing with respect to Holdings or any of its ERISA Affiliates and, in each case, such event or condition, together with all other such events or condition, if any, would result in a Material Adverse Effect: (i) the occurrence of any ERISA Event; (ii) the failure to make a contribution or contributions to one or more Foreign Pension Plans as required by Law applicable to such Foreign Pension Plan or Foreign Pension Plans; (iii) the partial or complete withdrawal of Holdings or any of its ERISA Affiliates from a Multiemployer Plan; (iv) the reorganization or termination of a Multiemployer Plan or (v) the termination of any Foreign Pension Plan which could result in increased liability to Holdings or any ERISA Affiliate; or

(i) Invalidity of Loan Documents. At any time after the execution and delivery thereof, (i) either the Subsidiary Guaranty or the Guaranty of Holdings or the US Borrower contained in Article X of this Agreement for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement ceases to be in full force and effect (other than by reason of the satisfaction in full of the Obligations in accordance with the terms hereof) or shall be declared null and void, or (iii) the Borrowers or any Guarantor shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future Credit Extensions by Lenders, under any Loan Document to which it is a party.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans of each Borrower, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable by such Borrower, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by Holdings and the Borrowers;

(c) require that each Borrower Cash Collateralize the L/C Obligations for which it is liable (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to Holdings or any Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to (a) payment of (i) that portion of the Obligations constituting unpaid principal of the Loans and L/C Borrowings and (ii) Obligations then owing under Guaranteed Hedge Agreements and Guaranteed Cash Management Agreements, in each case ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks and (b) the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations composed of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers pursuant to Sections 2.03 and 2.15, in proportion to the respective amounts described in this clause Fourth held by each applicable Person; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fourth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX.
ADMINISTRATIVE AGENT

9.01 Appointment and Authority. Each of the Lenders and the L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither Holdings, either Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrowers or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to a Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrowers, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for a Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the L/C Issuer, in consultation with the Borrowers, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

(b) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and Swing Line Lender, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to the retiring L/C Issuer to effectively assume the obligations of the retiring L/C Issuer with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Bookrunners, Arrangers, Syndication Agents, Documentation Agents or other similar titles listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid (other than Obligations in respect of Guaranteed Cash Management Agreements or Guaranteed Hedge Agreements unless consented to by the applicable Cash Management Bank or Hedge Bank, as the case may be) and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(i) and (j), 2.09 and 11.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer in any such proceeding.

9.10 Guaranty Matters. The Lenders and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion, to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty if such Person ceases to be a Subsidiary or Material Domestic Subsidiary of Holdings as a result of a transaction permitted hereunder. Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Subsidiary Guarantor from its obligations under the Subsidiary Guaranty pursuant to this Section 9.10.

9.11 Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03 or any Guaranty by virtue of the provisions hereof or of any Guaranty shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Guaranteed Cash Management Agreements and Guaranteed Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE X.
CONTINUING GUARANTY

10.01 Guaranties.

(a) Guaranty of Holdings. Holdings hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations of the Loan Parties, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, to the Guaranteed Parties, and whether arising hereunder or under any other Loan Document, any Guaranteed Cash Management Agreement or any Guaranteed Hedge Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Guaranteed Parties in connection with the collection or enforcement thereof). The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon Holdings, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of Holdings under this Guaranty, and Holdings hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

(b) Guaranty of US Borrower. US Borrower hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations of the Loan Parties, whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, to the Guaranteed Parties, and whether arising hereunder or under any other Loan Document, any Guaranteed Cash Management Agreement or any Guaranteed Hedge Agreement (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Guaranteed Parties in connection with the collection or enforcement thereof). The Administrative Agent's books and records showing the amount of the Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon the US Borrower, and conclusive for the purpose of establishing the amount of the Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument or agreement evidencing any Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Obligations which might otherwise constitute a defense to the obligations of the US Borrower under this Guaranty, and the US Borrower hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to any or all of the foregoing.

10.02 Rights of Lenders. Holdings and the US Borrower each consents and agrees that the Guaranteed Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the L/C Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Obligations. Without limiting the generality of the foregoing, Holdings and the US Borrower each consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the respective risks of Holdings and the US Borrower under this Guaranty or which, but for this provision, might operate as a discharge of Holdings, the US Borrower or both.

