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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): January 31, 2023 (January 31, 2023)

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

Delaware	**001-08703**	**33-0956711**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

5601 Great Oaks Parkway **San Jose, California**	**95119**
(Address of Principal Executive Offices)	**(Zip Code)**

(408) 717-6000
(Registrant's Telephone Number, Including Area Code)

Not applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

Item 1.01. Entry Into a Material Definitive Agreement.

Investment Agreements

On January 31, 2023 (the "Closing Date"), Western Digital Corporation (the "Company"), entered into an Investment Agreement (the "Apollo Investment Agreement") with AP WD Holdings, L.P., a Delaware limited partnership ("Apollo"), a copy of which is attached hereto as Exhibit 10.1, pursuant to which the Company issued and sold to Apollo 665,000 shares of the Company's Series A Convertible Perpetual Preferred Stock, par value $0.01 per share (the "Preferred Stock").

On the Closing Date, the Company also entered into an Investment Agreement (the "Elliott Investment Agreement") with Elliott Associates L.P., a Delaware limited partnership, and Elliott International L.P., a Cayman Islands limited partnership (collectively "Elliott"), a copy of which is attached hereto as Exhibit 10.2, pursuant to which the Company issued and sold to Elliott 235,000 shares of Preferred Stock (with Apollo and Elliott, and their respective affiliates, as applicable, collectively referred to as "Investor" or the "Investors", and the Apollo Investment Agreement and Elliott Investment Agreement collectively referred to as the "Investment Agreements"). The 665,000 shares of Preferred Stock issued and sold to Apollo and the 235,000 shares of Preferred Stock issued and sold to Elliott, were purchased by the Investors for $665,000,000 and $235,000,000 respectively, for an aggregate purchase price of $900,000,000, or $1,000.00 per share (the "Series A Private Placements"). The Investors will receive a combination of structuring fees and reimbursement of expenses in an aggregate amount of $18,000,000.

In connection with the closing of the Investment Agreements (the "Closing"), the Company also filed the Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock, (the "Certificate of Designations") with the Secretary of State of the State of Delaware on the Closing Date setting forth the terms, rights, obligations and preferences of the Preferred Stock, a copy of which is attached hereto as Exhibit 3.1.

The Preferred Stock will rank senior to other Company preferred shares unless such shares specify that they rank senior to the Preferred Stock and the shares of the Company's common stock, par value $0.01 per share (the "Common Stock"), with respect to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Company. The Preferred Stock will have an initial liquidation preference of $1,000 per share. Holders of the Preferred Stock will be entitled to a cumulative and compounding dividend at the rate of 6.25% per annum until the seven (7) year anniversary of the Closing Date; thereafter and until the ten (10) year anniversary of the Closing Date the dividend rate will be increased to 7.25% per annum; and from and after the ten (10) year anniversary of the Closing Date the dividend rate will be increased to 8.25% per annum. Such dividends will be payable on a quarterly basis in cash, in-kind through an increase to the liquidation preference ("Accrual Dividends") or combination thereof at the Company's sole option; provided that the Company will only have the option of Accrual Dividends to the extent the total Common Stock deemed issuable as an Accrual Dividend under The Nasdaq Stock Market LLC ("NASDAQ") rules together with shares issuable upon conversion of the Preferred Stock does not exceed 19.9% of outstanding Common Stock immediately prior to the date of original issuance of the Preferred Stock (calculated in accordance with NASDAQ shareholder approval rules), and thereafter all dividends will be payable solely in cash (the "Company Liquidation Preference").

Conversion and Redemption

The Preferred Stock will be convertible into Common Stock at an initial conversion price equal to $47.75 (the "Initial Conversion Price"), which represents a 25% premium over the volume-weighted average price per share ("VWAP") of the Common Stock over the twenty (20) trading days immediately prior to the announcement of the Series A Private Placements. The Initial Conversion Price is subject to adjustment (i) for customary anti-dilution protections, (ii) in the event that the Company spins off its Flash Business ("SpinCo", as defined in the Investment Agreements) in a transaction or series of transactions qualifying under Section 355 or 361 of the Internal Revenue Code (a "Spin-Off") and (iii) in the event that the Company enters into certain transactions to effect a Spin-Off and subsequently sell, merge, or otherwise combine or transfer SpinCo with a third party (a "Subsequent Transaction") (such adjusted Initial Conversion Price, the "Company Conversion Price"). In connection with a Subsequent Transaction, the Company Conversion Price will be determined by adjusting the conversion ratio in effect prior to a Spin-Off by the ratio of SpinCo's fair market value ("FMV") and SpinCo's FMV plus the average daily VWAP of Common Stock over the twenty (20) trading days immediately following but including the record date of the dividend associated with the Spin-Off, as specified in the Investment Agreements, provided that in the event the specified adjustment ratio is either greater than 0.625 or less than 0.45, such ratio will be deemed to be 0.625 and 0.45 respectively (the "Adjustment Limitations"). If the Company engages in a Spin-Off without a Subsequent Transaction, the Company Conversion Price will be adjusted in the same manner as described in the preceding sentence and one-third of the Preferred Stock will be exchanged for a similar class of preferred SpinCo stock, except that the Adjustment Limitations will not apply. In the event of a Subsequent Transaction, the Investors will not be entitled to receive shares of SpinCo in connection with the Subsequent Transaction.

The Preferred Stock will not be convertible by the Investors until after the earlier of (i) the closing of a Spin-Off and (ii) twelve (12) months following the Closing Date, unless the Company enters into a definitive agreement with respect to a Subsequent Transaction, then the twelve (12) month period will be extended until the earlier of the consummation of such Subsequent Transaction or the termination of the definitive agreement. Further, the Preferred Stock issued and sold to Apollo will not be convertible until the expiration or termination of any applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act") or foreign investment approvals.

During any period, and notwithstanding any written notice of conversion submitted by Elliott to the Company as provided for in the Certificate of Designations, the Company will have no obligation to deliver any Common Stock to the extent that Elliott's outstanding Common Stock, as would be outstanding immediately following the conversion, would be in excess of 4.99% of the Company's outstanding Common Stock, which limitation can be waived by Elliott on sixty-one (61) days' notice.

At any time after the three (3) year anniversary of the Closing Date, the Company will have the option to require that all or any portion of the then-outstanding shares of Preferred Stock of the series be converted into Common Stock at the then applicable conversion price if the closing price per Common Stock exceeds 150% of the Company Conversion Price for at least twenty (20) trading days in any period of thirty (30) consecutive trading days immediately prior to the Investors' receipt of the conversion notice.

At any time after the seven (7) year anniversary of the Closing Date, the Company may redeem all or any portion of the outstanding Preferred Stock for an amount in cash equal to 110% of the Company Liquidation Preference (the "Optional Redemption Amount") thereof plus accrued and unpaid dividends thereon, provided, that if a redemption notice is delivered, the Investor will retain its right to convert the Preferred Stock prior to redemption.

Upon the occurrence of a fundamental change of the Company, the Company will be obligated to offer to redeem all (but not less than all) of the Preferred Stock and, at the Company's option, may make such redemption mandatory, in each case for a price in cash (the "Company Redemption Price") equal to the greater of (a) the sum of (i) the Optional Redemption Amount plus (ii) accrued and unpaid dividends thereon, and (b) an amount the Investors would be entitled to receive if the Preferred Stock had been converted into Common Stock, in each case, before any distributions are made to holders of Common Stock and all other classes of junior capital stock of the Company and subject to the rights of the holders of any senior or parity capital stock of the Company and the rights of the Company's existing and

future creditors. The Company will also be required to redeem all of the then outstanding Preferred Stock at the Company Redemption Price in the event of a bankruptcy, liquidation, winding up or dissolution of the Company, out of assets legally available therefor and to the extent permitted by Delaware law.

Voting Rights

After the expiration or early termination of any applicable waiting period under the HSR Act, and receipt of any applicable foreign investment approvals, the Investors, as holders of the Preferred Stock, will be entitled to vote with the holders of the Common Stock on an as-converted basis on all matters and not as a separate class, except as required by Delaware law.

Restrictions on Transfer

The Investors have agreed to certain restrictions on transfer until the thirty six (36) month anniversary of the Closing Date, including that the Investors will not knowingly, after reasonable inquiry, make transfers of Preferred Stock (or Common Stock issuable on conversion of such Preferred Stock) to Company competitors or certain persons or entities that are or have been activist investors in the prior three (3) years. Such restrictions on transfers also include that, except in the case of insolvency proceedings, traditional underwritten transactions, or brokers' transactions pursuant to Rule 144 or Rule 144A of the Securities Act of 1933, as amended (the "Securities Act"), and until the thirty six (36) month anniversary of the Closing Date, the Investors will not knowingly, after reasonable inquiry, (i) make any transfers of Common Stock issued upon conversion of Preferred Stock to a person who would then beneficially own more than 5% of the Company's outstanding Common Stock or (ii) make any transfers of Preferred Stock to existing beneficial owners of at least 3% of the Company's outstanding Common Stock.

Additionally, for so long as Elliott beneficially owns Preferred Stock and/or Common Stock (in the aggregate and on an as-converted basis) equal to at least 25% of the shares they owned at the Closing, Elliott has agreed not to make any "short sale" (as defined in Rule 200 of Regulation SHO of the Securities Exchange Act of 1934 ("Regulation SHO")) of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a "short sale" (as defined in Regulation SHO) of or the purpose of which is to offset the loss which results from a decline in the market price of, any shares of Preferred Stock or Common Stock, or otherwise establish or increase, directly or indirectly, a put equivalent position as defined in Rule 16a-1(h) of the Securities Exchange Act of 1934 (collectively, "Hedging Arrangements") while Elliott's net beneficial ownership is less than the Common Stock issuable to Elliott upon conversion of its Preferred Stock.

Additionally, Apollo has agreed not to enter into any Hedging Arrangements until the later of (i) six (6) months from the Closing Date and (ii) ninety (90) days following the date no Apollo director designee is serving on the Company's board of directors (the "Board") (and as of such time Apollo no longer has rights pursuant to the Apollo Investment Agreement to designate a director designee to the Board); provided that, to the extent the foregoing restrictions are applicable, in the event the Company enters into a definitive agreement with respect to a Subsequent Transaction within twelve (12) months of the Closing Date, the foregoing restrictions on Hedging Arrangements (other than those with respect to "short sales" (as defined in Regulation SHO)) will terminate nine (9) months after the entry into such definitive agreement.

Preemptive Rights

Under each Investment Agreement, from and after the twelve (12) month anniversary of the Closing Date until the Investor no longer beneficially owns Preferred Stock and/or Common Stock (in the aggregate and on an as-converted basis) equal to at least 50% of the shares it owned at the Closing, such Investor will have customary preemptive rights to participate in future issuances of certain securities and certain financings by the Company or its subsidiaries, subject to customary exceptions.

Standstill Restrictions

Following the Closing Date, Apollo will be subject to certain standstill provisions, including that it and its affiliates will be restricted, subject to certain exceptions, from acquiring additional shares of Common Stock or other equity securities of the Company until the later of (i) ninety (90) days following the date no Apollo director designee is serving on the Board (and as of such time Apollo no longer has rights pursuant to the Apollo Investment Agreement to designate a director designee to the Board) and (ii) the thirty six (36) month anniversary of the Closing Date.

Registration Rights Agreement

On the Closing Date, the Company entered into a Registration Rights Agreement, by and among the Company and the Investors, pursuant to which the Investors will have certain customary registration rights with respect to the Preferred Stock and the Common Stock issuable upon conversion of the Preferred Stock, a copy of which is attached hereto as Exhibit 10.3 (the "Registration Rights Agreement").

Amended and Restated Letter Agreement

On the Closing Date, the Company entered into an amended and restated letter agreement (the "Letter Agreement"), amending and restating that certain letter agreement between the Company and Elliott Investment Management L.P., a Delaware limited partnership ("Elliott IM"), dated June 7, 2022, and attached hereto as Exhibit 10.4.

Standstill Restrictions

By the terms of the Letter Agreement, Elliott IM has agreed to comply with certain standstill restrictions including that Elliot IM and its affiliates will be restricted from acquiring additional equity securities of the Company subject to certain exceptions and except to the extent that the acquisition of equity of the Company would not reasonably be expected to prevent the Company from obtaining a "will" level tax opinion that the Subsequent Transaction or Spin-Off would not be taxable pursuant to Section 355(e) of the Internal Revenue Code. Such standstill restrictions are to extend until the one (1) year anniversary of the Closing Date, provided that if the Company enters into a definitive agreement with respect to a Subsequent Transaction before such date, the standstill restrictions will be extended to the earlier of the consummation or termination of the definitive agreement with respect to such Subsequent Transaction and the day following the Company's 2024 annual stockholder meeting. Notwithstanding, Elliott IM and its affiliates will be subject to the standstill restrictions from the date an Elliott Director (as defined below) joins the Board and until the forty fifth (45th) day after there is no Elliott Director serving on the Board.

Board Representation

Under the Letter Agreement, prior to the Company's 2025 annual stockholder meeting and for so long as certain conditions, including compliance with customary Company policies and applicable legal requirements and a minimum holding condition, are met, Elliott IM will have the right to select an individual for appointment to the Board (the "Elliott Director") who will be an individual acceptable to the Company (with the Company's consent not to be unreasonably withheld, conditioned, or delayed). If an Elliott Director is unable or unwilling to serve as a director, resigns as a director, is removed as a director or ceases to be a director for any other reason prior to the Company's 2025 annual stockholder meeting, subject to certain conditions, including compliance with customary Company policies and applicable legal requirements and a minimum holding condition, being satisfied, Elliott and the Company will appoint a substitute director to the Board to be mutually agreed upon between Elliott and the Company.

The foregoing description of the Preferred Stock, Certificate of Designations, the Apollo Investment Agreement, Elliott Investment Agreement, Letter Agreement, Registration Rights Agreement and the transactions contemplated thereby is only a summary and does not purport to be complete and is qualified in its entirety by reference to the full text of the agreements, copies of which are attached to this Current Report on Form 8-K as Exhibit 3.1, Exhibit 10.1, Exhibit 10.2, Exhibit 10.3, and Exhibit 10.4, and incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

The information regarding the Series A Private Placements set forth in Item 1.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.02. Each of the Series A Private Placements will be undertaken in reliance upon an exemption from the registration requirements of Section 4(a)(2) of the Securities Act. The Preferred Stock issued pursuant to the Investment Agreements and the Common Stock issuable upon conversion of the Preferred Stock may not be re-offered or sold in the United States absent an effective registration statement or an exemption from the registration requirements under applicable federal and state securities laws.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Pursuant to the Apollo Investment Agreement, the Board increased the size of the Board to nine (9) directors and appointed one (1) individual designated by Apollo to serve as a member of the Board.

Per the terms of the Apollo Investment Agreement, for so long as Apollo beneficially holds shares of Preferred Stock and/or Common Stock that represent, in the aggregate and on an as-converted basis, at least 50% of the Common Stock beneficially owned by Apollo, on an as converted basis, as of the Closing Date, then Apollo will continue to have the right to nominate and appoint one (1) person for election to the Board. At any time that (a) no Apollo director designee is serving on the Board and (b) Apollo holds Preferred Stock and/or Common Stock that represent, in the

aggregate and on an as-converted basis, at least 25% of the Common Stock beneficially owned by Apollo, on an as-converted basis, as of the Closing Date, Apollo will have the right to appoint a non-voting observer to attend all Board and committee meetings.

Pursuant to the Apollo Investment Agreement, Reed B. Rayman was appointed to serve as a member of the Board effective immediately following the Closing.

Each director designee appointed by Apollo, including Mr. Rayman, will receive compensation for his or her services as director in accordance with the Company's standard compensation program for non-employee directors, which is summarized in the "Director Compensation" section of the Company's Proxy Statement, as filed with the Securities and Exchange Commission (the "SEC") on October 3, 2022. In accordance with the Company's customary practice, the Company will also enter into its standard form of indemnity agreement with Mr. Rayman, which agreement is filed as Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q, as filed with the SEC on November 8, 2002.

Mr. Rayman is a Private Equity Partner at Apollo, a leading global alternative investment manager, where he has worked since 2010. Mr. Rayman previously was employed by Goldman, Sachs & Co. in both its Industrials Investment Banking and Principal Strategies groups from 2008 to 2010. Mr. Rayman also serves on the boards of directors of Yahoo! Inc. (of which he is the Chairman), ADT Inc., Shutterfly, Edgio, Coinstar, Careerbuilder and EcoATM. Mr. Rayman holds a B.A. in Economics from Harvard University.

Except as described in this Current Report on Form 8-K, there are no transactions between Mr. Rayman and the Company that would be reportable under Item 404(a) of Regulation S-K.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On the Closing Date, the Company filed the Certificate of Designations with the Secretary of State of the State of Delaware to establish and fix the terms of the Preferred Stock. The Certificate of Designations became effective upon filing. The information in Item 1.01 above is incorporated by reference into this Item 5.03.

Item 7.01 Regulation FD Disclosure

On the Closing Date, the Company issued a press release relating to the Series A Private Placements which is attached hereto as Exhibit 99.1 and incorporated herein by reference.

The information included in Item 7.01 of this Current Report on Form 8-K, including Exhibit 99.1, is being furnished pursuant to Item 7.01 of Form 8-K and shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, or otherwise subject to liabilities of that section.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

3.1	Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock.
10.1	Investment Agreement, dated January 31, 2023, by and between Western Digital Corporation and AP WD Holdings, L.P.#
10.2	Investment Agreement, dated January 31, 2023, by and among Western Digital Corporation, Elliott Associates, L.P. and Elliott International, L.P.#
10.3	Registration Rights Agreement, dated January 31, 2023, by and among Western Digital Corporation, AP WD Holdings, L.P, Elliott Associates, L.P. and Elliott International, L.P.
10.4	Amended and Restated Letter Agreement, dated January 31, 2023, by and between Western Digital Corporation and Elliott Investment Management L.P.
99.1	Press Release of Western Digital Corporation, dated January 31, 2023.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

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

SIGNATURE

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

Western Digital Corporation
(Registrant)

By : /s/ Michael C. Ray
Michael C. Ray
Executive Vice President, Chief Legal Officer
and Secretary

Date: January 31, 2023

Exhibit 3.1

CERTIFICATE OF DESIGNATIONS, PREFERENCES AND RIGHTS OF SERIES A CONVERTIBLE PERPETUAL PREFERRED STOCK OF WESTERN DIGITAL CORPORATION

Pursuant to Section 151 of the Delaware General Corporation Law (as amended, supplemented or restated from time to time, the "**DGCL**"), Western Digital Corporation, a corporation organized and existing under the laws of the State of Delaware (the "**Corporation**"), in accordance with the provisions of Section 103 of the DGCL DOES HEREBY CERTIFY

FIRST: That, the Amended and Restated Certificate of Incorporation of the Corporation (the "**Certificate of Incorporation**") authorizes the issuance of up to Five Million (5,000,000) shares of preferred stock and each such share has a par value of one cent ($0.01), of the Corporation ("**Preferred Stock**") in one or more series and expressly vests the Board of Directors of the Corporation (the "**Board**") with the authority to fix by resolution or resolutions the designations and the powers, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation the dividend rate, conversion rights, redemption price and liquidation preference, of any series of shares of Preferred Stock, and to fix the number of shares constituting any such series, and to increase or decrease the number of shares of any such series (but not below the number of shares thereof then outstanding);

SECOND: That, pursuant to the authority vested in the Board by the Certificate of Incorporation, the Board on January 31, 2023, adopted the following resolution designating a new series of Preferred Stock as "Series A Convertible Perpetual Preferred Stock":

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to the authority vested in the Board in accordance with the provisions of Article IV of the Certificate of Incorporation and the provisions of Section 151 of the DGCL, a series of Preferred Stock of the Corporation designated as "Series A Convertible Perpetual Preferred Stock" is hereby authorized, and the designations, rights, preferences, powers, restrictions and limitations of the Series A Convertible Perpetual Preferred Stock shall be as follows:

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1. Designation. There shall be a series of Preferred Stock that shall be designated as "Series A Convertible Perpetual Preferred Stock" (the "**Series A Preferred Stock**") and the number of shares constituting such series ("**Shares**") shall be 900,000 ("**Acquired Shares**") with an initial Stated Value (as defined below) of $1,000.00 per Share. The rights, preferences, powers, restrictions and limitations of the Series A Preferred Stock shall be as set forth herein. The Series A Preferred Stock shall be issued in book-entry form on the Corporation's share ledger, subject to the rights of holders to receive certificated Shares under the DGCL.