10.03 Certain Waivers. Holdings and the US Borrower each waives (a) any defense arising by reason of any disability or other defense of any Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Guaranteed Party) of the liability of any Borrower; (b) any defense based on any claim that Holdings' or the US Borrower's obligations exceed or are more burdensome than those of any Borrower; (c) the benefit of any statute of limitations affecting Holdings' or the US Borrower's liability hereunder; (d) any right to proceed against any Borrower, proceed against or exhaust any security for the Obligations, or pursue any other remedy in the power of any Guaranteed Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Guaranteed Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable law limiting the liability of or exonerating guarantors or sureties. Holdings and the US Borrower each expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Obligations. Holdings waives any rights and defenses that are or may become available to Holdings by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided below, this Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this Guaranty which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Guaranty or the Obligations.

10.04 Obligations Independent. The respective obligations of each of Holdings and the US Borrower hereunder are those of primary obligor, and not merely as surety, and are independent of the Obligations and the obligations of any other guarantor, and a separate action may be brought against Holdings, the US Borrower or both to enforce this Guaranty whether or not any Borrower or any other person or entity is joined as a party.

10.05 Subrogation. Neither Holdings nor the US Borrower shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until all of the Obligations and any amounts payable under this Guaranty have been indefeasibly paid and performed in full and the Commitments and the Facilities are terminated. If any amounts are paid to Holdings or the US Borrower in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Guaranteed Parties and shall forthwith be paid to the Guaranteed Parties to reduce the amount of the Obligations, whether matured or unmatured.

10.06 Termination; Reinstatement. This Guaranty is a continuing and irrevocable guaranty of all Obligations now or hereafter existing and shall remain in full force and effect until all Obligations (other than any contingent indemnification or similar contingent obligation not yet due and payable) and any other amounts payable under this Guaranty (other than any contingent indemnification or similar contingent obligation not yet due and payable) are indefeasibly paid in full in cash and the Commitments and the Facilities with respect to the Obligations are terminated. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrowers or Holdings is made, or any of the Guaranteed Parties exercises its right of setoff, in respect of the Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Guaranteed Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Guaranteed Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The respective obligations of Holdings and the US Borrower under this paragraph shall survive termination of this Guaranty.

10.07 Subordination. (a) Holdings hereby subordinates the payment of all obligations and indebtedness of any Borrower owing to Holdings and (b) the US Borrower hereby subordinates the payment of all obligations and indebtedness of the Cayman Borrower owing to the US Borrower, in each case, whether now existing or hereafter arising, including but not limited to any obligation of (x) any Borrower to Holdings or (y) the Cayman Borrower to the US Borrower, as subrogee of the Guaranteed Parties or resulting from Holdings' or the US Borrower's performance under this Guaranty, to the indefeasible payment in full in cash of all Obligations. If the Guaranteed Parties so request following the occurrence and during the continuation of an Event of Default, any such obligation or indebtedness of any Borrower to Holdings or to the US Borrower shall be enforced, but without reducing or affecting in any manner the respective liability of Holdings or the US Borrower under this Guaranty.

10.08 Stay of Acceleration. If acceleration of the time for payment of any of the Obligations is stayed, in connection with any case commenced by or against Holdings or any Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by Holdings or the US Borrower promptly upon demand by the Guaranteed Parties.

10.09 Condition of Borrowers. Holdings and the US Borrower each acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as Holdings or the US Borrower requires, and that none of the Guaranteed Parties has any duty, and neither Holdings nor the US Borrower is relying on the Guaranteed Parties at any time, to disclose to Holdings or the US Borrower any information relating to the business, operations or financial condition of any Borrower or any other guarantor (Holdings and the US Borrower each waiving any duty on the part of the Guaranteed Parties to disclose such information and any defense relating to the failure to provide the same).

ARTICLE XI.
MISCELLANEOUS

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders, Holdings and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

(a) either (i) waive any condition set forth in Section 4.01 (other than Section 4.01(a)(x)) without the written consent of each Lender or (ii) without limiting the generality of clause (i), waive any condition set forth in Section 4.02 as to any Revolving Credit Borrowing without the written consent of the Required Revolving Credit Lenders (including any effective waiver resulting from an amendment, consent or waiver otherwise approved hereunder, but without which a condition set forth in Section 4.02 would not be satisfied);

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document, or the mandatory termination of the Term Commitments pursuant to Section 2.06(b), without the written consent of each Lender directly and adversely affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder;

(e) change Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(f) change (i) any provision of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definition(s) specified in Section 11.01(f)(ii)) without the written consent of each Lender and (ii) the definition of "Required Revolving Credit Lenders" without the written consent of each Revolving Credit Lender;