2. Defined Terms. For purposes hereof, the following terms shall have the following meanings:

"**Accumulated Stated Value**" has the meaning set forth in **Section 4.1**.

"**Acquired Shares**" has the meaning set forth in **Section 1**.

"**Additional Shares**" has the meaning set forth in **Section 8.7(k)**.

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person including, in the case of Elliott and its Affiliates, any investment fund, vehicle or account sponsored or managed by such Person or any other Person that controls, is controlled by, or is under common control with such Person (for clarity, an investment fund, vehicle or account shall be deemed to be an "Affiliate" of all other investment funds, vehicles and accounts under common management, directly or indirectly, with such Person in the case of Elliott)); *provided*, *however*, (i) that the Corporation and its Subsidiaries shall not be deemed to be Affiliates of any holder of Shares of Series A Preferred Stock or any of their Affiliates, and (ii) in no event shall an Initial Investor or any its Subsidiaries be considered an Affiliate of Apollo or any portfolio company managed by an Affiliate of Apollo or Elliott, as the case may be, (other than the Initial Investors and their Subsidiaries) or investment fund managed directly or indirectly by an Affiliate of Apollo, nor shall Apollo or Elliott, as the case may be, or any portfolio company (other than the Initial Investors and their Subsidiaries) managed by an Affiliate of Apollo or Elliott, or investment fund managed directly or indirectly by an Affiliate of Apollo, be considered to be an Affiliate of either Initial Investor or any of their Subsidiaries. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"**Apollo**" means Apollo Global Management, Inc.

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

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

"**Board**" has the meaning set forth in the Recitals.

"**Business Day**" means a day other than a Saturday, Sunday or other day on which the SEC or banks in the City of New York are authorized or required by law to close.

"**Certificate of Designations**" means this Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock of Western Digital Corporation, as it may be amended from time to time.

"**Certificate of Incorporation**" has the meaning set forth in the Recitals.

"**Change in Tax Law**" has the meaning set forth in **Section 8.7(a)**.

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended.

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

"**Common Stock Cap Limitation**" has the meaning set forth in **Section 4.2**.

"Common Stock Liquidity Conditions" with respect to a Mandatory Conversion or redemption will be satisfied if: (a) the offer and sale of such share of Common Stock by such holder upon receipt of such Common Stock are registered pursuant to an effective registration statement under the Securities Act and such registration statement is reasonably expected by the Corporation to remain effective and usable by the holder to sell such share of Common Stock, continuously during the period from, and including, the date such share of Common Stock is issued to such holder pursuant to such Mandatory Conversion or conversion upon a redemption, to, and including, the thirtieth (30th) calendar day thereafter; provided, however, that each holder will supply all information reasonably requested by the Corporation for inclusion, and required to be included, in any registration statement or prospectus supplement related to the resale of the Common Stock; (b) each share of Common Stock referred to in clause (a) above (i) will, when issued (or, when sold or otherwise transferred pursuant to the registration statement referred to above) (1) be admitted for book-entry settlement through the Depositary with an "unrestricted" CUSIP number; and (2) not be represented by any Certificate that bears a legend referring to transfer restrictions under the Securities Act or other securities laws; and (ii) will, when issued, be listed and admitted for trading, without suspension or material limitation on trading, on any of The New York Stock Exchange, The NYSE American, The NASDAQ Capital Market, The NASDAQ Global Market or The NASDAQ Global Select Market (or any of their respective successors); and (c) (i) the Corporation has not received any written threat or notice of delisting or suspension by the applicable exchange referred to in clause (b)(ii) above with a reasonable prospect of delisting, after giving effect to all applicable notice and appeal periods; and (ii) no such delisting or suspension is reasonably likely to occur or is pending based on the Corporation falling below the minimum listing maintenance requirements of such exchange.

"**Compounded Dividends**" has the meaning set forth in **Section 4.2**.

"**Conversion Date**" has the meaning set forth in **Section 8.3(e)**.

"**Conversion Election Date**" means the date upon which the holder's right to convert its Shares pursuant to **Section 8** terminates in connection with a Corporation Redemption, which date shall be no earlier than two Business Days prior to the Corporation Redemption Date.

"**Conversion Price**" means, initially, 47.75 per Share, as adjusted from time to time in accordance with **Section 8.7**.

"**Conversion Shares**" means the shares of Common Stock or other capital stock of the Corporation then issuable upon conversion of the Series A Preferred Stock in accordance with the terms of **Section 8**.

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

"**Corporation**" has the meaning set forth in the Preamble.

"**Corporation Redemption**" has the meaning set forth in **Section 7.2**.

"**Corporation Redemption Date**" has the meaning set forth in **Section 7.6(b)**.

"**Corporation Redemption Notice**" has the meaning set forth in **Section 7.2**.

"**Corporation Redemption Price**" means, as of any date of redemption (or Liquidation, if applicable), the greater of (a) the sum of (i) the Optional Redemption Price, *plus* (ii) accrued and unpaid dividends thereon and (b) the payment that a holder of Shares of Series A Preferred Stock would have received had such holders, immediately prior to such redemption (or Liquidation, if applicable), converted such Shares then held by such holder into shares of Common Stock at the applicable Conversion Price then in effect in accordance with **Section 8.1**, before any distributions are made to holders of Common Stock and all other Junior Securities and subject to the rights of the holders of any Parity Securities or Senior Securities and the rights of the Corporation's existing and future creditors.

"**Current Market Price**" means, on any day, the average of the Daily VWAP for the five (5) consecutive Trading Days ending the Trading Day immediately prior to the day in question.

"**Daily VWAP**" means the consolidated volume-weighted average price per share of Common Stock as displayed under the heading "Bloomberg VWAP" on the Bloomberg page for the "<equity> AQR" page corresponding to the "ticker" for such Common Stock (or its equivalent successor if Bloomberg ceases to publish such price, or such page is not available) in

respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the closing price of one share of such Common Stock on such Trading Day). The "volume weighted average price" shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

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

"**DGCL**" has the meaning set forth in the Preamble.

"**Dividend Payment Date**" has the meaning set forth in **Section 4.2**.

"**Dividend Rate**" means 6.25% *per annum*, which amount shall increase to 7.25% *per annum* on the seventh anniversary of the Original Issue Date and to 8.25% *per annum* on the tenth anniversary of the Original Issue Date, as adjusted pursuant to **Section 4.2**, **Section 7.7(b)**, *provided*, that if and for so long as any Event of Noncompliance occurs and is continuing, then the then-current Dividend Rate shall automatically increase by an additional 1.00% per annum; *provided further*, that the Dividend Rate shall only be increased by 1.00% notwithstanding multiple Events of Noncompliance.

"**Dividends**" has the meaning set forth in **Section 4.1**.

"**Elliott**" means Elliott Investment Management L.P.

"**Equity Securities**" has the meaning ascribed to such term in Rule 405 promulgated under the Securities Act as in effect on the date hereof, and in any event includes any stock, any partnership interest, any limited liability company interest and any other interest, right or security convertible into, or exchangeable or exercisable for, capital stock, partnership interests, limited liability company interests or otherwise having the attendant right to vote for directors or similar representatives.

"**Event Effective Date**" has the meaning set forth in **Section 8.7(k)**.

"**Event of Noncompliance**" means (i) the failure by the Corporation to issue Common Stock upon receipt of a Notice of Conversion pursuant to the terms of **Section 8.3(a)**, (ii) the failure by the Corporation to comply with the provisions of **Section 11(a)**, and (iii) the failure of the Corporation to comply with the other terms of this Certificate of Designations and such failure continues for thirty (30) days.

"**Ex-Dividend Date**" means the first date on which shares of Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Corporation or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

"**Expiration Date**" has the meaning set forth in **Section 8.7(f)**.

"**Flash Business**" shall have the meaning ascribed to it in the Investment Agreement.

"**Fundamental Change**" shall be deemed to have occurred when any of the following has occurred; *provided* that a Specified Spin-Off Transaction shall be deemed not to be a Fundamental Change or a Make-Whole Fundamental Change:

(a) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than the Corporation, its Wholly-owned Subsidiaries and the employee benefit plans of the Corporation and its Wholly-owned Subsidiaries, files a Schedule TO or any schedule, form or report under the Exchange Act that discloses that such person or group has become the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of the Common Stock representing more than 50% of the voting power of the Common Stock;

(b) the consummation of (i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock is converted into, or exchanged for, stock, other securities, other property or assets; (ii) any share exchange, consolidation or merger of the Corporation pursuant to which the Common Stock will be converted into cash, securities or other assets; or (iii) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries, taken as a whole, to any person or group other than any of the Corporation's Wholly-owned Subsidiaries; *provided*, *however*, that a transaction described in clause (ii) in which the holders of all classes of the Corporation's Common Stock immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Stock of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Corporation approve any plan or proposal for the liquidation or dissolution of the Corporation; or

(d) the Common Stock (or other common stock underlying the Series A Preferred Stock) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors);

provided, *however*, that a transaction or transactions described in clause (a) or clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by the common stockholders of the Corporation, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of

such transaction or transactions the Series A Preferred Stock become convertible into such consideration, excluding cash payments for fractional shares and cash payments made in respect of dissenters' appraisal rights. If any transaction in which the Common Stock is replaced by the securities of another entity occurs, following completion of any related Make-Whole Fundamental Change Period (or, in the case of a transaction that would have been a Fundamental Change or a Make-Whole Fundamental Change but for the proviso immediately following clause (d) of this definition, following the effective date of such transaction) references to the Corporation in this definition shall instead be references to such other entity.

"**Fundamental Change Redemption**" shall have the meaning specified in **Section 7.1**.

"**Fundamental Change Redemption Date**" shall have the meaning specified in **Section 7.4**.

"**Fundamental Change Redemption Notice**" shall have the meaning specified in **Section 7.1**.

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

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

"**Immaterial Subsidiary**" shall mean any Subsidiary of the Corporation that did not, as of the last day of the fiscal quarter of the Corporation most recently ended, have assets with a value in excess of 10.00% of the consolidated total assets or revenues and income from continuing operations before taxes representing in excess of 10.00% of total revenues and income from continuing operations before taxes, respectively, of the Corporation and its Subsidiaries on a consolidated basis as of such date and after giving pro forma effect to any acquisitions or dispositions which occur after such balance sheet date.

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

"**Initial Investors**" means AP WD Holdings, L.P., a Delaware limited partnership ("**Apollo**"), Elliott Associates, L.P., a Delaware limited partnership ("**EALP**"), and Elliott International, L.P., a Cayman Islands limited partnership ("**EILP**"), and each Affiliate of any Initial Investor to whom shares of Series A Preferred Stock or Common Stock are transferred.

"**Insolvency Event**" means:

(a) any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or any of its Material Subsidiaries;

(b) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Corporation or any of its Material Subsidiaries, or of a substantial part of the property or assets of the Corporation or any of its Material Subsidiaries, under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Corporation or any of its Material Subsidiaries or for a substantial part of the property or assets of the Corporation or any of its Material Subsidiaries or (iii) the winding-up or liquidation of the Corporation or any of its Material Subsidiaries, and such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; or

(c) the Corporation or any of its Material Subsidiaries shall (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (b) above, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Corporation or any of its Material Subsidiaries or for a substantial part of the property or assets of the Corporation or any of its Material Subsidiaries, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or admit in writing its inability or fail generally to pay its debts as they become due.

"**Investment Agreement**" means collectively (i) the Investment Agreement dated the Original Issue Date between the Corporation (the "**Apollo Investment Agreement**") and Apollo and (ii) the Investment Agreement dated the Original Issue Date among the Corporation, EALP and EILP (the "**Elliott Investment Agreement**").

"**IRS**" means the United States Internal Revenue Service.

"**Junior Securities**" means, collectively, the Common Stock and each other class or series of capital stock now existing or hereafter authorized, classified or reclassified, the terms of which do not expressly provide that such class or series ranks on a parity basis with or senior to the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

"**Last Reported Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the Common Stock is traded. If the Common Stock is not listed for trading on a U.S. national or regional securities exchange on the relevant date, the "**Last Reported Sale Price**" shall be the last quoted bid price per share for the Common Stock in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock is not so quoted, the "**Last Reported Sale Price**" shall be the average of the mid-point of the last bid and ask prices per share for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Corporation for this purpose.

"**Laws**" mean all state or federal laws, common law, statutes, ordinances, codes, rules or regulations, orders, executive orders, judgments, injunctions, governmental guidelines or interpretations have the force of law, Permits, decrees, or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Authority.

"**Liquidation**" has the meaning set forth in **Section 5.1**.

"**Make-Whole Fundamental Change**" means any transaction or event that constitutes a Fundamental Change, after giving effect to any exceptions to or exclusions from the definition thereof, but without regard to the proviso in clause (b) of the definition thereof.

"**Material Subsidiary**" shall mean any Subsidiary other than an Immaterial Subsidiary.

"MP0" means the average of the Daily VWAP of the Common Stock over the twenty (20) consecutive Trading Days immediately following, but including, the Spin-Off Ex-Dividend Date.

"**NASDAQ**" means the NASDAQ Global Select Market.

"**Notice of Conversion**" has the meaning set forth in **Section 8.3(a)**.

"**Optional Redemption Price**" means an amount in cash equal to 110% of the Accumulated Stated Value.

"**Original Issue Date**" means January 31, 2023.

"**Parity Securities**" means any class or series of capital stock, the terms of which expressly provide that such class ranks pari passu with the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary bankruptcy, liquidation, dissolution or winding up of the affairs of the Corporation.

"**Permits**" mean all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Authorities.

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

"**Preferred Stock**" has the meaning set forth in the Recitals.

"**Redemption Dates**" has the meaning set forth in **Section 7.6(b)**.

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

"**Reorganization Event**" has the meaning set forth in **Section 8.7(g)**.

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

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

"**Senior Securities**" means any class or series of capital stock, the terms of which expressly provide that such class ranks senior to any series of the Series A Preferred Stock, has preference or priority over the Series A Preferred Stock as to dividend rights and rights on the distribution of assets on any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

"**Series A Preferred Stock**" has the meaning set forth in **Section 1**.

"**Shares**" has the meaning set forth in **Section 1**.

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

"**Spin Cut-Off Date**" has the meaning set forth in **Section 8.1**.

"**Spin-Co**" means the entity that directly or indirectly owns the applicable assets and liabilities of all or substantially all of the Flash Business in connection with the contribution or transfer of such business in a Specified Spin-Off Transaction.

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

"**Spin-Co Preferred Stock**" has the meaning set forth in **Section 8.7(l)**.

"Spin-Co Spin-Off Transaction Adjustment Ratio" means the quotient of (i) Spin-Co FMV and (ii) Spin-Co FMV *plus* MP0.

"**Spin-Off**" has the meaning set forth in **Section 8.7(d)**.

"Spin-Off Ex-Dividend Date" means, in connection with a Specified Spin-Off Transaction, the first date on which shares of the applicable common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Corporation or Spin-Co, as applicable, on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market; provided that if the applicable common stock does not trade on an exchange or market, the "Spin-Off Ex-Dividend Date" shall mean the record date for such issuance, dividend or distribution.

"Spin-Off Transaction Adjustment Ratio" means the quotient of (i) MP0 and (ii) MP0 *plus* Spin-Co FMV.

"Spin-Off Transaction Share" means one share of common stock of Spin-Co.

"**Standalone Specified Spin-Off Transaction**" means a Specified Spin-Off Transaction pursuant to which the Corporation does not enter into a definitive agreement with respect to a Subsequent Transaction in connection with such Specified Spin-off Transaction.

"**Stated Value**" means, with respect to any Share on any given date, $1,000.00.

"**Stock Price**" has the meaning set forth in **Section 8.7(k)**.

"**Subsequent Transaction**" has the meaning set forth in **Section 8.1**.

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

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

"**Tax Opinion or Ruling**" means a "will" level opinion from national recognized tax counsel or an IRS private letter ruling to the effect that a distribution (taking into account any Subsequent Transaction and any other transactions related thereto or contemplated thereby) meets the requirements of Section 355 or Section 361 of the Code, as the case may be, and is not a distribution to which Section 355(d) or (e) of the Code applies.

"**Trading Day**" means a Business Day on which the NASDAQ (or any other national securities exchange on which the Common Stock is listed at such time) is open for business.

"**Treasury Rate**" means, as of any redemption date, the weekly average rounded to the nearest 1/100th of a percentage point (for the most recently completed week for which such information is available as of the date that is two Trading Days prior to the redemption date) of the yield to maturity of United States Treasury Securities with a constant maturity (as compiled and published in Federal Reserve Statistical Release H.15 with respect to each applicable day during such week or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the redemption date to the seventh anniversary of the Original Issue Date; *provided*, *however*, that if the period from the redemption date to the seventh anniversary of the Original Issue Date is not equal to the constant maturity of a United States Treasury Security for which such a yield is given, the Treasury Rate shall be obtained by linear interpolation (calculated to the nearest one-twelfth of a year) from the weekly average yields of United States Treasury Securities for which such yields are given, except that if the period from the redemption date to the seventh anniversary of the Original Issue Date is less than one year, the weekly average yield on actually traded United States Treasury Securities adjusted to a constant maturity of one year shall be used.

"**Wholly-owned Subsidiary**" means, at any time, any Subsidiary of which all of the issued and outstanding Equity Securities (other than directors' qualifying shares and shares held by a resident of the jurisdiction, in each case, as required by law) are owned by any one (1) or more of the Corporation and the Corporation's other Wholly-owned Subsidiaries at such time.

3. Rank. With respect to payment of dividends and distribution of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, all Shares of the Series A Preferred Stock shall rank (a) senior to all Junior Securities, (b) pari passu with any Parity Securities in issue from time to time, and (c) junior to all Senior Securities; *provided* that all Shares of the Series A Preferred Stock shall rank senior to or pari passu with any other series of shares of preferred stock of the Corporation authorized following the Original Issue Date.

4. Dividends.

4.1 Accrual of Dividends. From and after the Original Issue Date of the Shares, cumulative dividends ("**Dividends**") on each such Share shall accrue whether or not there are funds legally available for the payment of dividends, on a daily basis in arrears at the applicable Dividend Rate on the sum of (i) the Stated Value thereof *plus*, (ii) once compounded, any Compounded Dividends thereon (the Stated Value plus accumulated Compounded Dividends, the "**Accumulated Stated Value**"). All accrued dividends on any Share shall, unless declared and paid in cash or Common Stock pursuant to **Section 4.2**, compound quarterly on the last day of March, June, September and December of each calendar year.

4.2 Payment of Dividends. If, as and when declared by the Board out of funds legally available therefor to the maximum extent not prohibited by Delaware law, the Corporation shall make each dividend payment on the Series A Preferred Stock in cash on the last day of March, June, September and December of each calendar year (each such date, a "**Dividend Payment Date**") at the applicable Dividend Rate; *provided*, that if the Corporation elects and declares and pays in cash any such dividend payments, the Corporation shall elect and declare and pay in cash such dividend payments on the same *pro rata* portion of each holder's Shares. The record date for payment of dividends on the Series A Preferred Stock will be the fifteenth (15th) day of the calendar month of the applicable Dividend Payment Date, whether or not such date is a Business Day, and dividends shall only be payable to registered holders of record of the Series A Preferred Stock as such holders appear on the stock register of the Corporation at the close of business on the related record date. If any Dividend Payment Date is not a Business Day, the applicable payment shall be due on the next succeeding Business Day and no additional dividend amount for such period shall be payable during such period as a result of such delay, but shall be paid on the next succeeding Dividend Payment Date. All dividends that the Corporation does not elect to declare and pay in cash shall compound quarterly pursuant to **Section 4.1** on the last day of such quarterly period and shall be added to the then current Accumulated Stated Value ("**Compounded Dividends**"**).** Notwithstanding anything to the contrary in the foregoing, unless the issuance of shares upon conversion of the Series A Preferred Stock has been approved by holders of the Common Stock in accordance with applicable NASDAQ shareholder approval requirements, if upon any Dividend Payment Date all accrued and unpaid dividends payable on such Dividend Payment Date would result in the number of shares of Common Stock issued and/or into which the outstanding Series A Preferred Stock could be converted to be in excess of 63,546,241 shares of Common Stock at a price less than Minimum Price in accordance with NASDAQ shareholder approval requirements (as adjusted for any event set forth in **Section 8.7**, the "**Common Stock Cap Limitation**"), then the Corporation must declare and make each dividend payment on the Series A Preferred Stock on each such Dividend Payment Date in cash except to the extent prohibited by applicable Delaware law (and any such accrued and unpaid dividends resulting in conversion in excess of such threshold prior to any such Dividend Payment Date must be paid in cash upon any conversion of the Series A Preferred Stock in accordance with **Section 8** rather than converting into shares of Common Stock). For the avoidance of doubt, (i) no Dividend may be declared by the Board in respect of the Series A Preferred Stock unless paid immediately in cash, and (ii) no Dividend shall be declared or paid upon delivery of a redemption notice or conversion notice of the Series A Preferred Stock (including in connection with a liquidation pursuant to **Section 5**).

4.3 Dividend Calculations. Dividends on the Series A Preferred Stock shall accrue on the basis of a 360-day year, consisting of twelve (12), thirty (30) calendar day periods, and shall accrue daily commencing on the Original Issue Date, and shall be deemed to accrue from such date whether or not earned or declared and whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends.

4.4 Dividends on the Common Stock. If the Corporation declares a dividend or makes a distribution of cash (or any other distribution treated as a dividend under Section 301 of the Code) on its Common Stock, each holder of Shares of Series A Preferred Stock shall be entitled to participate in such dividend or distribution in an amount equal to the largest number of whole shares of Common Stock into which all Shares of Series A Preferred Stock (including any unpaid Compounded Dividends and, without duplication, accrued but unpaid dividends up to, but excluding, the record date for the applicable distribution) held of record by such holder is convertible pursuant to **Section 8** herein as of the record date for such dividend or distribution or, if there is no specified record date, as of the date of such dividend or distribution.

4.5 Conversion Prior to or Following a Record Date. If the Conversion Date for any Shares is prior to the close of business on the record date for a dividend as provided in **Section 4.2**, the holder of such Shares shall not be entitled to any dividend in respect of such record date. If the Conversion Date for any Shares is after the close of business on the record date for a dividend as provided in **Section 4.2** but prior to the corresponding Dividend Payment Date, the holder of such Shares as of the applicable record date shall be entitled to receive such dividend, notwithstanding the conversion of such Shares prior to the applicable Dividend Payment Date.

5. Liquidation.

5.1 Liquidation. In the event of any Insolvency Event of the Corporation (a "**Liquidation**"), the holders of Shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, pari passu with any payment to the holders of any Parity Securities and subject to the rights of Senior Securities and the Corporation's creditors, but before any distribution or payment out of the assets of the Corporation shall be made to the holders of Junior Securities by reason of their ownership thereof, an amount in cash equal to the Corporation Redemption Price.

5.2 Insufficient Assets. If upon any Liquidation the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Shares of Series A Preferred Stock the Corporation Redemption Price to which they are entitled under **Section 5.1**, (a) the holders of the Shares shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective full preferential amounts which would otherwise be payable in respect of the Series A Preferred Stock any Parity Securities in the aggregate upon such Liquidation if all amounts payable on or with respect to such Shares were paid in full, taking into account the Corporation Redemption Price payable in respect of such Series A Preferred Stock, and (b) the Corporation shall not make or agree to make, or set aside for the benefit of the holders of Junior Securities, any payments to the holders of Junior Securities.

5.3 Notice Requirement. In the event of any Liquidation, the Corporation shall, within ten (10) days of the date the Board approves such action, or no later than twenty (20) days of any stockholders' meeting called to approve such action, or within twenty (20) days of the commencement of any involuntary proceeding, whichever is earlier, give each holder of Shares of Series A Preferred Stock written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash and property to be received by the holders of Shares upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of Shares of such material change.

6. Voting. Each holder of outstanding Shares of Series A Preferred Stock shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law; *provided* that no holder of Shares of Series A Preferred Stock shall be entitled to vote in any such vote until the expiration or termination of the applicable waiting period (and any extension thereof) under the HSR Act and any other applicable Regulatory Laws. In any such vote, each holder of Shares of Series A Preferred Stock shall be entitled to a number of votes equal to the largest number of whole shares of Common Stock into which all Shares of Series A Preferred Stock (including any unpaid Compounded Dividends and, without duplication, accrued but unpaid dividends up to, but excluding, the record date for the applicable distribution) held of record by such holder is convertible pursuant to **Section 8** herein as of the record date for such vote or written consent or, if there is no specified record date, as of the date of such vote or written consent; *provided that*, in accordance with the NASDAQ voting rights rules, the Conversion Price used in this **Section 6** shall be the "Minimum Price" as defined in the applicable NASDAQ listing rules (as such rules may be amended from time to time), which shall initially be $43.08 (as adjusted for any event set forth in **Section 8.7**; *provided* that if a Specified Spin-Off Transaction is consummated in connection with a Subsequent Transaction pursuant to **Section 8.7(m)** then, solely for purposes of this **Section 6**, without giving effect to any Adjustment Limitation as described therein). The parties acknowledge that such adjustment is designed to ensure that the voting rights of the Series A Preferred Stock at all times comply with the NASDAQ voting rules. Each holder of outstanding Shares of Series A Preferred Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation's bylaws. As long as any Share of Series A Preferred Stock is outstanding, the Corporation shall not amend, modify or supplement any provision of (a) this Certificate of Designations in a manner that would have an adverse effect on the rights, powers, preferences or privileges of the holders of the Series A Preferred Stock or (b) the Certificate of Incorporation in a manner that would have an adverse effect on the rights, powers, preferences or privileges of the holders of the Series A Preferred Stock that is disproportionate to any other Parity Securities, unless in each case, the prior written approval of the holders of a majority of the Series A Preferred Stock issued and outstanding has been obtained.

7. Redemption.

7.1 Fundamental Change Redemption. Subject to the provisions of this **Section 7**, upon the occurrence of a Fundamental Change, each holder of Series A Preferred Stock shall have the right to require the Corporation to redeem, and the Corporation shall redeem, out of funds legally available therefor, any or all of the then-outstanding Shares of Series A Preferred Stock held by such holder (a "**Fundamental Change Redemption**") for a price per Share equal to the Corporation Redemption Price. The Corporation may, at its option upon prior written notice to the holders of Series A Preferred Stock, and subject to the Common Stock Liquidity Conditions, make such Fundamental Change Redemption mandatory with respect to all shares of Series A Preferred Stock then outstanding. In the event the Corporation elects to mandatorily redeem the shares of Series A Preferred Stock in connection with a Fundamental Change, the Corporation shall redeem all of the shares of Series A Preferred Stock at a price per share equal to the Corporation Redemption Price. In connection with a Fundamental Change, the Corporation shall provide to the holders of Series A Preferred Stock written notice of the proposed Fundamental Change (the "**Fundamental Change Redemption Notice**") at least prior to the twentieth (20th) calendar day prior to the date on which the Corporation anticipates consummating a Fundamental Change (or if later and subject to this **Section 7.1**, promptly after the Corporation discovers that a Fundamental Change may occur). Any such Fundamental Change Redemption shall occur on the date of consummation of the Fundamental Change and in accordance with the Fundamental Change Redemption Notice , if such notice is received by the holders of Series A Preferred Stock at least five (5) Business Days prior to the consummation of such Fundamental Change (solely in the case of the Corporation discovering a Fundamental Change may occur following the twenty (20) calendar day period above and within five (5) Business Days after the consummation of such Fundamental Change if the Corporation shall discover the occurrence of such Fundamental Change at a later date). In exchange for the cancellation of Shares of Series A Preferred Stock of their certificate or certificates, if any, or an affidavit of loss, representing such Shares on or after the applicable Fundamental Change Redemption Date in accordance with **Section 7.8** below, the Corporation Redemption Price for the Shares being redeemed shall be payable in cash by the Corporation in immediately available funds to the respective holders of the Series A Preferred Stock, except to the extent prohibited by applicable Delaware law, and *provided* that the Corporation shall only be required to pay the Fundamental Change Redemption Price simultaneously with, or immediately after, satisfaction of all of the Corporation's obligations under the Delayed Draw Facility, the Revolving Credit Facility, the Indentures and the Convertible Notes after giving effect to any waivers, amendments or modifications thereof.

7.2 Corporation Redemption. Subject to the provisions of this **Section 7**, the Corporation shall have the right, but not the obligation, subject to the Common Stock Liquidity Conditions, to redeem, from time to time, out of funds legally available therefor, all or any portion of the then-outstanding Shares of Series A Preferred Stock (a "**Corporation Redemption**") at any time on or following the seventh anniversary of the Original Issue Date for a price per Share equal to the Optional Redemption Amount *plus* accrued and unpaid dividends thereon. Any such Corporation Redemption shall occur not less than twenty (20) days and not more than sixty (60) days following receipt by the applicable holder(s) of Series A Preferred Stock of a written election notice (the "**Corporation Redemption Notice**") from the Corporation. Following the notice period required by the Corporation Redemption Notice, the Corporation shall redeem all, or in the case of an election to redeem less than all of the Shares of Series A Preferred Stock, the same *pro rata* portion of each such holder's Shares redeemed pursuant to this **Section 7.2**. In exchange for the surrender to the Corporation by the respective holders of Shares of Series A Preferred Stock of their certificate or certificates, if any, or an affidavit of loss, representing such Shares on or after the applicable Corporation Redemption Date in accordance with **Section 7.8** below, the Corporation Redemption Price for the Shares

being redeemed shall be payable in cash by the Corporation in immediately available funds to the respective holders of the Series A Preferred Stock, except to the extent prohibited by applicable Delaware law. Notwithstanding anything to the contrary contained herein, each holder of Shares of Series A Preferred Stock shall have the right to elect, prior to the Corporation Redemption Date, to exercise the conversion rights, if any, in accordance with **Section 8**, including, for the avoidance of doubt, an adjustment to the Conversion Price in the case of a Corporation Redemption pursuant to clause (i) of this **Section 7.2**.

7.3 Insolvency Redemption. Upon the occurrence of an Insolvency Event, the Corporation shall immediately redeem out of assets legally available therefor all the then outstanding Shares of Series A Preferred Stock for an amount equal to the Corporation Redemption Price. In exchange for the surrender to the Corporation by the respective holders of Shares of Series A Preferred Stock of their certificate or certificates, if any, or an affidavit of loss, representing such Shares on or after the applicable Insolvency Event in accordance with **Section 7.8** below, the Corporation Redemption Price for the Shares being redeemed shall be payable in cash by the Corporation in immediately available funds to the respective holders of the Series A Preferred Stock, except to the extent prohibited by applicable Delaware law and subject to the rights of the holders of any Parity Securities or Senior Securities and the rights of the Corporation's existing and future creditors.

7.4 Fundamental Change Redemption Notice. Each Fundamental Change Redemption Notice shall state:

(a) the Corporation Redemption Price;

(b) the date of the closing of the redemption, which pursuant to **Section 7.1** shall be the date of consummation of the Fundamental Change (the applicable date, the "**Fundamental Change Redemption Date**");

(c) the current Conversion Price of the Series A Preferred Stock, after giving effect to any adjustments pursuant to **Section 8.7** (including, for the avoidance of doubt, any adjustments for a Make-Whole Fundamental Change);

(d) whether such redemption is mandatory, and unless such redemption is, at the option of the Corporation, mandatory, a description of the information needed from the holder to elect to participate in such redemption, including a form of any notice required to be delivered by a holder to participate in such redemption;

(e) a description of the payments and other actions required to be made or taken in order to satisfy all of the Corporation's obligations under any outstanding indebtedness; and

(f) the manner and place designated for surrender by the holder to the Corporation of his, her or its certificate or certificates, if any, representing the Shares of Series A Preferred Stock to be redeemed.

7.5 Make-Whole Fundamental Change Notice. Upon the occurrence of an Event Effective Date with respect to any Make-Whole Fundamental Change, the Corporation shall notify holders of Series A Preferred Stock in writing of the Event Effective Date of any Make-Whole Fundamental Change and the current Conversion Price of the Series A Preferred Stock.

7.6 Corporation Redemption Notice. Each Corporation Redemption Notice shall state:

(a) the number of Shares of Series A Preferred Stock held by the holder that the Corporation proposes to redeem on the Corporation Redemption Date specified in the Corporation Redemption Notice;

(b) the date of the closing of the redemption, which pursuant to **Section 7.1** shall be no earlier than twenty (20) days and shall be no later than sixty (60) days following circulation by the Corporation of the Corporation Redemption Notice (the applicable date, the "**Corporation Redemption Date**" and, together with the Fundamental Change Redemption Date, the "**Redemption Dates**") and the Corporation Redemption Price;

(c) the Conversion Election Date;

(d) the current Conversion Price of the Series A Preferred Stock, after giving effect to any adjustments pursuant to **Section 8.7** (including, for the avoidance of doubt, any adjustments for a Make-Whole Fundamental Change); and

(e) the manner and place designated for surrender by the holder to the Corporation of his, her or its certificate or certificates, if any, representing the Shares of Series A Preferred Stock to be redeemed.

7.7 Insufficient Funds; Remedies For Nonpayment.

(a) Insufficient Funds. If on any Fundamental Change Redemption Date the assets of the Corporation legally available are insufficient to pay the full Fundamental Change Redemption Price for the total number of Shares to be redeemed, the Corporation shall (i) take all commercially reasonable actions required and permitted under applicable law to maximize the assets legally available for paying the Fundamental Change Redemption Price, as applicable, (ii) redeem out of all such assets legally available therefor on the applicable Fundamental Change Redemption Date the maximum possible number of Shares that it can redeem on such date, *pro rata* among the holders of such Shares to be redeemed in proportion to the aggregate number of Shares to be redeemed by each such holder on the applicable Fundamental Change Redemption Date and (iii) following the applicable Fundamental Change Redemption Date, at any time and from time to time when additional assets of the Corporation become legally available to redeem the remaining Shares, the Corporation shall use such assets to pay the remaining balance of the aggregate applicable Fundamental Change Redemption Price.

(b) Remedies For Nonpayment. If on any Fundamental Change Redemption Date or Corporation Redemption Date all of the Shares elected to be redeemed pursuant to such redemption are not redeemed in full by the Corporation by paying the entire applicable redemption price until such Shares are fully redeemed and the aggregate redemption price is paid in full, all of the unredeemed Shares shall remain outstanding and continue to have the rights, preferences and privileges expressed herein, including the accrual and accumulation of dividends

thereon as provided in **Section 4**; *provided* that the applicable Dividend Rate on all of the unredeemed Shares shall increase by 1.00% *per annum* on the applicable redemption date and shall subsequently increase by an additional 1.00% *per annum* on each anniversary thereafter of the applicable redemption date up to a maximum Dividend Rate of 10.00% *per annum*, until such time as the full Fundamental Change Redemption Price or Corporation Redemption Price, as applicable (including any unpaid Compounded Dividends and, without duplication, accrued but unpaid dividends up to, but excluding, the record date for the applicable distribution on such Shares at the adjusted Dividend Rate), has been paid in full in respect of all Shares to be redeemed.

7.8 Surrender of Certificates. On or before the applicable Redemption Date, each holder of Shares of Series A Preferred Stock being redeemed shall surrender the certificate or certificates, if any, representing such Shares to the Corporation in the manner and place designated in the Fundamental Change Redemption Notice or Corporation Redemption Notice, as applicable, or to the Corporation's corporate secretary at the Corporation's headquarters, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto), or, in the event such certificate or certificates are lost, stolen or missing, shall deliver an affidavit of loss, in the manner and place designated in the Fundamental Change Redemption Notice or Corporation Redemption Notice, as applicable. Each surrendered certificate shall be canceled and retired and the Corporation shall thereafter make payment of the Corporation Redemption Price or Optional Redemption Price, as applicable, by certified check or wire transfer to the holder of record of such certificate; *provided*, that if less than all the Shares represented by a surrendered certificate are redeemed, then a new stock certificate representing the unredeemed Shares shall be issued in the name of the applicable holder of record of the canceled stock certificate.

7.9 Rights Subsequent to Redemption. If on the applicable Redemption Date the applicable Redemption Price is paid (or tendered for payment) for any of the Shares to be redeemed on such Redemption Date, then on such date all rights of the holder in the Shares so redeemed and paid or tendered, including any rights to dividends on such Shares, shall cease, and such Shares shall no longer be deemed issued and outstanding.