(g) release (i) Holdings or the US Borrower from the Guaranty in Article X hereof or (ii) all or substantially all of the value of the Subsidiary Guaranty, in either case, without the written consent of each Lender, except to the extent the release of any Subsidiary Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(h) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of such Lender;

and, provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything to the contrary herein, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent, to enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 11.01 and/or Section 2.13) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of any amendment which extends the Maturity Date of any Facility with respect to fewer than all of the Lenders (including any terms therein which provide for a higher interest rate and/or fees to be paid to each Lender agreeing to extend its maturity date); provided that (a) such amendment has been approved by the Required Lenders and each Lender required to approve such amendment pursuant to Section 11.01(c), and (b) no amendment or modification shall result in any increase in the amount of any Lender's Term Loans or Revolving Credit Commitment or any increase in any Lender's Applicable Percentage without the consent of such Lender.

Notwithstanding anything to the contrary herein, if following the Closing Date, the Administrative Agent, Holdings and the Borrowers shall have jointly identified an inconsistency, error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Lenders within ten Business Days following receipt of notice thereof.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of such Lender and that has been approved by the Required Lenders, the Borrowers may replace such non-consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrowers to be made pursuant to this paragraph).

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Holdings, the Borrowers, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Holdings and its Subsidiaries).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the L/C Issuer pursuant to Article II if such Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Loan Parties may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to Holdings, the Borrowers, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of Holdings', the Borrowers' or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to Holdings, the Borrowers, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc. Each of Holdings, the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to Holdings and its Subsidiaries or their respective securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of any Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. Each Borrower shall indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of such Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers shall pay (i) all reasonable and documented costs and out-of-pocket expenses incurred by the Administrative Agent, the Arranger and their Affiliates (including the reasonable fees, charges and disbursements of one lead counsel for the Administrative Agent and the Arranger and of appropriate local counsel, if any, limited to one such counsel in each jurisdiction), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by the L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out-of-pocket expenses incurred by the Administrative Agent, the Arranger, any Lender or the L/C Issuer (including the reasonable fees, charges and disbursements of one counsel for the Administrative Agent and the Arranger, and one additional counsel for the Lenders and the L/C Issuer, taken together, absent a conflict of interest, and any necessary local or foreign counsel (limited to one or, in the case of a conflict of interest, two such local and foreign counsel in each jurisdiction)), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit (including, without limitation, any Cayman Islands stamp duty that may become payable on this Agreement or any other Loan Document).

(b) **Indemnification by the Borrowers**. The Borrowers shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the reasonable fees, charges and disbursements of one counsel for the Administrative Agent and one counsel for the other Indemnitees, taken together, absent a conflict of interest, and any necessary local or foreign counsel (limited to one or, in the case of a conflict of interest, two such local or foreign counsel in each jurisdiction), and shall indemnify and hold harmless each Indemnitee from all reasonable fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by Holdings, the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by a Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to a Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by a Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available (A) to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith (including, without limitation, a material breach by such Indemnitee of its obligations under this Agreement or under any other Loan Document) or willful misconduct of such Indemnitee or (B) in the case of disputes solely between or among Indemnitees (except that in the event of such dispute involving a claim or proceeding brought against the Administrative Agent or the Arranger (in each case, in its capacity as such) by the other Indemnitees, the Administrative Agent or the Arranger (in each case, in its capacity as such), as applicable, shall be entitled (subject to the other limitations and exceptions set forth in this proviso) to the benefit of such indemnities) not relating to or in connection with acts or omissions by Holdings, any Borrower, any other Loan Party or any of the their respective Affiliates. This Section 11.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim; provided, however, for the avoidance of doubt, (A) this Section 11.04(b) shall not apply to Indemnified Taxes or Other Taxes covered by Section 3.01 or Excluded Taxes imposed on any payment of interest or fees and (B) the amount of Taxes that represent losses or damages from any non-Tax claim shall take into account whether (and to what extent) the Indemnitee is entitled to take a deduction in respect of the payment of the non-Tax claim and whether (and to what extent) the receipt of the indemnity payment by such Indemnitee is taxable to such Indemnitee.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the L/C Issuer or such Related Party, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent) or the L/C Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or L/C Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, and without derogating the Indemnitees' rights to indemnity under this Section, Holdings and the Borrowers, on one hand, and the Indemnitees, on the other hand, shall not assert, and hereby waives, any claim against any of the others on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the Transactions, including any transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent**,** the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of a Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that, other than in a transaction permitted under Section 6.04 or 7.02 hereof, neither the Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, or $1,000,000, in the case of any assignment in respect of a Term Loan Facility unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrowers otherwise consent (each such consent not to be unreasonably withheld or delayed); provided that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met.