8. Conversion.

8.1 Holders' Optional Right to Convert. Subject to the provisions of this **Section 8**, at any time and from time to time on or after the earlier of (i) the date that is twelve (12) months following the Original Issue Date ("**Spin Cut-Off Date**") and (ii) the completion of a Specified Spin-Off Transaction, any holder of Series A Preferred Stock shall have the right by written election to the Corporation to convert all or any portion of the outstanding Shares of Series A Preferred Stock (including any fraction of a Share) held by such holder into an aggregate number of shares of Common Stock as is determined by (a) *multiplying* the number of Shares (including any fraction of a Share) to be converted by the sum of (i) the Accumulated Stated Value *plus* (ii) Compounded Dividends (if such Dividends have not yet been added to the Accumulated Stated Value) and, without duplication, accrued but unpaid dividends up to, but excluding, the Conversion Date on such Shares to be converted and then (b) *dividing* the result by the Conversion Price in effect immediately prior to such conversion, and in addition thereto the holder shall receive cash in lieu of any fractional shares as set out in **Section 8.3(d)**; *provided*

that no holder of Shares of Series A Preferred Stock shall have the right to convert all or any portion of the outstanding Shares of Series A Preferred Stock into shares of Common Stock until the expiration or termination of the applicable waiting period (and any extension thereof) under the HSR Act and any other applicable Regulatory Laws; *provided*, *further*, that if the Corporation enters into a definitive agreement to sell, merge, combine or otherwise transfer all or substantially all of the Flash Business to a third party in connection with a Specified Spin-Off Transaction before the Spin Cut-Off Date ("**Subsequent Transaction**"), then the Spin Cut-Off Date shall be extended until the earlier of the consummation the Subsequent Transaction or the termination of such definitive agreement.

8.2 Mandatory Conversion Subject to the provisions of this **Section 8**, and subject to the Common Stock Liquidity Conditions, at any time following the third anniversary of the Original Issue Date, if the closing price per share of Common Stock exceeds 150% of the Conversion Price for at least twenty (20) Trading Days in any period of thirty (30) consecutive Trading Days immediately prior to the Initial Investors' receipt of a Notice of Conversion, the Corporation may elect to convert all or any portion of the outstanding Shares of Series A Preferred Stock (including any fraction of a Share) (the **"Mandatory Conversion Right"**) at the Conversion Price in effect immediately prior to such conversion (with the aggregate number of shares of Common Stock to be delivered by the Corporation determined pursuant to the formula set forth in **Section 8.1**), and in addition thereto the holder shall receive cash in lieu of any fractional shares as set out in **Section 8.3(d)**; *provided*, that in the case of an election to convert less than all of the outstanding Shares of Series A Preferred Stock, the Corporation shall convert the same *pro rata* portion of each holder's Shares converted pursuant to this **Section 8.2**. The Corporation will not exercise its Mandatory Conversion Right, or otherwise send a Notice of Conversion, with respect to any Series A Preferred Stock pursuant to this **Section 8.2** (x) unless the Common Stock Liquidity Conditions are satisfied with respect to the Mandatory Conversion and (y) without limiting the application of the Common Stock Liquidity Conditions, at a time that the Corporation has determined to close its trading window with respect to the Corporation's directors to the extent that there is an Investor Director or an Elliott Director (as defined in the Apollo Investment Agreement and the Elliott Investment Agreement, respectively) on the Board or either Initial Investor is deemed an affiliate of the Corporation (as determined pursuant to Rule 144 under the Securities Act). Notwithstanding anything to the contrary in this **Section 8.2**, the Corporation's exercise of its Mandatory Conversion Right, and any related Notice of Mandatory Conversion, will not apply to any share of Series A Preferred Stock as to which a Change of Control Redemption Notice has been duly delivered, and not withdrawn. The date (the "**Mandatory Conversion Date**") for any Mandatory Conversion will be a Business Day of the Corporation's choosing that is no more than twenty (20), nor less than ten (10), Business Days after the Notice of Mandatory Conversion for such Mandatory Conversion. To exercise its Mandatory Conversion Right with respect to any shares of Series A Preferred Stock, the Corporation must send to each holder of such shares a written notice of such exercise (a **"Notice of Mandatory Conversion**"). Such Notice of Mandatory Conversion must state: (1) that the Corporation has exercised its Mandatory Conversion Right to cause the Mandatory Conversion of the shares, briefly describing the Corporation's Mandatory Conversion Right under this Certificate of Designations; (2) the Mandatory Conversion Date for such Mandatory Conversion and the date scheduled for the settlement of such Mandatory Conversion; (3) that shares of Series A Preferred Stock subject to Mandatory Conversion may be converted earlier at the option of the holders thereof pursuant to an Optional Conversion at any time before the close of business on

the Business Day immediately before the Mandatory Conversion Date; (4) the Conversion Price in effect on the Notice of Mandatory Conversion Date for such Mandatory Conversion; and (5) the CUSIP and ISIN numbers, if any, of the Series A Preferred Stock. If less than all shares of Series A Preferred Stock then outstanding are subject to Mandatory Conversion, then: (1) the shares of Series A Preferred Stock to be subject to such Mandatory Conversion will be selected by the Corporation pro rata; and (2) if only a portion of the Series A Preferred Stock is subject to Mandatory Conversion and a portion of such Series A Preferred Stock is subject to Optional Conversion, then the converted portion of such Series A Preferred Stock will be deemed to be from the portion of such Series A Preferred Stock that was subject to Mandatory Conversion. Mandatory Conversion.

8.3 Procedures for Conversion; Effect of Conversion.

(a) Mandatory Conversion. If the Corporation duly exercises, in accordance with Section 8, its Mandatory Conversion Right with respect to any share of Series A Preferred Stock, then (1) the Mandatory Conversion of such share will occur automatically and without the need for any action on the part of the holder(s) thereof; and (2) the shares of Common Stock due upon such Mandatory Conversion will be registered in the name of the holder(s) of such shares of Series A Preferred stock as of the close of business on the related Mandatory Conversion Date.

(b) Procedures for Holder Conversion. In order to effectuate a conversion of Shares of Series A Preferred Stock pursuant to **Section 8.1** a holder or the Corporation, as applicable, shall (i) submit a written election to the Corporation or the holders, as applicable, that such holder or the Corporation elects to convert Shares specifying the number of Shares elected to be converted (a "**Notice of Conversion**"). The holders shall surrender, along with a Notice of Conversion, if applicable, to the Corporation the certificate or certificates, if any, representing the Shares being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or, in the event such certificate or certificates are lost, stolen or missing, accompanied by an affidavit of loss executed by the holder. The conversion of such Shares hereunder shall be deemed effective as of the date of submission of the Notice of Conversion and surrender of such Series A Preferred Stock certificate or certificates, if any, or delivery of such affidavit of loss, if applicable. Upon the receipt by the Corporation or the holders, as applicable, of a Notice of Conversion and the surrender of such certificate(s) and accompanying materials (if any), the Corporation shall as promptly as practicable (but in any event within ten (10) days thereafter) deliver to the relevant holder or holders, as applicable (A) the number of shares of Common Stock (including, subject to **Section 8.3(c)**, any fractional share) to which such holder or holders shall be entitled upon conversion of the applicable Shares as calculated pursuant to **Section 8.1**, as applicable, and, if applicable (B) the number of Shares of Series A Preferred Stock delivered to the Corporation for conversion but otherwise not elected to be converted pursuant to the written election, in each case in book-entry form on the Corporation's share ledger. All shares of capital stock issued hereunder by the Corporation shall be duly and validly issued, fully paid and non-assessable, free and clear of all Taxes, liens, charges and encumbrances with respect to the issuance thereof.

(c) [Reserved].

(d) Fractional Shares. The Corporation shall not issue any fractional shares of Common Stock upon conversion of Series A Preferred Stock. Instead the Corporation shall pay a cash adjustment to the holder of Series A Preferred Stock being converted based upon the Current Market Price on the Trading Day prior to the Conversion Date.

(e) Effect of Conversion. All Shares of Series A Preferred Stock converted as provided in **Section 8.1** or **Section 8.2**, as applicable, shall no longer be deemed outstanding as of the applicable Conversion Date and all rights with respect to such Shares shall immediately cease and terminate as of such time (including, without limitation, any right of redemption pursuant to **Section 7**), other than the right of the holder to receive shares of Common Stock and payment in lieu of any fraction of a Share in exchange therefor. The "**Conversion Date**" means the date on which such holder complies with the procedures in **Section 8.3(a)** (including the submission of the written election to the Corporation of its election to convert).

(f) Limitation on Conversions. The Corporation shall not be obligated to issue any shares of Common Stock pursuant to the terms of this Certificate of Designations, and the holders of Series A Preferred Stock shall not have the right to receive any shares of Common Stock pursuant to the terms of this Certificate of Designations, to the extent the issuance of such shares of Common Stock would exceed the Common Stock Cap Limitation, except that such limitation shall not apply (i) for the avoidance of doubt, as a result of any adjustment to the Conversion Price set forth in Section 8.7 (including any adjustment to the Conversion Price pursuant to Section 8.7(l) or Section 8.7(m) (but without regard to the Adjustment Limitations set forth therein)) and (ii) in the event that the Corporation obtains the approval of its shareholders in accordance with NASDAQ Shareholder approval requirements for issuances of shares of Common Stock in excess of such amount or if the NASDAQ allows for a greater number of shares of Common Stock to be issued pursuant to this Certificate of Designations. Until such approval is obtained, no holder of Series A Preferred Stock shall be issued in the aggregate, pursuant to the terms of this Certificate of Designations, shares of Common Stock in an amount greater than the product of the Common Stock Cap Limitation multiplied by a fraction, the numerator of which is the number of shares of Series A Preferred Stock issued to such initial holder pursuant to the Investment Agreement on the Original Issuance Date and the denominator of which is the aggregate number of all shares of Series A Preferred Stock issued to the initial holders pursuant to the Investment Agreement on the Original Issuance Date (with respect to each such holder, the "**Exchange Cap Allocation**"). In the event that any holder shall sell or otherwise transfer any of such holder's Series A Preferred Stock, the transferee shall be allocated a *pro rata* portion of such holder's Exchange Cap Allocation, and the restrictions of the prior sentence shall apply to such transferee with respect to the portion of the Exchange Cap Allocation allocated to such transferee. In the event that any holder shall have converted all of such holder's Series A Preferred Stock into a number of shares of Common Stock which, in the aggregate, is less than such holder's Exchange Cap Allocation, then the difference between such holder's Exchange Cap Allocation and the number of shares of Common Stock actually issued to such holder shall be allocated to the respective Exchange Cap Allocations of the remaining holders on a *pro rata* basis in proportion to the shares of Common Stock underlying the Series A Preferred Stock then held by each such holder. In the event that the Corporation is prohibited from issuing any shares of Common Stock in connection with a conversion of Series A Preferred Stock pursuant to Section 8.1 or Section 8.2 (the "**Exchange Cap Shares**"), the Corporation shall, to the fullest extent permitted by law and out of funds lawfully available therefor, pay cash

on or prior to the applicable share delivery date to such holder in exchange for the redemption of such number of shares of Series A Preferred Stock held by the holder that are not convertible into such Exchange Cap Shares at a price equal to the product of (x) such number of Exchange Cap Shares and (y) the Current Market Price of the share of Common Stock on the applicable Conversion Date or Mandatory Conversion Date.

8.4 Reservation of Stock. The Corporation shall at all times when any Shares of Series A Preferred Stock is outstanding reserve and keep available out of its authorized but unissued shares of capital stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock issuable upon the conversion of all outstanding Series A Preferred Stock pursuant to this **Section 8**, taking into account any adjustment to such number of shares so issuable in accordance with **Section 8.7** hereof. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not close its books against the transfer of any of its capital stock in any manner which would prevent the timely conversion of the Shares of Series A Preferred Stock.

8.5 No Charge or Payment. The issuance of certificates for shares of Common Stock upon conversion of Shares of Series A Preferred Stock pursuant to **Section 8.1** or **Section 8.2**, as applicable, shall be made without payment of additional consideration by, or other charge, cost or Tax to, the holder in respect thereof.

8.6 Termination of Conversion Right in Connection with Redemption. Notwithstanding anything to the contrary set forth in this Certificate of Designations, in no event may Shares of Series A Preferred Stock be converted as provided in **Section 8.1** or **Section 8.2**, as applicable, on and following the date that is two (2) Business Days prior to the Corporation Redemption Date in respect of such Shares, *provided that*, for the avoidance of doubt, this **Section 8.6** shall no longer apply in the event in respect of Shares of Series A Preferred Stock to be redeemed in accordance with **Section 7** if the closing of the redemption of such Shares does not occur on the applicable Redemption Date and so long as such Shares are not otherwise redeemed.

8.7 Adjustment to Conversion Price and Number of Conversion Shares. In order to prevent dilution of the conversion rights granted under this **Section 8**, the Conversion Price and the number of Conversion Shares issuable on conversion of the Shares of Series A Preferred Stock shall be subject to adjustment, without duplication, from time to time as provided in this **Section 8.7**, except that the Corporation shall not make any adjustment to the Conversion Price if each holder of the Series A Preferred Stock participates, at the same time and upon the same terms as all holders of Common Stock and solely as a result of holding Series A Preferred Stock, in any transaction described in this **Section 8.7**, without having to convert its Series A Preferred Stock, as if each such holder held a number of shares of Common Stock that would be issuable upon conversion of such Series A Preferred Stock in accordance with **Section 8.1** (without giving effect to the proposed adjustment and notwithstanding the exercise by any holder of its rights pursuant to Section 5.15 of the Investment Agreement).

(a) Subdivisions and Combinations. In case the outstanding shares of Common Stock shall be subdivided (whether by stock split, recapitalization or otherwise) into a greater number of shares of Common Stock or combined (whether by consolidation, reverse stock split or otherwise) into a lesser number of shares of Common Stock, then the Conversion Price in effect at the opening of business on the day following the day upon which such subdivision or combination becomes effective shall be adjusted to equal the product of the Conversion Price in effect on such date and a fraction the numerator of which shall be the number of shares of Common Stock outstanding immediately prior to such subdivision or combination, and the denominator of which shall be the number of shares of Common Stock outstanding immediately after such subdivision or combination. Such adjustment shall become effective retroactively to the close of business on the day upon which such subdivision or combination becomes effective.

(b) Stock Dividends or Distributions. If the Corporation shall issue shares of Common Stock as a dividend or distribution on all or substantially all shares of Common Stock or if the Corporation effects a stock split or combination of the Common Stock (other than as set forth in **Section 8.7 (g)**), the Conversion Price shall be adjusted based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0}{OS_1}$$

where,

CP_1 = the Conversion Price in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution or the effective date of such share split or share combination, as the case may be;

CP_0 = the Conversion Price in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution or the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution or the effective date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock that would be outstanding immediately after giving effect to such dividend, distribution, share split or share combination, as the case may be.

Any adjustment made under this clause (b) shall become effective immediately after the open of business on such Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this clause (b) is declared but not so paid or made, the Conversion Price shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, to the Conversion Price that would then be in effect if such dividend or distribution had not been declared or announced.

(c) Distributions of Rights, Options or Warrants. If the Corporation shall distribute to all or substantially all holders of its Common Stock any rights, options or warrants (other than rights, options or warrants distributed in connection with a stockholders' rights plan, in which case the provisions of **Section 8.7 (g)** shall apply) entitling them to purchase, for a period of not more than 45 calendar days from the announcement date for such distribution, shares of the Common Stock at a price per share less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement date for such distribution, the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where

CP_1 = the Conversion Price in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

CP_0 = the Conversion Price in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

OS_0 = the number of shares of the Common Stock outstanding immediately prior to the open of business on the Ex-Dividend Date for such distribution;

X = the number of shares of the Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided* by the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date of such distribution; and

Y = the total number of shares of the Common Stock issuable pursuant to such rights, options or warrants.

Any decrease made under this clause (c) shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. To the extent that shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Price shall be increased to the Conversion Price that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of the Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Price shall be increased to the Conversion Price that would then be in effect if such record date for such distribution had not occurred.

For purposes of this clause (c), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at a price per share less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the announcement date for such distribution, and in determining the aggregate offering price of such shares of the Common Stock, there shall be taken into account any consideration received by the Corporation for such rights, options or warrants and any amount payable upon exercise or conversion thereof, the value of such consideration, if other than cash, as reasonably determined by the Corporation in good faith.

(d) Distributions of Equity Securities, Indebtedness, other Securities, Assets or Property. If the Corporation distributes shares of its Equity Securities, evidences of its Indebtedness, other assets or property of the Corporation or rights, options or warrants to acquire its Equity Securities or other securities to all or substantially all holders of Common Stock, excluding:

(i) dividends or distributions as to which adjustment is required to be effected pursuant to clause (b) or (c) above;

(ii) rights issued to all holders of the Common Stock pursuant to a rights plan, where such rights are not presently exercisable, trade with the Common Stock and the plan provides that the holders of Shares of Series A Preferred Stock will receive such rights along with any Common Stock received upon conversion of the Notes;

(iii) dividends or distributions in which Series A Preferred Stock participates on an as-converted basis pursuant to **Section 4.4**; and

(iv) Spin-Offs described below in this clause (d) and a Specified Spin-Off Transaction for which the adjustments in **Section 8.7(l)** and **Section 8.7(m)** shall apply,

then the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP_0 - FMV}{SP_0}$$

where,

CP_1 = the Conversion Price in effect immediately after the open of business on the Ex-Dividend Date for such distribution;

CP_0 = the Conversion Price in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;

SP_0 = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board in good faith) of the shares of Equity Securities, evidences of Indebtedness, securities, assets or property distributed with respect to each outstanding share of the Common Stock immediately prior to the open of business on the Ex-Dividend Date for such distribution.

Any decrease made under the portion of this clause (d) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Price shall be increased to be the Conversion Price that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP_0" (as defined above), in lieu of the foregoing decrease, each holder of Shares of Series A Preferred Stock may elect to receive at the same time and upon the same terms as holders of shares of Common Stock without having to convert its Series A Preferred Stock, the amount and kind of the Equity Securities, evidences of the Corporation's Indebtedness, other assets or property of the Corporation or rights, options or warrants to acquire its Equity Securities or other securities of the Corporation that such holder would have received as if such holder owned a number of shares of Common Stock into which the Share of Series A Preferred Stock was convertible at the Conversion Price in effect on the Ex-Dividend Date for the distribution. If the Board of Directors determines the "FMV" (as defined above) of any distribution for purposes of this clause (d) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this clause (d) where there has been a payment of a dividend or other distribution on the Common Stock in shares of Equity Securities of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Corporation that will be, upon distribution, listed on a U.S. national or regional securities exchange (a "**Spin-Off**") (other than a Standalone Specified Spin-Off Transaction pursuant to **Section 8.7(l)** or a Specified Spin-Off Transaction consummated in connection with a Subsequent Transaction pursuant to **Section 8.7(m)**), the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{MP_0}{FMV + MP_0}$$

where,

CP_1 = Conversion Price in effect immediately after the end of the Valuation Period;

CP_0 = the Conversion Price in effect immediately prior to the end of the Valuation Period;

FMV = the average of the Last Reported Sale Prices of the Equity Securities or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in **Section 2** as if references therein to Common Stock were to such Equity Securities or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "**Valuation Period**"); and

MP_0 = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

Any adjustment to the Conversion Price under the preceding paragraph of this clause (d) shall be made immediately after the close of business on the last Trading Day of the Valuation Period. If the Conversion Date for any share of Series A Preferred Stock to be converted occurs on or during the Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designations, the Corporation will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Valuation Period.

Notwithstanding the foregoing, if the "FMV" (as defined above) is equal to or greater than the Daily VWAP of the Common Stock over the Valuation Period, in lieu of the foregoing decrease, each holder of Shares of Series A Preferred Stock may elect to receive at the same time and upon the same terms as holders of shares of Common Stock without having to convert its Shares of Series A Preferred Stock, the amount and kind of Equity Securities or similar equity interest that such holder would have received as if such holder owned a number of shares of Common Stock into which the Series A Preferred Stock was convertible at the Conversion Price in effect on the Ex-Dividend Date for the distribution.

(e) [Reserved].

(f) Tender Offer, Exchange Offer. If the Corporation or any of its Subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date (the "**Expiration Date**") on which tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended), the Conversion Price shall be decreased based on the following formula:

$$CP_1 = CP_0 \times \frac{SP_1 \times OS_0}{AC + (SP_1 \times OS_1)}$$

where,

CP_1 = the Conversion Price in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

CP_0 = the Conversion Price in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date;

AC = the aggregate value of all cash and any other consideration (as determined by the Board in good faith) paid or payable for shares purchased or exchanged in such tender or exchange offer;

SP_1 = the average of the Last Reported Sales Prices of the Common Stock of over the ten (10) consecutive Trading Day period beginning on, and including, the Trading Day next succeeding the Expiration Date;

OS_1 = the number of shares of the Common Stock outstanding immediately after the close of business on the Expiration Date (adjusted to give effect to the purchase or exchange of all shares accepted for purchase in such tender offer or exchange offer); and

OS_0 = the number of shares of the Common Stock outstanding immediately prior to the Expiration Date (prior to giving effect to such tender offer or exchange offer).

provided, however, that the Conversion Price will in no event be adjusted up pursuant to this **Section 8(f)**, except to the extent provided in the immediately following paragraph. The adjustment to the Conversion Price pursuant to this **Section 8(f)** will be calculated as of the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the Expiration Date. If the Conversion Date for any share of Series A Preferred Stock to be converted occurs on the Expiration Date or during the Tender/Exchange Offer Valuation Period, then, notwithstanding anything to the contrary in this Certificate of Designations, the Corporation will, if necessary, delay the settlement of such conversion until the second (2nd) Business Day after the last Trading Day of the Tender/Exchange Offer Valuation Period.

(g) Adjustment for Reorganization Events. If there shall occur any reclassification, statutory share exchange, reorganization, recapitalization, consolidation or merger involving the Corporation with or into another Person in which the Common Stock (but not the Series A Preferred Stock) is converted into or exchanged for securities, cash or other property (excluding a merger solely for the purpose of changing the Corporation's jurisdiction of incorporation) including a Fundamental Change (without limiting the rights of holders of Series A Preferred Stock or the Corporation with respect to any Fundamental Change) (a

"**Reorganization Event**"), then, subject to **Section 5**, following any such Reorganization Event, each Share of Series A Preferred Stock shall remain outstanding and be convertible into the number, kind and amount of securities, cash or other property which a holder of such Share of Series A Preferred Stock would have received in such Reorganization Event had such holder converted its Shares of Series A Preferred Stock into the applicable number of shares of Common Stock immediately prior to the effective date of the Reorganization Event using the Conversion Price applicable immediately prior to the effective date of the Reorganization Event; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this **Section 8.7** set forth with respect to the rights and interest thereafter of the holders of Series A Preferred Stock, to the end that the provisions set forth in this **Section 8.7** (including provisions with respect to changes in and other adjustments of the Conversion Price) shall thereafter be applicable, as nearly as reasonably practicable, in relation to any shares of stock or other property thereafter deliverable upon the conversion of the Series A Preferred Stock. Without limiting the Corporation's obligations with respect to a Fundamental Change, the Corporation (or any successor) shall, no less than twenty (20) calendar days prior to the occurrence of any Reorganization Event, provide written notice to the holders of Series A Preferred Stock of the expected occurrence of such event and of the kind and amount of the cash, securities or other property that each Share of Series A Preferred Stock is expected to be convertible into under this **Section 8.7(g)**. Failure to deliver such notice shall not affect the operation of this **Section 8.7(g)**. The Corporation shall not enter into any agreement for a transaction constituting a Reorganization Event unless, to the extent that the Corporation is not the surviving corporation in such Reorganization Event, or will be dissolved in connection with such Reorganization Event, proper provision shall be made in the agreements governing such Reorganization Event for the conversion of the Series A Preferred Stock into stock of the Person surviving such Reorganization Event or such other continuing entity in such Reorganization Event.

(h) Stockholders' Rights Plan. To the extent that any stockholders' rights plan adopted by the Corporation is in effect upon conversion of the Shares of Series A Preferred Stock, the holders of Shares of Series A Preferred Stock will receive, in addition to any Common Stock due upon conversion, the appropriate number of rights, if any, under the applicable rights agreement (as the same may be amended from time to time). However, if, prior to any conversion, the rights have separated from the shares of the Common Stock in accordance with the provisions of the applicable stockholders' rights plan, the Conversion Price will be adjusted at the time of separation as if the Corporation distributed to all holders of the Common Stock, shares of Equity Securities, evidences of Indebtedness, securities, assets or property as described in clause (d) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

(i) Other Issuances. Except as stated in this **Section 8.7**, the Corporation shall not adjust the Conversion Price for the issuances of shares of Common Stock or any securities convertible into or exchangeable for shares of Common Stock or rights to purchase shares of Common Stock or such convertible or exchangeable securities.

(j) Adjustment at the Discretion of the Board. The Corporation shall be permitted to decrease the Conversion Price by any amount for a period of at least 20 Business Days if the Board determines in good faith that such decrease would be in the best interest of the Corporation. In addition, to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Corporation's securities are then listed, the Corporation also may (but is not required to) decrease the Conversion Price to avoid or diminish income tax to holders of Common Stock or rights to purchase shares of Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Price is decreased pursuant to either of the preceding two sentences, the Corporation shall deliver to the holders of the Series A Preferred Stock a notice of the decrease at least fifteen (15) days prior to the date the decreased Conversion Price takes effect, and such notice shall state the decreased Conversion Price and the period during which it will be in effect.

(k) Adjustment Upon Make-Whole Fundamental Change.

(i) If the Event Effective Date of a Make-Whole Fundamental Change occurs and a holder of Shares of Series A Preferred Stock elects to convert any or all of its Shares of Series A Preferred Stock in connection with such Make-Whole Fundamental Change, the Corporation shall, in addition to the shares of Common Stock otherwise issuable upon conversion of such Shares of Series A Preferred Stock, issue an additional number of shares of Common Stock (the "**Additional Shares**") upon surrender of such Shares of Series A Preferred Stock for conversion as described in this **Section 8.7(k)**. A conversion of Shares of Series A Preferred Stock shall be deemed for these purposes to be "in connection with" such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Corporation during the period from the open of business on the Event Effective Date of the Make-Whole Fundamental Change to the date that is twenty (20) Trading Days following the Event Effective Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the proviso in clause (b) of the definition thereof, the 35th Trading Day immediately following the Event Effective Date of such Make-Whole Fundamental Change) (such period, the "**Make-Whole Fundamental Change Period**").

(ii) The number of Additional Shares, if any, issuable in connection a Make-Whole Fundamental Change shall be determined by reference to the table below, based on:

(a) the date on which the Make-Whole Fundamental Change occurs or becomes effective (the "**Event Effective Date**") and

(b) the price paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change, as described in the succeeding paragraph (the "**Stock Price**").

If the holders of the Common Stock receive only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. Otherwise, the Stock Price shall be the average of the Last Reported Sale Prices per share of the

Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Event Effective Date of the Make-Whole Fundamental Change. The Board shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Price that becomes effective, or any event requiring an adjustment to the Conversion Price where the Ex-Dividend Date, effective date or expiration date of the event occurs during such five Trading Day period.

(iii) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Price is otherwise adjusted. The adjusted Stock Prices shall equal (i) the Stock Prices applicable immediately prior to such adjustment, multiplied by (ii) a fraction, the numerator of which is the Conversion Price immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Price as so adjusted. The Additional Shares issuable upon conversion set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Price as set forth in this **Section 8.7**.

(iv) The following table sets forth the number of Additional Shares issuable upon conversion of Series A Preferred Stock pursuant to this **Section 8.7(k)** for each Stock Price and Event Effective Date set forth below:

Year	$44.24	$47.75	$50.00	$55.00	$60.00	$65.00	$70.00	$71.62	$75.00	$80.00	$85.00	$90.00	$95.00	$100.00
0	1.6607	1.4873	1.3902	1.2053	1.0542	0.9285	0.8227	0.7918	0.7324	0.6548	0.5873	0.5283	0.4764	0.4305
1	1.6607	1.3579	1.2656	1.0922	0.9525	0.8380	0.7426	0.7149	0.6619	0.5928	0.5331	0.4810	0.4352	0.3946
2	1.6607	1.1345	1.0404	0.8678	0.7348	0.6311	0.5490	0.5261	0.4832	0.4295	0.3851	0.3476	0.3154	0.2874
3	1.6607	0.9636	0.8512	0.6365	0.4600	0.3128	0.1884	0.1522	0.0820	0.0000	0.0000	0.0000	0.0000	0.0000
4	1.6607	0.9518	0.8416	0.6305	0.4565	0.3109	0.1876	0.1515	0.0817	0.0000	0.0000	0.0000	0.0000	0.0000
5	1.6607	0.9066	0.8030	0.6040	0.4390	0.3000	0.1814	0.1467	0.0792	0.0000	0.0000	0.0000	0.0000	0.0000
6	1.6607	0.7749	0.6870	0.5204	0.3832	0.2660	0.1637	0.1332	0.0728	0.0000	0.0000	0.0000	0.0000	0.0000
7	1.6607	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact Stock Price or Event Effective Date may not be set forth in the table above, in which case:

(a) if the Stock Price is between two Stock Prices in the table or the Event Effective Date is between two Event Effective Dates in the table, the number of Additional Shares shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later Event Effective Dates in the table above, as applicable, based on a 365- or 366-day year, as the case may be;

(b) if the Stock Price is greater than $100.00 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above), no Additional Shares shall be issued; and

(c) if the Stock Price is less than $44.24 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above), no Additional Shares shall be issued.

(v) Nothing in this **Section 8.7(k)** shall prevent any other adjustment to the Conversion Price pursuant to this **Section 8.7** in respect of a Make-Whole Fundamental Change.

(l) Adjustment Upon Standalone Specified Spin-Off Transaction. If the Corporation consummates a Standalone Specified Spin-Off Transaction, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect prior to the Standalone Specified Spin-Off Transaction by the Spin-Off Transaction Adjustment Ratio. In the event that preferred stock of Spin-Co is issued to holders of Series A Preferred Stock in exchange for all or a portion of such Series A Preferred Stock pursuant to the terms of the Investment Agreement (the "**Spin-Co Preferred Stock**"), in connection with a Standalone Specified Spin-Off Transaction, the conversion price for the Spin-Co Preferred Stock will be calculated by multiplying the Conversion Price in effect prior to the Specified Spin-Off Transaction by the Spin-Co Spin-Off Transaction Adjustment Ratio.

(m) Adjustment Upon Specified Spin-Off Transaction and Subsequent Transaction. In the event that the Corporation consummates a Subsequent Transaction in connection with a Specified Spin-Off Transaction, the Conversion Price shall be adjusted by multiplying the Conversion Price in effect prior to the Specified Spin-Off Transaction by the Spin-Off Transaction Adjustment Ratio; *provided,* that in the event the Spin-Off Transaction Adjustment Ratio is greater than 0.625, it shall be deemed to be 0.625 for purposes of this adjustment to the Conversion Price and in the event that the Spin-Off Adjustment Ratio is less than 0.45, it shall be deemed to be 0.45 for purposes of this adjustment to the Conversion Price (such limitations, the "**Adjustment Limitations**"). Holders of the Series A Preferred Stock will not be entitled to receive Spin-Off Transaction Shares in the Specified Spin-Off Transaction and Subsequent Transaction.

(n) Rounding; Par Value; De-minimis Adjustments. All calculations under **Section 8.7** shall be made to the nearest 1/10,000th of a cent or to the nearest 1/10,000th of a share, as the case may be. No adjustment in the Conversion Price shall reduce the Conversion Price below the then par value of the Common Stock. If an adjustment to the Conversion Price otherwise required by this **Section 8.7** would result in a change of less than 1% to the Conversion Price, then, notwithstanding anything to the contrary in this **Section 8.7**, the Corporation may, at its election, defer and carry forward such adjustment, except that all such deferred adjustments must be given effect (i) when all such deferred adjustments would result in an aggregate change to the Conversion Price of at least 1%, (ii) on the Conversion Date of any share of Series A Preferred Stock, (iii) on the effective date of any Fundamental Change and/or Make-Whole Fundamental Change and (iv) in connection with Dividends paid on the Common Stock pursuant to **Section 4.4** hereof.

(o) Treatment of Pre-Record Date Adjustments. Notwithstanding this **Section 8.7** or any other provision of this Certificate of Designations, if a Conversion Price adjustment becomes effective on any Ex-Dividend Date, and a holder that has converted its Series A Preferred Stock on or after such Ex-Dividend Date and on or prior to the related record date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date based on an adjusted Conversion Price for such Ex-Dividend Date, then, notwithstanding the Conversion Price adjustment provisions in this **Section 8.7**, the Conversion Price adjustment relating to such Ex-Dividend Date shall not be made for such converting holder. Instead, such holder shall be treated as if such holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(p) Notwithstanding anything to the contrary in this **Section 8**, the Conversion Price shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Corporation's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Corporation or any of the Corporation's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of Original Issuance Date;

(iv) upon the repurchase of any shares of Common Stock pursuant to an open market share repurchase program or other buy back transaction, including structured or derivative transactions, that is not a tender or exchange offer of the kind described in **Section 8.7(f)**;

(v) solely for a change in the par value of the Common Stock; or

(vi) for accrued and unpaid Dividends, if any.

(q) Certificate as to Adjustment.

(i) As promptly as reasonably practicable following any adjustment of the Conversion Price, but in any event not later than thirty (30) days thereafter, the Corporation shall furnish to each holder of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Corporation of a written request by any holder of Series A Preferred Stock, but in any event not later than thirty (30) days thereafter, the Corporation shall furnish to such holder a certificate of an executive officer certifying the Conversion Price then in effect and the number of Conversion Shares or the amount, if any, of other shares of stock, securities or assets then issuable to such holder upon conversion of the Shares of Series A Preferred Stock held by such holder.

(r) Notices. In the event:

(i) that the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another Person, or sale of all or substantially all of the Corporation's assets to another Person; or

(iii) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation;

then, and in each such case, unless the Corporation has previously publicly announced such information (including through filing or furnishing such information with the Securities and Exchange Commission), the Corporation shall send or cause to be sent to each holder of record of Series A Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) at least ten (10) days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent or other right or action, and a description of such dividend, distribution or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Corporation shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon conversion of the Series A Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Series A Preferred Stock and the Conversion Shares.

9. Reissuance of Series A Preferred Stock. Shares of Series A Preferred Stock that have been issued and reacquired by the Corporation in any manner, including shares purchased or redeemed or exchanged or converted, shall (upon compliance with any applicable provisions of the laws of Delaware) have the status of authorized but unissued shares of Preferred Stock of the Corporation undesignated as to series and may be designated or re-designated and issued or reissued, as the case may be, as part of any series of preferred stock of the Corporation, *provided* that any issuance of such shares as Series A Preferred Stock must be in compliance with the terms hereof.

10. Notices. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address at it appears in the stock records of the Corporation (or at such other address for a stockholder as shall be specified in a notice given in accordance with this **Section 10**).

11. Amendments and Waiver.

(a) Amendments Generally. No provision of this Certificate of Designations may be amended, modified or waived, whether by merger, consolidation or otherwise, except by an instrument in writing executed by the Corporation and holders of a majority of outstanding Shares of Series A Preferred Stock, and any such written amendment, modification or waiver will be binding upon the Corporation and each holder of Series A Preferred Stock; *provided*, that any amendment, whether by merger, consolidation or otherwise, to (A)(i) decrease the Stated Value or Accumulated Stated Value, Optional Redemption Price, Corporation Redemption Price or Dividend Rate of any Share of Series A Preferred Stock or otherwise amend or modify in any manner adverse to a holder of Series A Preferred Stock the Corporation's obligations to pay, or the circumstances under which the Corporation is obligated to offer or pay, the Optional Redemption Price or the Corporation Redemption Price, (ii) adversely affect the right of a holder of Series A Preferred Stock to convert Series A Preferred Stock into Common Stock or otherwise modify the provisions with respect to conversion in a manner adverse to a holder of Series A Preferred Stock, or increase the Conversion Price (or any amendment, modification or waiver, whether by merger or otherwise, which would in its application increase the Conversion Price) (subject to such modifications as are required under this Certificate of Designations) or (iii) otherwise amend any other terms of the Series A Preferred Stock in a manner that would have a disproportionate adverse effect on any holder of the Series A Preferred Stock as compared to other holders of the Series A Preferred Stock, requires the consent of holders of each Share of Series A Preferred Stock and to (B) without limiting the foregoing, amend or modify the provisions of **Section 8.7** requires the consent of holders of 90% of the outstanding Shares of Series A Preferred Stock. The holders of Series A Preferred Stock shall have all remedies available at law or in equity for a breach of this Certificate of Designations, including the right to seek specific performance. Any action by the Corporation without the consent of holders of Shares of Series A Preferred Stock required by this **Section 11** is expressly *ultra vires* and shall be void *ab initio* and any action or attempted action, any contracts, amendments or other documentation thereof or related thereto are expressly null and void.

(b) [Reserved.]

12. Withholding. The Corporation and its paying agent shall be entitled to withhold Taxes on all payments on the Series A Preferred Stock or Common Stock or other securities issued upon conversion of the Series A Preferred Stock in each case to the extent required by applicable Law; *provided* that to the extent that the holders of Series A Preferred Stock have previously delivered an appropriate IRS Form W-8 or W-9 to the Corporation establishing an exemption for

U.S. federal withholding (including backup withholding), the Corporation shall not be permitted to withhold unless the Corporation has provided such a holder advance written notice of its intent to withhold at least five (5) days prior to the payment of the amount subject to withholding, and has given such a holder a reasonable opportunity to provide any form or certificate available to reduce or eliminate such withholding. Within a reasonable amount of time after making such withholding payment, the Corporation shall furnish the applicable holder with copies of any tax certificate, receipt or other documentation reasonably acceptable to the holder evidencing such payment.