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrowers (such consent not to be unreasonably withheld) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Borrowers shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of (1) any Term Commitment or any Revolving Credit Commitment if such assignment is to a Person that is not a Lender with a Commitment in respect of the applicable Facility, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (2) any Term Loan to a Person that is not a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the consent of the L/C Issuer (such consent not to be unreasonably withheld or delayed) shall be required for any assignment that increases the obligation of the assignee to participate in exposure under one or more Letters of Credit (whether or not then outstanding); and

(D) the consent of the Swing Line Lender (such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to the Borrowers or any of the Borrowers' Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person.

(vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrowers and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment. Upon request, each applicable Borrower (at its expense) shall execute and deliver a Note or Notes to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of each Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of (and interest on) the Loans and L/C Obligations owing by each Borrower to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by each Loan Party and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. (i) Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender or a Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Loan Parties, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to clause (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided such Participant agrees to be subject to Section 3.06 as though it were a Lender. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

(iii) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the applicable Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents owing to each Borrower (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) or 1.871-14(c) of the United States Treasury Regulations. Any participation of a Loan shall be effective only upon appropriate entries with respect thereto being made in the Participant Register. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless (A) the sale of the participation to such Participant is made with the Borrowers' prior written consent or (B) such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable Participation and such Participant shall have otherwise complied with Section 3.01(e). A Participant shall not be entitled to the benefits of Section 3.01 unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to subsection (b) above, Bank of America may, (i) upon 30 days' notice to the Borrowers and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Borrowers, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Borrowers shall be entitled to appoint, from among the Lenders willing to serve in such capacity, a successor L/C Issuer or Swing Line Lender hereunder; provided that no failure by the Borrowers to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements reasonably satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, trustees, advisors and representatives on a need to know basis and only in connection with the transactions described herein (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.14(c) or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction or to any credit insurance provider relating to the Borrowers and their obligations, (g) with the consent of the Borrowers or (h) to the extent such Information (x) becomes generally available to the public other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrowers who is not known by the Person to whom such Information has become available to be bound by a confidentiality agreement or other confidentiality obligation to the Borrowers with respect to such Information. For purposes of this Section, "Information" means all information received from any Borrower or any Subsidiary relating to the Borrowers or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the L/C Issuer on a nonconfidential basis prior to disclosure by any Borrower or any Subsidiary, provided that, in the case of information received from any Borrower or any Subsidiary after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning Holdings or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of a Borrower or any other Loan Party against any and all of the obligations of the Borrowers or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer, irrespective of whether or not such Lender or the L/C Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured or are owed to a branch or office of such Lender or the L/C Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Borrowers and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations of the applicable Borrower hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation (other than any contingent indemnification or similar contingent obligation not yet due or payable) hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04 or is unable to make Eurodollar Rate Loans pursuant to Section 3.02, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if the last paragraph of Section 11.01 applies to such Lender, or if any other circumstance exists hereunder that gives the Borrowers the right to replace a Lender as a party hereto pursuant to this Section, then the Borrowers may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 11.06(b)(iv);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter; and

(d) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver or consent by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK SITTING IN CITY OF NEW YORK, BOROUGH OF MANHATTAN AND OF THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 California Judicial Reference. If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 11.04, the Borrowers shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

11.17 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Borrower in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Borrower (or to any other Person who may be entitled thereto under applicable law).

11.18 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding**,** that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arranger, are arm's-length commercial transactions between the Borrowers, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and the Arranger, on the other hand, (B) each Borrower and each other Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arranger each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrowers, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor the Arranger has any obligation to the Borrowers, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor the Arranger has any obligation to disclose any of such interests to the Borrowers, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrowers and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent and the Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.19 Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.20 USA PATRIOT Act. Each Lender that is subject to the Patriot Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies each Borrower and each other Loan Party, which information includes the name and address of each Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Borrower and each other Loan Party in accordance with the Patriot Act. Each Borrower and each other Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act.