13. Tax Matters. Absent a change in Tax law (a "**Change in Tax Law**"), or a contrary determination (as defined in Section 1313(a)(1) of the Code), the holders of Series A Preferred Stock and the Corporation agree (i) to treat the Series A Preferred Stock as "common stock" and not "preferred stock" for purposes of Section 305 of the Code and Treasury Regulations Section 1.305-5, (ii) not to treat any dividend paid on the Corporation's Common Stock in which the Series A Preferred Stock participates as giving rise to a "disproportionate distribution" within the meaning of Section 305(b)(2) of the Code, and (iii) not to take any action that would reasonably be expected to cause any holder of the Series A Preferred Stock to recognize taxable income by reason of the operation of Section 305(b)(2) of the Code. Absent a Change in Tax Law, or a contrary determination (as defined in Section 1313(a)(1) of the Code), the Corporation shall treat any adjustment to the Conversion Price pursuant to **Section 8.7** as being made pursuant to a "bona fide, reasonable, adjustment formula" within the meaning of Treasury Regulations Section 1.305-7(b) for U.S. federal and applicable state and local income Tax and withholding purposes, and shall not take any position inconsistent with such treatment.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designations, Preferences and Rights to be executed this 31st day of January, 2023.

WESTERN DIGITAL CORPORATION

By: /s/ Michael C. Ray
Name: Michael C. Ray
Title: Executive Vice President, Chief Legal Officer and Secretary

Exhibit 10.1

INVESTMENT AGREEMENT

by and between

WESTERN DIGITAL CORPORATION

and

AP WD HOLDINGS, L.P.

Dated as of January 31, 2023

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

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

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

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

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

ARTICLE I

Definitions

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

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

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

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

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

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

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

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

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

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

(v) Non-Cash Charges,

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

(vii) [reserved],

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

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

(x) [reserved],

(xi) [reserved],

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

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

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

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

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

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

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

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

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

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

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

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

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

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person; provided, however, (i) that the Company and its Subsidiaries shall not be deemed to be Affiliates of any Investor Party or any of its Affiliates, and (ii) other than in the case of the definitions of "Third Party", "Investor Party" and "Investor Related Party", Section 4.08, Section 5.08(j), Section 5.08(k), Section 5.16, Article VI, Section 7.03 or Section 7.13, in no event shall any of the Investor Parties or any of their respective Subsidiaries be considered an Affiliate of any portfolio company or investment fund affiliated with or managed by affiliates of Apollo, nor shall any other portfolio company or investment fund affiliated with or managed by affiliates of Apollo be considered to be an Affiliate of an Investor Party or any of their respective Affiliates. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"Apollo" means Apollo Global Management, Inc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Fitch" means Fitch, Inc.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"IRS" means the United States Internal Revenue Service.

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

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

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

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

"Material Adverse Effect" means any effect, change, event or occurrence that has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (x) the business, results of operations, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole or (y) the ability of the Company to (i) consummate the Transactions on a timely basis or (ii) comply with its obligations under this Agreement; provided, however, that, for purposes of clause (x) above, none of the following, and no effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: any effect, change, event or occurrence (A) generally affecting (1) the industry in which the Company and its Subsidiaries operate or (2) the economy, credit or financial or capital markets, in the United States or elsewhere in the world, including changes in interest or exchange rates, or (B) to the extent arising out of, resulting from or attributable to (1) changes or prospective changes in Law or in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes or prospective changes in general legal, regulatory or political conditions, in each case occurring after the date hereof, (2) the public announcement of a Spin-Off, this Agreement, the Elliott Transaction Documents, the Transaction Documents or the consummation of the Transactions, (3) acts of war (whether or not declared), sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, (4) volcanoes, tsunamis, pandemics, earthquakes, hurricanes, tornados or other natural disasters, (5) any action taken by the Company or its Subsidiaries (w) that is expressly required by this Agreement or the Transaction Documents, (x) to negotiate and consummate a Spin-Off and any Subsequent Transaction (except as otherwise expressly prohibited by this Agreement or the Transaction Documents), (y) with the Investor's express written consent, or (z) at the Investor's express prior written request, (6) any decline in the market price, or change in trading volume, of the capital stock of the Company (it being understood that this clause (6) shall not prevent a determination that the underlying cause of any such change or decline is a Material Adverse Effect), (7) any failure to meet any internal or public projections, forecasts, guidance, estimates, milestones, budgets or internal or published financial or operating predictions of revenue, earnings, cash flow or cash position (it being understood that this clause (7) shall not prevent or otherwise affect a determination that the underlying cause of any such failure is a Material Adverse Effect), (8) any change or prospective change in the Company's credit ratings (it being understood that this clause (8) shall not prevent or otherwise affect a determination that the underlying cause of any such change or prospective change is a Material Adverse Effect), (9) any change resulting or arising from the identity of the Investor or any of its Affiliates or (10) any actions taken at the written request of the Investor; provided, further, however, that any effect, change, event or occurrence referred to in clause (A) or clauses (B)(1), (B)(3) or (B)(4) may be taken into account in determining whether there has been, or would reasonably be expected to be, individually or in the aggregate, a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on the business, results of operations, assets or financial condition of the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industry in which the Company and its Subsidiaries operate (in which case the incremental disproportionate impact or impacts may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect).

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

"NASDAQ" means the NASDAQ Global Select Market.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"SEC" means the Securities and Exchange Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Term	Section
Acquired Shares	2.01
Action	3.07
Agreement	Preamble
Announcement	5.03
Apollo Entity	5.08(j)
Apollo Indemnitors	5.08(j)
Balance Sheet Date	3.05(c)
Bankruptcy and Equity Exception	3.03(a)
Board Observer	5.08(h)
Capitalization Date	3.02(a)
Certificate of Designations	Recitals
Closing	2.02(a)
Closing Date	2.02(a)
Company	Preamble
Company Disclosure Letter	Article III
Company Preferred Stock	3.02(a)
Company SEC Documents	3.05(a)
Company Securities	3.02(b)
Contract	3.03(b)
DOJ	5.01(c)
Excluded Stock	5.15(a)
Ex-Im Laws	3.08(e)
Filed SEC Documents	Article III
Foreclosure	5.06(e)
FTC	5.01(c)
Hedging Arrangements	5.06(b)
Identified Person	5.08(k)
Identified Persons	5.08(k)
Initial Investor Rights	7.03(b)
Intellectual Property Rights	3.22
Investor	Preamble
Investor Director Designee	5.08(a)
IT Systems and Data	3.23
J.P. Morgan	3.13
Judgments	3.07
Laws	3.08(a)
Material Contract	3.09
Multiemployer Plan	3.14(a)
Organizational Documents	5.08(j)
Participation Portion	5.15(b)(ii)
Permits	3.08(a)
Permitted Loan	5.06(e)
Preferred Stock	Recitals
Proposed Securities	5.15(b)(i)
Purchase Price	2.01

Term	Section
Related Companies	5.08(k)
Related Company	5.08(k)
Required Regulatory Approvals	5.01(a)
Restricted Issuance Information	5.15(b)(ii)
Sanctioned Country	3.08(b)
Sanctioned Person	3.08(b)
Sanctions	3.08(b)
SpinCo Preferred Stock	5.10(b)(i)
Subsequent Transaction Announcement	5.06(b)
Transfer	1.01
USRPHC	3.11

ARTICLE II

Purchase and Sale

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

Section 2.02 Closing.

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

(b) At the Closing:

(i) the Company shall:

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

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

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

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

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

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

ARTICLE III

Representations and Warranties of the Company

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

Section 3.01 Organization; Standing.

(a) The Company is a corporation duly incorporated and validly existing and in good standing under the Laws of the State of Delaware and has all requisite corporate power and corporate authority necessary to carry on its business as it is now being conducted, except (other than with respect to the Company's due organization, valid existence and

good standing) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The Company is duly licensed or qualified as a foreign corporation for the transaction of business and is in good standing (if applicable) under the Laws of each other jurisdiction in which it owns or leases properties or conducts any business so as to require such qualification. True and complete copies of the Company Charter Documents are included in the Filed SEC Documents.

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

Section 3.02 Capitalization.

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

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

(c) As of the date of this Agreement, there are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities, or obligate the Company to grant, extend or enter into any such agreements relating to any Company Securities, including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or

similar rights with respect to any Company Securities. None of the Company or any Subsidiary of the Company is a party to any stockholders' agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any Company Securities or any other agreement relating to the disposition, voting or dividends with respect to any Company Securities. All outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

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

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

Section 3.03 Authority; Non-contravention.

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

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by the Company, nor the consummation by the Company of the Transactions, nor performance or compliance by the Company with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Company Charter Documents or (ii) assuming that the authorizations, consents and approvals referred to in Section 3.04 are obtained at or prior to the Closing Date (other than the authorizations, consents and approvals referred to in Section 3.04(b), which are to be obtained following the Closing in accordance with Section 5.01) and the filings referred to in Section 3.04 are made and any waiting periods thereunder have terminated or expired at or prior to the Closing Date (other than the filings referred to in Section 3.04(b), which are to be made and any waiting periods thereunder are to terminate or expire following the Closing in accordance with Section 5.01), (x) violate any Law or Judgment applicable to the Company or any of its Subsidiaries or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) or accelerate the performance required by the Company under any of the terms or provisions of any loan or credit agreement, indenture, debenture, note, bond, mortgage, deed of trust, lease, sublease, license, contract or other agreement (a "Contract") to which the Company or any of its Subsidiaries is a party or accelerate the Company's or, if applicable, any of its Subsidiaries' obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

Section 3.05 Company SEC Documents; Undisclosed Liabilities.

(a) The Company has filed with the SEC, on a timely basis, all required reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC pursuant to the Exchange Act since July 3, 2021 (collectively, the "Company SEC Documents"). As of their respective SEC filing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act of 2002 (and the regulations promulgated thereunder), as the case may be, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such respective dates (or, if amended prior to the date hereof, the date of the filing of such amendment, with respect to the disclosures that are amended) contained any untrue statement of a material fact

or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, (i) the Company is eligible to file a registration statement on Form S-3, (ii) none of the Company's Subsidiaries is required to file any documents with the SEC, (iii) there are no outstanding or unresolved comments in comment letters from the SEC staff with respect to any of the Company SEC Documents and (iv) to the Knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review, outstanding SEC comment or outstanding SEC investigation. Each of the certifications and statements relating to the Company SEC Documents required by: (A) Rule 13a-14 or Rule 15d-14 under the Exchange Act; (B) 18 U.S.C. §1350 (Section 906 of the Sarbanes-Oxley Act); or (C) any other rule or regulation promulgated by the SEC or applicable to the Company SEC Documents is accurate and complete, and complies as to form and content in all material respects with all applicable Laws.

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

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

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

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

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

Section 3.08 Compliance with Laws; Permits.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and each of its Subsidiaries are and since July 3, 2021 (or such later date as the applicable Laws may have come into effect) have been, in compliance with all state or federal laws, common law, statutes, ordinances, codes, rules or regulations, orders, executive orders, judgments, injunctions, governmental guidelines or interpretations having the force of law, Permits, decrees, or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Authority ("Laws") or Judgments, in each case, that are applicable to the Company or any of its Subsidiaries, including the General Data Protection Regulation (EU) 2016/679, the Privacy and Electronic Communications Directive (2002/58/EC), and any national legislation implementing or supplementing the foregoing in the European Union, to the extent applicable. The Company and each of its Subsidiaries hold all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Authorities ("Permits") necessary for the lawful conduct of their respective businesses, except where the failure to hold the same would not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

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

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

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

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

Section 3.10 Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) the Company and each of its Subsidiaries has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all Tax Returns required to be filed by any of them, and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and

accurate, (b) all Taxes owed by the Company and each of its Subsidiaries that are due (whether or not shown on any Tax Return) have been timely paid except for Taxes which are being contested in good faith by appropriate proceedings which have been adequately reserved against in accordance with GAAP, (c) no examination or audit of any Tax Return relating to any Taxes of the Company or any of its Subsidiaries or with respect to any Taxes due from or with respect to the Company or any of its Subsidiaries by any Taxing Authority is currently in progress or threatened in writing, (d) none of the Company or any of its Subsidiaries has engaged in, or has any liability or obligation with respect to, any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) and (e) neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was or was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

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

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

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

Section 3.14 Employee Benefit Plans.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each material Company Plan has been established, operated, maintained and administered in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and other applicable Laws; (ii) no material Company Plan subject to the Laws outside of the United States which covers individual service providers located outside of the United States has any unfunded or underfunded liabilities or obligations; and (iii) to the Knowledge of the Company, each "multiemployer plan" (as defined in Section 4001 of ERISA) to which the Company, its Subsidiaries or their respective ERISA Affiliates contributes (a "Multiemployer Plan") is in compliance with ERISA. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or, to the Knowledge of the Company, is reasonably expected to occur with respect to any "employee pension benefit plan" (as defined under Section 3(2) of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates; (ii) no "single-employer plan" (as defined in Section 4001 of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA

Affiliates, if such "single-employer plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under Section 4001 of ERISA); (iii) neither the Company, its Subsidiaries nor any of their respective ERISA Affiliates has incurred or, to the Knowledge of the Company, reasonably expects to incur (A) any liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (B) any liability under Section 412 of the Code or tax imposed by Section 4971, 4975 or 4980B of the Code; and (iv) each "employee pension benefit plan" established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates that is intended to be qualified under Section 401 of the Code is so qualified and, to the Knowledge of the Company, nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

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

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

Section 3.16 Sale of Securities. Based in part on the representations and warranties set forth in Section 4.05, the sale and offer of the Acquired Shares pursuant to this Agreement is exempt from the registration and prospectus delivery requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the Knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of Preferred Stock, and neither the Company nor, to the Knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with other offerings by the Company.

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

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

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

Section 3.20 Indebtedness.

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

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

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

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

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

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

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

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

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

ARTICLE IV

Representations and Warranties of the Investor

The Investor represents and warrants to the Company:

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

Section 4.02 Authority; Non-contravention.

(a) The Investor has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by the Investor of this Agreement and the other Transaction Documents and the consummation by the Investor of the Transactions have been duly authorized and approved by all necessary action on the part of the Investor, and no further action, approval or authorization by any of its partners, is necessary to authorize the execution, delivery and performance by the Investor of this Agreement and the other Transaction Documents and the consummation by the Investor of the Transactions. This Agreement has been duly executed and delivered by the Investor and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of the Investor, enforceable against the Investor in accordance with its terms, except that such enforceability may be limited by the Bankruptcy and Equity Exception.

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

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

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

Section 4.05 Purchase for Investment. The Investor acknowledges that the offer and sale of the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares have not been registered under the Securities Act or under any state or other applicable securities laws. The Investor (a) acknowledges that it is acquiring the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares pursuant to an exemption from registration under the Securities Act solely for investment with no intention to distribute any of the foregoing to any Person, (b) will not sell, transfer, or otherwise dispose of any of the Acquired Shares or the Common Stock issuable upon the conversion of the Acquired Shares, except in compliance with this Agreement and the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (c) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares and of making an informed investment decision, (d) is an "accredited investor" (as that term is defined by Rule 501 of the Securities Act) and an "Institutional Account" (as that term is defined by FINRA Rule 4512(c)), and (e) (1) has reviewed the information that it considers necessary or appropriate to make an informed investment decision with respect to the Acquired Shares and the Common Stock issuable upon conversion of the Acquired Shares, (2) has had an opportunity to discuss with the Company and its Representatives the intended business and financial affairs of the Company and to obtain information necessary to verify the information furnished to it or to which it had access and (3) can bear the economic risk of (i) an investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares indefinitely and (ii) a total loss in respect of such investment. The Investor has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of, and form an investment decision with respect to its investment in, the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares.

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

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

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

ARTICLE V

Additional Agreements

Section 5.01 Reasonable Best Efforts; Filings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.06 Transfer Restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.08 Board Matters; Election of Directors.

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

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

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

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

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

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

(v) to the extent such attendance would reasonably be expected to present an actual or likely conflict of interest for the Investor Director in the good faith opinion of the Board or the applicable committee thereof, waive notice of and recuse himself or herself from any meetings, deliberations or discussion of the Board or any committee thereof, as applicable, regarding any Transaction Document, the Transactions (other than a Spin-Off or Subsequent Transaction) or any other transactions involving the Investor Parties.

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

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

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

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

(g) Other than with respect the appointment of the initial Investor Director Designee at the Closing, the Company's obligations to have any Investor Director Designee elected to the Board or nominate any Investor Director Designee for election as a director at any meeting of the Company's stockholders pursuant to this Section 5.08, as applicable, shall in each case be subject to such Investor Director Designee's satisfaction of all applicable requirements regarding service as a director of the Company under applicable Law and stock exchange listing rules regarding service as a director of the Company and all other criteria and qualifications for service as a director applicable to all directors of the Company. The Investor Parties will cause each Investor Director Designee to make himself or herself reasonably available for interviews by the applicable committee of the Board on the same basis as any other new or returning, as applicable, candidate for appointment or election to the Board, and to consent to such reference and background checks or other investigations as the Board may reasonably request on the same basis as any other new or returning, as applicable, candidate for appointment or election to the Board to determine the Investor Director Designee's eligibility and qualification to serve as a director of the Company. No Investor Director Designee shall be eligible to serve on the Board if he or she has been involved in any of the events enumerated under Item 2(d) of Schedule 13D under the Exchange Act or Item 401(f) of Regulation S-K under the Securities Act. Other than with respect the appointment of the initial Investor Director Designee at the Closing, as a condition to any Investor Director Designee's election to the Board or nomination for election as a director of the Company at any meeting of the Company's stockholders, the Investor Parties and the Investor Director Designee must provide to the Company: (x) all information reasonably requested by the Company that is required to be or is customarily disclosed for all new or returning, as applicable, candidates for appointment or election to the Board and their respective Affiliates in a proxy statement or other filings required by applicable Law, any stock exchange listing rules or listing standards or the Company Charter Documents or corporate governance guidelines, in each case, (1) to the extent relating to the Investor Director Designee's election as a director of the Company or the Company's operations in the ordinary course of business and (2) to the same extent requested or required of other candidates for appointment or election to the Board and (y) all information reasonably requested by the Company in connection with assessing eligibility and other criteria applicable to all new or returning, as applicable, candidates for appointment or election to the Board or satisfying compliance and legal or regulatory obligations, in each case, (1) to the extent relating to the Investor Director Designee's nomination or election, as applicable, as a director of the Company or the Company's operations in the ordinary course of business and (2) to the same extent requested or required of other candidates for appointment or election to the Board.

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

(i) The Company shall at all times provide each Investor Director (in his or her capacity as a member of the Board) with the same rights to indemnification and exculpation that it provides to other members of the Board. In addition, in his or her capacity as a member of the Board or any applicable Committee on which he or she formally serves as a member, such Investor Director shall be entitled to receive, unless waived by the Investor Director, (i) any and all applicable director and Committee fees and compensation that are payable to the Company's non-management directors as part of the Company's director compensation plan, and (ii) reimbursement of all reasonable, documented out-of-pocket expenses that he or she incurs in connection with performing Board and any applicable Committee duties consistent with the Company's expense reimbursement policy applicable to non-management directors.