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

WESTERN DIGITAL TECHNOLOGIES, INC.,
as the US Borrower and Guarantor

By: /s/ Wolfgang Nickl
Name: Wolfgang Nickl
Title: Chief Vice President and Chief Financial Officer

WESTERN DIGITAL IRELAND, LTD., as the Cayman Borrower

By: /s/ Wolfgang Nickl
Name: Wolfgang Nickl
Title: Director and Chief Financial Officer

WESTERN DIGITAL CORPORATION, as Holdings and Guarantor

By: /s/ Wolfgang Nickl
Name: Wolfgang Nickl
Title: Senior Vice President and Chief Financial Officer

BANK OF AMERICA, N.A., as
Administrative Agent

By: /s/ Joan Mok
Name: Joan Mok
Title: Vice President, Agency Management Officer

BANK OF AMERICA, N.A., as a Lender, L/C Issuer and
Swing Line Lender

By: /s/ Sugeet Manchanda Madan
Name: Sugeet Manchanda Madan
Title: Director

THE BANK OF NOVA SCOTIA,
as a Lender

By: /s/ John Mathews
Name: John Mathews
Title: Director

UNION BANK, N.A.,
as a Lender

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

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD., as a
Lender

By: /s/ Victor Pierzchalski
Name: Victor Pierzchalski
Title: Authorized Signatory

HSBC BANK USA, NATIONAL ASSOCIATION
as a Lender

By: /s/ Andrew W. Hietala
Name: Andrew W. Hietala
Title: Vice President

JPMORGAN CHASE BANK, N.A.,
as a Lender

By: /s/ Alex McKindra
Name: Alex McKindra
Title: Senior Vice President

THE ROYAL BANK OF SCOTLAND PLC,
as a Lender

By: /s/ Richard Ong Pho
Name: Richard Ong Pho
Title: Authorized Signatory

COMPASS BANK,
as a Lender

By: /s/ Scott L. Brewer
Name: Scott L. Brewer
Title: Managing Director

CITIBANK, N.A.,
as a Lender

By: /s/ Sean Klimchalk
Name: Seam Klimchalk
Title: Director

MIZUHO CORPORATE BANK, LTD.,
as a Lender

By: /s/ Bertram H. Tang
Name: Bertram H. Tang
Title: Authorized Signatory

U.S. BANK NATIONAL ASSOCIATION,
as a Lender

By: /s/ Richard J. Ameny, Jr.
Name: Richard J. Ameny, Jr.
Title: Vice President

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as a Lender

By: /s/ Meggie Chichioco
Name: Meggie Chichioco
Title: Managing Director

DEUTSCHE BANK AG, NEW YORK BRANCH,
as a Lender

By: /s/ Ross Levitsky
Name: Ross Levitsky
Title: Managing Director

By: /s/ Yvonne Tilden
Name: Yvonne Tilden
Title: Director

UNITED OVERSEAS BANK LIMITED, NEW YORK AGENCY,
as a Lender

By: /s/ K. Jin Koh
Name: K. Jin Koh
Title: Executive Director

By: /s/ Mario Sheng
Name: Mario Sheng
Title: AVP

BARCLAYS BANK PLC,
as a Lender

By: /s/ Diane Rolfe
Name: Diane Rolfe
Title: Director

COMERICA BANK,
as a Lender

By: /s/ Steve D. Clear
Name: Steve D. Clear
Title: Vice President

OVERSEA-CHINESE BANKING CORPORATION LIMITED, LOS ANGELES AGENCY,
as a Lender

By: /s/ Charles Ong
Name: Charles Ong
Title: General Manager

TD BANK, N.A.,
as a Lender

By: /s/ Todd A. Antico
Name: Todd A. Antico
Title: Senior Vice President

KEYBANK NATIONAL ASSOCIATION,
as a Lender

By: /s/ Raed Y. Alfayoumi
Name: Raed Y. Alfayoumi
Title: Vice President

DBS BANK LTD., LOS ANGELES AGENCY,
as a Lender

By: /s/ James McWalters
Name: James McWalters
Title: General Manager

STANDARD CHARTERED BANK,
as a Lender

By: /s/ James P. Hughes
Name: James P. Hughes A2386
Title: Director

By: /s/ Robert K. Reddington
Name: Robert K. Reddington
Title: Credit Documentation Manager
Credit Documentations Unit, WB Legal-Americas