(j) The Company shall maintain directors' and officers' liability insurance as determined by the Board. The Company acknowledges and agrees that any Investor Director who are partners, members, employees, or consultants of Apollo and/or any of its Affiliates (each, an "Apollo Entity") may have certain rights to indemnification, advancement of expenses and/or insurance provided by the applicable Apollo Entity (collectively, the "Apollo Indemnitors"). The Company acknowledges and agrees that the Company shall be the indemnitor of first resort with respect to any indemnification, advancement of expenses and/or insurance provided in the certificate of incorporation, bylaws or any other organizational documents (collectively, the "Organizational Documents") of the Company and/or any of its Subsidiaries and/or any indemnification agreements to any Investor Director in his or her capacity as a director of the Company or any of its Subsidiaries (such that the Company's obligations to such indemnitees in their capacities as directors are primary and any obligation of the Apollo Indemnitors to advance expenses or to provide indemnification or insurance for the same expenses or liabilities incurred by such indemnitees are secondary). Such indemnitees shall, in their capacities as directors, be entitled to all the rights to indemnification, advancement of expenses

and entitled to insurance to the extent provided under (i) Organizational Documents of the Company and/or any of its Subsidiaries in effect from time to time and/or (ii) such other agreement, if any, between the Company and/or any of its Subsidiaries, on the one hand, and such indemnitees, on the other hand, without regards to any rights such indemnitees may have against the Apollo Indemnitors. No advancement or payment by the Apollo Indemnitors on behalf of such indemnitees with respect to any claim for which such indemnitees have sought indemnification, advancement of expenses or insurance from the Company in their capacities as directors shall affect the foregoing and the Apollo Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such indemnitees against the Company and/or its applicable Subsidiaries.

(k) In recognition and anticipation that (i) certain directors, principals, officers, employees, members, partners and/or other representatives of the Investor, any Investor Party or Apollo Entity, or of investment funds or vehicles affiliated with an Apollo Entity or any of its respective Affiliates may be an Investor Director Designee and, accordingly, serve as Directors, and (ii) each of Apollo or investment funds or vehicles affiliated with Apollo may now engage, may continue to engage, and/or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which the Company or any of its Subsidiaries, directly or indirectly, now engage or may engage and/or other business activities that overlap with, are complementary to or compete with those in which the Company or any of its Subsidiaries, directly or indirectly, now engage or may engage, the provisions of this Section 5.08(k) are set forth to regulate and define the conduct of certain affairs of the Company and its Subsidiaries with respect to certain classes or categories of business opportunities as they may involve any Investor Party or its Affiliates and the powers, rights, duties and liabilities of the Company, its Subsidiaries, and their respective directors, officers and stockholders in connection therewith. To the fullest extent permitted by applicable Law, the Company, on behalf of itself and each of its Subsidiaries, hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate (or analogous) or business opportunity for any Investor Party, any of its Affiliates, or any Investor Director Designees or Investor Director (collectively, "Identified Persons" and, individually, an "Identified Person") and the Company or any of its Affiliates. To the fullest extent permitted by applicable Law, in the event that any Identified Person acquires knowledge of a potential transaction or other corporate (or analogous) or business opportunity which may be a corporate (or analogous) or business opportunity for itself, herself or himself and the Company or any of its Affiliates, such Identified Person shall have no duty to communicate, offer or otherwise make available such transaction or other corporate (or analogous) or business opportunity to the Company or any of its Affiliates and shall not be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any purported fiduciary duty solely by reason of the fact that such Identified Person pursues or acquires such corporate (or analogous) or business opportunity for itself, herself or himself, or offers or directs such corporate (or analogous) or business opportunity to another Person (including any Affiliate of such Identified Person). The Company, on behalf of itself and each of its Subsidiaries, (x) acknowledges that the Identified Persons may now own, may continue to own, and from time to time may acquire and own, investments in one or more other entities (each such entity, a "Related Company" and all such entities, collectively, "Related Companies") that are direct competitors of, or that otherwise may have interests that do or could conflict with those of, the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates, and (y) agree that (A) the enjoyment, exercise and enforcement of the rights, interests, privileges, powers

and benefits granted or available to the Identified Persons under this Agreement shall not be in any manner reduced, diminished, affected or impaired, and the obligations of the Identified Persons under this Agreement (if any) shall not be in any manner augmented or increased, by reason of any act, circumstance, occurrence or event arising from or in any respect relating to (1) the ownership by an Identified Person of any interest in any Related Company, (2) the affiliation of any Related Company with an Identified Person or (3) any action taken or omitted by any Related Company or an Identified Person in respect of any Related Company, (B) no Identified Person who is not an Investor Director shall, by reason of such ownership, affiliation or action, become subject to any fiduciary duty to the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates, (C) none of the duties imposed on an Identified Person who is not an Investor Director, whether by contract or law, do or shall limit or impair the right of any Identified Person lawfully to compete with the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates as if the Identified Persons were not a party to this Agreement, and (D) to the fullest extent permitted by Delaware Law, the Identified Persons are not and shall not be obligated to disclose to the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates any information related to their respective businesses or opportunities, including acquisition opportunities, or to refrain from or in any respect to be restricted in competing against the Company, any of its Subsidiaries, any of the Company's stockholders or any of their respective Affiliates in any such business or as to any such opportunities.

Section 5.09 Tax Matters.

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

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

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

Section 5.10 Spin-Off Matters.

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

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

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

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

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

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

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

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

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

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

Section 5.15 Participation Rights.

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

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

(i) give written notice to the Investor Parties, no less than five (5) Business Days prior to the closing of such issuance, setting forth in reasonable detail (A) the designation and all of the terms and provisions of the securities proposed to be issued (the "Proposed Securities"), including, where applicable, the voting powers, preferences and relative participating, optional or other special rights, and the qualification, limitations or restrictions

thereof and interest rate and maturity; (B) the price and other terms of the proposed sale of such securities; (C) the amount of such securities proposed to be issued; and (D) such other information as the Investor Parties may reasonably request in order to evaluate the proposed issuance (except that the Company shall not be required to deliver any information that has not been or will not be provided or otherwise made available to the proposed purchasers of the Proposed Securities); and

(ii) offer to issue and sell to the Investor Parties, on such terms as the Proposed Securities are issued and upon full payment by the Investor Parties, a portion of the Proposed Securities equal to a percentage determined by dividing (A) the number of shares of Common Stock the Investor Parties beneficially own (on an "as-converted basis") by (B) the total number of shares of Common Stock then outstanding (on an "as-converted basis") (such percentage, the "Participation Portion"); provided, however, that, subject to compliance with the terms and conditions set forth in Section 5.15(h), the Company shall not be required to offer to issue or sell to the Investor Parties (or to any of them) the portion of the Proposed Securities that would require the Company to obtain stockholder approval in respect of the issuance of any Proposed Securities under the listing rules of NASDAQ or any other securities exchange or any other applicable Law (provided, further, however, that the Company shall still be obligated to provide written notice of such proposed issuance to the Investor Parties pursuant to Section 5.15(b)(i), which notice shall include a description of the Proposed Securities (including the number thereof) that would require stockholder approval in respect of the issuance thereof (the "Restricted Issuance Information")).

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

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

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

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

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

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

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

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

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

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

Section 5.17 Information Rights.

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

(b) Individuals associated with the Investor Parties may from time to time serve on the Board or the equivalent governing body of the Company's Subsidiaries. The Company, on its behalf and on behalf of its Subsidiaries, recognizes that such individuals (i) will from time to time receive non-public information concerning the Company and its Subsidiaries, and (ii) may (subject to the obligation to maintain the confidentiality of such information in accordance with Section 5.04) share such information with other individuals associated with the

Investor Parties who have a need to know such information for the purpose of facilitating support to such individuals in their capacity as members of the Board or such equivalent governing body or enabling the Investor Parties, as equityholders, to better evaluate the Company's performance and prospects; provided, that such other individuals are informed about the confidential nature of such information and agree in writing to maintain the confidentiality of such information consistent with the confidentiality obligations under Section 5.04.

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

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

(b) [reserved];

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

(d) solely in the event that the corporate family rating for the Company shall be less than the following from at least two of the following three ratings agencies (immediately prior to such issuance, and with respect to the expected corporate family rating as determined by the Company in good faith after giving Pro Forma Effect to such issuance): (x) Ba2 (or the equivalent) from Moody's (or any successor to the rating agency business thereof), (y) BB (or the equivalent) from S&P (or any successor to the rating agency business thereof) and (z) BB (or the equivalent) from Fitch (or any successor to the rating agency business thereof), incur any Indebtedness for borrowed money to the extent that the Company's Consolidated Net Total Leverage Ratio, on a Pro Forma Basis for such incurrence of such Indebtedness for borrowed money and the use of proceeds thereof, would exceed 4.75x; provided, that this right shall not apply to (I) Indebtedness, loans and advances among the Company and any of its Subsidiaries, (II) any commitments or borrowings under working capital, overdraft or liquidity facilities as in effect from time to time, (III) Indebtedness with respect to Capital Leases, (IV) to the extent constituting Indebtedness, arrangements entered into in connection with the purchase and sale of commodities and related assets, or hedging related thereto, (V) any bilateral letter of credit facilities, (VI) any borrowings under the Company's Revolving Credit Facility or Delayed Draw Facility, (VII) other Indebtedness for borrowed money in an aggregate principal amount not to exceed $300,000,000 and (VIII) the refinancing of any existing Indebtedness of the Company; provided, that the principal amount of any such refinancing Indebtedness shall not be increased from the principal amount of such Indebtedness so refinanced (other than any premium, original issue discount, accrued interest and fees and expenses incurred in connection with such refinancing);

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

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

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

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

ARTICLE VI

Survival

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

ARTICLE VII

Miscellaneous

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

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

Section 7.03 Assignment.

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

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

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

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

Section 7.06 Governing Law; Jurisdiction.

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

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 7.06 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 7.09 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7.12 Interpretation.

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

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

Section 7.13 Non-Recourse. Each party hereto agrees, on behalf of itself and its Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that all Actions, claims, obligations, liabilities or causes of action (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to: (A) this Agreement or any other Transaction Document, or any of the transactions contemplated hereunder or thereunder, (B) the negotiation, execution or performance of this Agreement or any of the other Transaction Documents (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement or any of the other Transaction Documents), (C) any breach or violation of this Agreement or any other of the other Transaction Documents and (D) any failure of any of the transactions contemplated hereunder or under any of the other Transaction Documents or any other agreement referenced herein or therein to be consummated, in each case, may be made only against (and are those solely of) the Persons that are, in the case of this Agreement, expressly identified as parties to this Agreement or, in the case of any of the other Transaction Documents, Persons that are expressly identified as parties to such other Transaction Documents and in accordance with, and subject to the terms and conditions of this Agreement or such other Transaction Documents, as applicable. In furtherance and not in limitation of the foregoing and notwithstanding anything contained in this Agreement or any of the other Transaction Documents to the contrary and without limiting the foregoing or any other agreement referenced herein or therein or otherwise to the contrary, each party hereto covenants, agrees and acknowledges on behalf of itself and its respective Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that no recourse under this Agreement or any of the other Transaction Documents or in connection with any of the transactions contemplated hereunder or thereunder shall be sought or had against any other Person, including any Investor Related Party, and no other Person, including any Investor Related Party, shall have any liabilities or obligations (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), it being expressly agreed and acknowledged that no personal liability or losses whatsoever shall attach to, be imposed on or otherwise be incurred by any of the aforementioned, as such, arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), in each case, except for claims that the Company

or the Investor Parties, as applicable, may assert: (i) against any Person that is party to and solely pursuant to the terms and conditions of, the Confidentiality Agreement or (ii) against the Investor Parties solely in accordance with, and pursuant to the terms and conditions of, this Agreement. Notwithstanding anything to the contrary in this Agreement or any of the other Transaction Documents or otherwise, no party hereto or any Investor Related Party shall be responsible or liable for any multiple, consequential, indirect, special, statutory, exemplary or punitive damages or lost profits, opportunity costs, loss of business reputation, diminution in value or damages based upon a multiple of earnings or similar financial measure which may be alleged as a result of this Agreement or any of the other Transaction Documents or any of the transactions contemplated hereunder or thereunder, or the termination or abandonment of any of the foregoing.

[*Remainder of page intentionally left blank*]

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

WESTERN DIGITAL CORPORATION

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

AP WD HOLDINGS, L.P.

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

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

Exhibit 10.2

INVESTMENT AGREEMENT

by and among

WESTERN DIGITAL CORPORATION,

ELLIOTT ASSOCIATES, L.P.

and

ELLIOTT INTERNATIONAL, L.P.

Dated as of January 31, 2023

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

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

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

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

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

ARTICLE I

Definitions

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

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

"50% Beneficial Holding Requirement" means that the Investor Parties continue to beneficially own shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock that represent, in the aggregate and on an as-converted basis (without regard to the provisions of Section 5.08), at least 50% of the number of shares of Common Stock beneficially owned by the Investor Parties in the aggregate on an as-converted basis as at the Closing (without regard to the provisions of Section 5.08), in each case as appropriately adjusted

to account for any event that results in an adjustment to the Conversion Price in accordance with the applicable section of the Certificate of Designations; provided, that, to the extent the Company undertakes a Standalone Spin-Off, from and after such Spin-Off, for purposes of calculating this 50% Beneficial Holding Requirement, the number of shares of Preferred Stock and/or Common Stock beneficially owned by the Investor Parties as of the Closing shall equal (a) the Acquired Shares (as defined below) *less* (b) the SpinCo Preferred Stock (as defined below).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Confidential Information" means any information required to be furnished by or on behalf of the Company or any of its Representatives to the Investors pursuant to the terms of this Agreement, whether disclosed orally or in writing, that (i) is proprietary to the Company and pertains to the business of the Company, (ii) may be reasonably recognized as confidential and proprietary in nature by the Investors, and (iii) (A) if tangible material, is conspicuously marked "confidential" at the time of its delivery to the Investors, or (B) if oral information, is identified as "confidential" at the time of its disclosure to the Investors, or if such information is inadvertently not marked or identified as "confidential" at the time of disclosure or delivery, is sufficiently identified and designated as "confidential" by the Company in a written document and delivered or e-mailed to the Investors within five days after the disclosure or delivery; provided that, notwithstanding anything to the contrary in this Agreement, "Confidential Information" does not and will not include (1) any information that is or becomes generally available to the public other than as a result of a disclosure by the Investors in breach of Section 5.04, (2) any information that is obtained by, or that is or becomes available to, the Investors or their Affiliates in the normal course of any business dealings between the Parties without obligation of confidentiality, (3) any information that becomes legally available to the Investors or their Affiliates from a source other than the Company who is not, to the knowledge of the Investors, bound by a confidentiality obligation to the Company with respect to such information, or (4) any information that was or is independently developed by the Investors or their Affiliates or on their behalf; and provided, further, that, notwithstanding anything to the contrary in this Agreement, the Investors may, upon written notice to the Company, request not to receive any information that is otherwise contemplated to be furnished by the Company to the Investors pursuant to the terms of this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"IRS" means the United States Internal Revenue Service.

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

"Labor Laws" means all Laws relating to labor and employment, including but not limited to, all Law relating to employment and independent contractor practices, wages, equal employment opportunity, affirmative action and other hiring practices, immigration (including the completion of I-9s for all employees and the proper confirmation of employee visas), workers' compensation, unemployment, the payment of social security and other employment-related taxes, employment standards, employment of minors, occupational health and safety, labor relations, unions, withholdings, payment of wages and overtime, meal and rest periods, workplace safety, employee benefits, pay equity, employee and worker classification (including the classification of independent contractors and exempt and non-exempt employees), leaves of absence, family and medical leave, civil rights, retaliation, discrimination, sexual or other workplace harassment, the Worker Adjustment and Retraining Notification Act of 1988, and the regulations promulgated thereunder and any similar state, local or foreign Law, the National Labor Relations Act, the Labor Management Relations Act, the Occupational Safety and Health Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the

Family Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Rehabilitation Act, the Employee Retirement Income Security Act, the Uniform Services Employment and Reemployment Rights Act, the Genetic Information Nondiscrimination Act, 42 U.S.C. §§ 1981, 1983, 1985 and 1986, the Sarbanes-Oxley Act and the Immigration Reform and Control Act, or any similar state, local or foreign Law.

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

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

"Material Adverse Effect" means any effect, change, event or occurrence that has or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on (x) the business, results of operations, assets, liabilities or condition (financial or otherwise) of the Company and its Subsidiaries, taken as a whole or (y) the ability of the Company to (i) consummate the Transactions on a timely basis or (ii) comply with its obligations under this Agreement; provided, however, that, for purposes of clause (x) above, none of the following, and no effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur: any effect, change, event or occurrence (A) generally affecting (1) the industry in which the Company and its Subsidiaries operate or (2) the economy, credit or financial or capital markets, in the United States or elsewhere in the world, including changes in interest or exchange rates, or (B) to the extent arising out of, resulting from or attributable to (1) changes or prospective changes in Law or in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, or any changes or prospective changes in general legal, regulatory or political conditions, in each case occurring after the date hereof, (2) the public announcement of a Spin-Off, this Agreement, the Apollo Transaction Documents, the Transaction Documents or the consummation of the Transactions, (3) acts of war (whether or not declared), sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), sabotage or terrorism, (4) volcanoes, tsunamis, pandemics, earthquakes, hurricanes, tornados or other natural disasters, (5) any action taken by the Company or its Subsidiaries (w) that is expressly required by this Agreement or the Transaction Documents, (x) to negotiate and consummate a Spin-Off and any Subsequent Transaction (except as otherwise expressly prohibited by this Agreement or the Transaction Documents), (y) with the Investors' express written consent, or (z) at the Investors' express prior written request, (6) any decline in the market price, or change in trading volume, of the capital stock of the Company (it being understood that this clause (6) shall not prevent a determination that the underlying cause of any such change or decline is a Material Adverse Effect), (7) any failure to meet any internal or public projections, forecasts, guidance, estimates, milestones, budgets or internal or published financial or operating predictions of revenue, earnings, cash flow or cash position (it being understood that this clause (7) shall not prevent or otherwise affect a

determination that the underlying cause of any such failure is a Material Adverse Effect), (8) any change or prospective change in the Company's credit ratings (it being understood that this clause (8) shall not prevent or otherwise affect a determination that the underlying cause of any such change or prospective change is a Material Adverse Effect), (9) any change resulting or arising from the identity of the Investors or any of their respective Affiliates or (10) any actions taken at the written request of the Investors; provided, further, however, that any effect, change, event or occurrence referred to in clause (A) or clauses (B)(1), (B)(3) or (B)(4) may be taken into account in determining whether there has been, or would reasonably be expected to be, individually or in the aggregate, a Material Adverse Effect to the extent such effect, change, event or occurrence has a disproportionate adverse effect on the business, results of operations, assets or financial condition of the Company and its Subsidiaries, taken as a whole, as compared to other participants in the industry in which the Company and its Subsidiaries operate (in which case the incremental disproportionate impact or impacts may be taken into account in determining whether there has been, or would reasonably be expected to be, a Material Adverse Effect).

"NASDAQ" means the NASDAQ Global Select Market.