THE BANK OF EAST ASIA, LIMITED, NEW YORK BRANCH,
as a Lender

By: /s/ Kitty Sin
Name: Kitty Sin
Title: Senior Vice President

By: /s/ Peng-Wah Tang
Name: Peng-Wah Tang
Title: General Manager

BRANCH BANKING & TRUST CO.,
as a Lender

By: /s/ Bradley B. Sands
Name: Bradley B. Sands
Title: Assistant Vice President

THE NORTHERN TRUST COMPANY,
as a Lender

By: /s/ Brandon Rolek
Name: Brandon Rolek
Title: Vice President

BANK OF CHINA, LOS ANGELES BRANCH, as a Lender

By: /s/ Jason Fu
Name: JASON FU aka HOU YUE FU
Title: VICE PRESIDENT

BANK OF THE WEST,
as a Lender

By: /s/ Cecile Segovia
Name: Cecile Segovia
Title: Vice President, Sr. Relationship Mgr

LAND BANK OF TAIWAN LOS ANGELES BRANCH,
as a Lender

By: /s/ Juifu Chien
Name: Juifu Chien
Title: Vice President & General Manager

MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD., Los Angeles Branch
as a Lender

By: /s/ Chia Jang Liu
Name: Chia Jang Liu
Title: SVP & GM

SUMITOMO MITSUI BANKING CORPORATION,
as a Lender

By: /s/ William M. Ginn
Name: William M. Ginn
Title: Executive Officer

BANK OF COMMUNICATIONS CO., LTD., NEW YORK BRANCH
as a Lender

By: /s/ Shelley He
Name: Shelley He
Title: Deputy General Manager

FIRST HAWAIIAN BANK,
as a Lender

By: /s/ Susan Takeda
Name: Susan Takeda
Title: Vice President

TAIPEI FUBON COMMERCIAL BANK CO., LTD.,
as a Lender

By: /s/ Robin Wu
Name: Robin Wu
Title: VP & Deputy General Manager

TAIWAN BUSINESS BANK LOS ANGELES BRANCH,
as a Lender

By: /s/ Alex Wang
Name: Alex Wang
Title: S.V.P. & General Manager

TAIWAN COOPERATIVE BANK, LOS ANGELES BRANCH,
as a Lender

By: /s/ Li-Hua Huang
Name: LI-HUA HANG
Title: VP & GENERAL MANAGER

BANK LEUMI USA,
as a Lender

By: /s/ Joung Hee Hong
Name: Joung Hee Hong
Title: First Vice President

BANK OF TAIWAN, LOS ANGELES BRANCH,
as a Lender

By: /s/ Chwan-Ming Ho
Name: Chwan-Ming Ho
Title: VP & General Manager

CHANG HWA COMMERCIAL BANK, LTD., LOS ANGELES BRANCH,
as a Lender

By: /s/ Beverley Chen
Name: Beverley Chen
Title: VP & General Manager

E.SUN COMMERCIAL BANK, LTD., LOS ANGELES BRANCH,
as a Lender

By: /s/ Edward Chen
Name: Edward Chen
Title: V.P. & General Manager

HUA NAN COMMERCIAL BANK, LTD.,
as a Lender

By: /s/ Henry Hsieh
Name: Henry Hsieh
Title: Assistant Vice President

MANUFACTURERS BANK,
as a Lender

By: /s/ Sandy Lee
Name: Sandy Lee
Title: Vice President

AMERICAN SAVINGS BANK, F.S.B.,
as a Lender

By: /s/ Rian DuBach
Name: Rian DuBach
Title: Vice President

CHINATRUST COMMERCIAL BANK NEW YORK BRANCH,
as a Lender

By: /s/ Amy Fong
Name: Amy Fong
Title: SVP & General Manager

Exhibit 31.1

Certification of Principal Executive Officer

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, John F. Coyne, certify that:

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

Date: May 9, 2012

/s/ JOHN F. COYNE

John F. Coyne
Chief Executive Officer

Exhibit 31.2

Certification of Principal Financial Officer

Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Wolfgang U. Nickl, certify that:

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

Date: May 9, 2012

/s/ WOLFGANG U. NICKL

Wolfgang U. Nickl

Senior Vice President and Chief Financial Officer

Exhibit 32.1

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

Certification of Chief Executive Officer

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

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the period ended March 30, 2012 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

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

Date: May 9, 2012

/s/ JOHN F. COYNE

John F. Coyne
Chief Executive Officer

Exhibit 32.2

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

Certification of Chief Financial Officer

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

(i) the accompanying Quarterly Report on Form 10-Q of the Company for the period ended March 30, 2012 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

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

Date: May 9, 2012

/s/ WOLFGANG U. NICKL

Wolfgang U. Nickl
Senior Vice President and Chief Financial Officer