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

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

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

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

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

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

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

"SEC" means the Securities and Exchange Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Term	Section
Acquired Shares	2.01
Action	3.07
Agreement	Preamble
Announcement	5.03
Balance Sheet Date	3.05(c)
Bankruptcy and Equity Exception	3.03(a)
Beneficial Ownership Limitation	5.08(c)
Board Observer	5.08(h)
Capitalization Date	3.02(a)
Certificate of Designations	Recitals
Class	5.08(a)
Closing	2.02(a)
Closing Date	2.02(a)
Company	Preamble
Company Disclosure Letter	Article III
Company Preferred Stock	3.02(a)
Company SEC Documents	3.05(a)
Company Securities	3.02(b)
Contract	3.03(b)
Conversion Shares	5.08(b)
DOJ	5.01(c)
Excluded Stock	5.15(a)
Ex-Im Laws	3.08(e)
Filed SEC Documents	Article III
Foreclosure	5.06(e)
FTC	5.01(c)
Hedging Arrangements	5.06(b)
Identified Person	5.08(k)
Identified Persons	5.08(k)
Initial Investor Rights	7.03(b)
Intellectual Property Rights	3.22
Investors	Preamble
IT Systems and Data	3.23
J.P. Morgan	3.13
Judgments	3.07
Laws	3.08(a)
Material Contract	3.09

Term	Section
Multiemployer Plan	3.14(a)
Open Windows	5.17(c)
Organizational Documents	5.08(j)
Participation Portion	5.15(b)(ii)
Permits	3.08(a)
Permitted Loan	5.06(e)
Preferred Stock	Recitals
Proposed Other Financing	5.15(b)(i)
Proposed Securities	5.15(b)(i)
Purchase Price	2.01
Related Companies	5.08(k)
Related Company	5.08(k)
Required Regulatory Approvals	5.01(a)
Restricted Issuance Information	5.15(b)(ii)
Sanctioned Country	3.08(b)
Sanctioned Person	3.08(b)
Sanctions	3.08(b)
Significant Subsidiary	3.01(b)
Specified Exception	5.05(h)
SpinCo Preferred Stock	5.10(b)(i)
Subsequent Transaction Announcement	5.06(b)
Transfer	1.01
USRPHC	3.11

ARTICLE II

Purchase and Sale

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

Section 2.02 Closing.

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

(b) At the Closing:

(i) the Company shall:

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

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

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

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

ARTICLE III

Representations and Warranties of the Company

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

Section 3.01 Organization; Standing.

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

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

Section 3.02 Capitalization.

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

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

(c) As of the date of this Agreement, there are no outstanding agreements of any kind which obligate the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any Company Securities, or obligate the Company to grant, extend or enter into any such agreements relating to any Company Securities, including any agreements granting any preemptive rights, subscription rights, anti-dilutive rights, rights of first refusal or similar rights with respect to any Company Securities. None of the Company or any Subsidiary of the Company is a party to any stockholders' agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any Company Securities or any other agreement relating to the disposition, voting or dividends with respect to any Company Securities. All outstanding shares of Common Stock have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights.

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

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

Section 3.03 Authority; Non-contravention.

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

(b) Neither the execution and delivery of this Agreement or the other Transaction Documents by the Company, nor the consummation by the Company of the Transactions, nor performance or compliance by the Company with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Company Charter Documents, or (ii) assuming that the authorizations, consents and approvals referred to in Section 3.04 are obtained at or prior to the Closing Date (other than the authorizations, consents and approvals referred to in Section 3.04(b), which are to be obtained following the Closing in accordance with Section 5.01) and the filings referred to in Section 3.04 are made and any waiting periods thereunder have terminated or expired at or prior to the Closing Date (other than the filings referred to in Section 3.04(b), which are to be made and any waiting periods thereunder are to terminate or expire following the Closing in accordance with Section 5.01), (x) violate any Law or Judgment applicable to the Company or any of its Subsidiaries or (y) violate or constitute a default (or constitute an event which, with notice or lapse of time or both, would violate or constitute a default) or accelerate the performance required by the Company under any of the terms or provisions of any loan or credit agreement, indenture, debenture, note, bond, mortgage, deed of trust, lease, sublease, license, contract or other agreement (a "Contract") to which the Company or any of its Subsidiaries is a party or accelerate the Company's or, if applicable, any of its Subsidiaries' obligations under any such Contract, except, in the case of clause (ii), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

Section 3.05 Company SEC Documents; Undisclosed Liabilities.

(a) The Company has filed with the SEC, on a timely basis, all required reports, schedules, forms, statements and other documents required to be filed by the Company with the SEC pursuant to the Exchange Act since July 3, 2021 (collectively, the "Company SEC Documents"). As of their respective SEC filing dates, the Company SEC Documents complied in all material respects with the requirements of the Securities Act, the Exchange Act or the Sarbanes-Oxley Act of 2002 (and the regulations promulgated thereunder), as the case may be, applicable to such Company SEC Documents, and none of the Company SEC Documents as of such

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

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

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

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

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

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

Section 3.08 Compliance with Laws; Permits.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, the Company and each of its Subsidiaries are and since July 3, 2021 (or such later date as the applicable Laws may have come into effect) have been, in compliance with all state or federal laws, common law, statutes, ordinances, codes, rules or regulations, orders, executive orders, judgments, injunctions, governmental guidelines or interpretations having the force of law, Permits, decrees, or other similar requirement enacted, adopted, promulgated, or applied by any Governmental Authority ("Laws") or Judgments, in each case, that are applicable to the Company or any of its Subsidiaries, including the General Data Protection Regulation (EU) 2016/679, the Privacy and Electronic Communications Directive (2002/58/EC), and any national legislation implementing or supplementing the foregoing in the European Union, to the extent applicable. The Company and each of its Subsidiaries hold all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Authorities ("Permits") necessary for the lawful conduct of their respective businesses, except where the failure to hold the same would not individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

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

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

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

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

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

Section 3.10 Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (a) the Company and each of its Subsidiaries has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all Tax Returns required to be filed by any of them, and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and

accurate, (b) all Taxes owed by the Company and each of its Subsidiaries that are due (whether or not shown on any Tax Return) have been timely paid except for Taxes which are being contested in good faith by appropriate proceedings which have been adequately reserved against in accordance with GAAP, (c) no examination or audit of any Tax Return relating to any Taxes of the Company or any of its Subsidiaries or with respect to any Taxes due from or with respect to the Company or any of its Subsidiaries by any Taxing Authority is currently in progress or threatened in writing, (d) none of the Company or any of its Subsidiaries has engaged in, or has any liability or obligation with respect to, any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2) and (e) neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was or was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code.

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

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

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

Section 3.14 Employee Benefit Plans.

(a) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) each material Company Plan has been established, operated, maintained and administered in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and other applicable Laws; (ii) no material Company Plan subject to the Laws outside of the United States which covers individual service providers located outside of the United States has any unfunded or underfunded liabilities or obligations; and (iii) to the Knowledge of the Company, each "multiemployer plan" (as defined in Section 4001 of ERISA) to which the Company, its Subsidiaries or their respective ERISA Affiliates contributes (a "Multiemployer Plan") is in compliance with ERISA. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) no "reportable event" (within the meaning of Section 4043(c) of ERISA) has occurred or, to the Knowledge of the Company, is reasonably expected to occur with respect to any "employee pension benefit plan" (as defined under Section 3(2) of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates; (ii) no "single-employer plan" (as defined in Section 4001 of ERISA) established or maintained by the Company, its Subsidiaries or any of their respective ERISA

Affiliates, if such "single-employer plan" were terminated, would have any "amount of unfunded benefit liabilities" (as defined under Section 4001 of ERISA); (iii) neither the Company, its Subsidiaries nor any of their respective ERISA Affiliates has incurred or, to the Knowledge of the Company, reasonably expects to incur (A) any liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan" or (B) any liability under Section 412 of the Code or tax imposed by Section 4971, 4975 or 4980B of the Code; and (iv) each "employee pension benefit plan" established or maintained by the Company, its Subsidiaries or any of their respective ERISA Affiliates that is intended to be qualified under Section 401 of the Code is so qualified and, to the Knowledge of the Company, nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification.

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

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

Section 3.16 Sale of Securities. Based in part on the representations and warranties set forth in Section 4.05, the sale and offer of the Acquired Shares pursuant to this Agreement is exempt from the registration and prospectus delivery requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the Knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of Preferred Stock, and neither the Company nor, to the Knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with prior offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemption from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Preferred Stock under this Agreement to be integrated with other offerings by the Company.

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

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

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

Section 3.20 Indebtedness.

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

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

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

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

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

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

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

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

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

ARTICLE IV

Representations and Warranties of the Investors

The Investors represent and warrant to the Company:

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

Section 4.02 Authority; Non-contravention.

(a) The Investors have all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which they are a party and to perform their respective obligations hereunder and thereunder and to consummate the Transactions. The execution, delivery and performance by the Investors of this Agreement and the other Transaction Documents and the consummation by the Investors of the Transactions have been duly authorized and approved by all necessary action on the part of the Investors, and no further action, approval or authorization by any of their respective partners, is necessary to authorize the execution, delivery and performance by the Investors of this Agreement and the other Transaction Documents and the consummation by the Investors of the Transactions. This Agreement has been duly executed and delivered by the Investors and, assuming due authorization, execution and delivery hereof by the Company, constitutes a legal, valid and binding obligation of the Investors, enforceable against the Investors in accordance with its terms, except that such enforceability may be limited by the Bankruptcy and Equity Exception.

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

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

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

Section 4.05 Purchase for Investment. The Investors acknowledge that the offer and sale of the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares have not been registered under the Securities Act or under any state or other applicable securities Laws. The Investors (a) acknowledge that they are acquiring the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares pursuant to an exemption from registration under the Securities Act solely for investment with no intention to distribute any of the foregoing to any Person, (b) will not sell, transfer, or otherwise dispose of any of the Acquired Shares or the Common Stock issuable upon the conversion of the Acquired Shares, except in compliance with this Agreement and the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (c) have such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares and of making an informed investment decision, (d) are "accredited investors" (as that term is defined by Rule 501 of the Securities Act) and "Institutional Accounts" (as that term is defined by FINRA Rule 4512(c)), and (e) (1) have reviewed the information that they consider necessary or appropriate to make an informed investment decision with respect to the Acquired Shares and the Common Stock issuable upon conversion of the Acquired Shares, (2) have had an opportunity to discuss with the Company and its Representatives the intended business and financial affairs of the Company and to obtain information necessary to verify the information furnished to them or to which they had access and (3) can bear the economic risk of (i) an investment in the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares indefinitely and (ii) a total loss in respect of such investment. The Investors have such knowledge and experience in business and financial matters so as to enable them to understand and evaluate the risks of, and form an investment decision with respect to its investment in, the Acquired Shares and the Common Stock issuable upon the conversion of the Acquired Shares.

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

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

Section 4.08 Big Boy Representation. Each Investor understands and acknowledges that the Company is in possession of information about the Company and its subsidiaries and their respective securities (including information relating to a Spin-Off and potential Subsequent Transaction that, at the Investors' request, has not been provided to the Investors). Any such information may include material non-public information that may or may not be material or superior to information available to the Investors. Each Investor hereby waives any claim, or potential claim, it has or may have against the Company and any its Affiliates relating to the Company's possession of material non-public information.

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

ARTICLE V

Additional Agreements

Section 5.01 Reasonable Best Efforts; Filings.

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

(b) The Company and the Investors agree to make any required filings pursuant to the HSR Act and any other Required Regulatory Approvals with respect to the receipt of Compounded Dividends by the Investors as promptly as reasonably practicable following notice by the Investors that such Required Regulatory Approvals may be required, and to supply as promptly as reasonably practicable any additional information and documentary material that may be requested pursuant to the HSR Act or any other Required Regulatory Approvals, as applicable, and to promptly take any and all steps necessary to avoid or eliminate each and every impediment and obtain all consents that may be required pursuant to the HSR Act or any other Required Regulatory Approvals, as applicable, so as to enable the Investors to receive Compounded Dividends in a form free of restrictions on voting or conversion.

(c) Each of the Company and the Investors shall use its reasonable best efforts to (i) cooperate in all respects with the other party in connection with any filing or submission with a Governmental Authority in connection with any Required Regulatory Approvals and in connection with any investigation or other inquiry by or before a Governmental Authority relating to any Required Regulatory Approvals, including any proceeding initiated by a private person, (ii) keep the other party informed in all material respects and on a reasonably timely basis of any material communication received by the Company or the Investors, as the case may be, from or given by the Company or the Investors, as the case may be, to the Federal Trade Commission ("FTC"), the Department of Justice ("DOJ") or any other Governmental Authority

and of any material communication received or given in connection with any proceeding by a private Person, in each case regarding any Required Regulatory Approvals, (iii) subject to applicable Laws relating to the exchange of information, and to the extent reasonably practicable, consult with the other party with respect to information relating to such party and its respective Subsidiaries, as the case may be, that appears in any filing made with, or written materials submitted to, any third Person or any Governmental Authority in connection with any Required Regulatory Approvals, and (iv) to the extent permitted by the FTC, the DOJ or such other applicable Governmental Authority or other Person, give the other party the opportunity to attend and participate in such meetings and conferences. Any documents or other materials provided pursuant to this Section 5.01(c) may be redacted or withheld as necessary to address reasonable privilege or confidentiality concerns, and to remove references concerning the valuation of the Company or other competitively sensitive material, and the parties may, as each deems advisable, reasonably designate any material provided under this Section 5.01(c) as "outside counsel only material".

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

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

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

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

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

Section 5.05 [Reserved].

Section 5.06 Transfer Restrictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.08 Blocker Provisions.

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

(b) For purposes of calculating beneficial ownership for purposes of this Section 5.08, the aggregate number of shares of Common Stock beneficially owned by the Investor Parties shall include (a) the aggregate number of shares of Common Stock issuable upon conversion of the Preferred Stock held by the Investor Parties; (b) the aggregate number of shares of Common Stock beneficially owned by the Investor Parties; and (c) the aggregate number of shares of Common Stock issuable upon exercise, conversion or exchange of any other securities of the Company beneficially owned by the Investor Parties; provided that such calculation shall exclude the number of shares of Common Stock which are issuable upon exercise, conversion or exchange of the unexercised, unconverted or unexchanged portion of the Preferred Stock and any other securities of the Company beneficially owned by the Investor Parties (including, without limitation, any convertible or exchangeable notes, convertible stock or warrants) that are subject to the limitation on beneficial ownership described in this Section 5.08 or a limitation on conversion, exchange or exercise analogous to the limitation contained in this Section 5.08. Any purported delivery to the Investor Parties of a number of shares or any other security upon conversion of the Preferred Stock, in either case, shall be void and have no effect to the extent, and only to the extent, that after such delivery, the Investor Parties would have beneficial ownership of shares of Common Stock or any Class in excess of the Beneficial Ownership Limitation. In the event that the issuance of shares of Common Stock to an Investor upon conversion of Preferred Stock results in the Investors being deemed to beneficially own, in the aggregate, more than the Beneficial Ownership Limitation (as determined under Section 13(d) of the Exchange Act), the shares issued in connection with such conversion of Preferred Stock (the "Conversion Shares") shall be deemed null and void and shall be cancelled ab initio, and the Investor shall not have the power to vote or to transfer the Conversion Shares.

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

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

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

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

Section 5.09 Tax Matters.

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

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

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

Section 5.10 Spin-Off Matters.

(a) The Company shall, and shall cause each of its Affiliates to, (i) consult in good faith with the Investors with respect to the structuring of a Spin-Off, and give reasonable and good faith consideration to any proposals or comments made by the Investors and their counsel, (ii) provide the Investors with a reasonable opportunity to review and comment upon (A) all Spin-Off Transaction Documents prior to execution thereof, (B) any registration statement

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

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

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

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

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

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

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

Section 5.13 Financing Cooperation. From and after the Closing, if requested by an Investor Party, the Company will provide cooperation (with, in each case, all reasonable, documented out-of-pocket expenses, including legal expenses, incurred by the Company in connection with the foregoing, being borne by such Investor Party) in connection with such Investor Party obtaining any Permitted Loan, including with respect to the following: (i) entering into an issuer agreement (in customary form and substance reasonably satisfactory to the Company and the sources of the Permitted Loan) with each lender in connection with such transactions (which agreement may include agreements and obligations of the Company relating to procedures and specified time periods for effecting transfers and/or conversions upon Foreclosure, agreements to not hinder or delay exercises of remedies on Foreclosure, acknowledgments regarding organizational documents and corporate policy, if applicable, and certain acknowledgments regarding the pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock and securities law status of the pledge arrangements and a specified list of Competitors (which, for the avoidance of doubt, shall only apply if such transaction is not undertaken in a registered offering or an offering exempt from registration under Rule 144 or Rule 144A of the Securities Act), (ii) using commercially reasonable efforts to (A) remove any restrictive legends on certificates representing pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock and depositing any pledged shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock in book entry form on the books of The Depository Trust Company, in each case when eligible to do so or otherwise as agreed with the transfer agent (and providing any necessary indemnities to the transfer agent in connection therewith) or (B) without limiting the generality of clause (A), if such shares of Preferred Stock or Common Stock are eligible for resale under Rule 144A, depositing such pledged shares of Preferred Stock and/or shares of Common Stock in book entry form on the books of The Depository Trust Company or other depository with customary representations and warranties from the applicable Investor Party or its applicable Affiliates regarding compliance with securities Laws, (iii) if so requested by such lender or counterparty, as applicable, re-registering on the books and records of the transfer agent the pledged shares of Preferred Stock and/or Common Stock in the name of the relevant lender, agent, counterparty,

custodian or similar party to a Permitted Loan, with respect to a Permitted Loan as securities intermediary and only to the extent the Investor Parties (or its or their Affiliates) continue to beneficially own such pledged shares of Preferred Stock and/or Common Stock, (iv) entering into customary triparty agreements (in form and substance reasonably satisfactory to the Company and the sources of the Permitted Loan) with each lender and the applicable Investor Parties relating to the delivery of the applicable shares of Preferred Stock and/or Common Stock to the relevant lender for crediting to the relevant collateral accounts upon funding of the loan and payment of the purchase price including a right for such lender as a third party beneficiary of the Company's obligations hereunder and (v) such other cooperation and assistance as the Investor Parties may reasonably request (which cooperation and assistance, for the avoidance of doubt, shall not include any requirements that the Company deliver information, compliance certificates or any other materials typically provided by borrowers to lenders) that will not unreasonably disrupt the operation of the Company's business. Notwithstanding anything to the contrary in the preceding sentence, the Company's obligation to deliver an issuer agreement is conditioned on the Investors certifying to the Company in writing that (A) the loan agreement with respect to which the issuer agreement is being delivered constitutes a Permitted Loan being entered into in accordance with this Agreement, the Investors have pledged the Preferred Stock and/or the underlying shares of Common Stock as collateral to the lenders under such Permitted Loan and that the execution of such Permitted Loan and the terms thereof do not violate the terms of this Agreement, (B) to the extent applicable, whether the registration rights under the Registration Rights Agreement are being assigned to the lenders under that Permitted Loan and (C) the Investor Parties acknowledge and agree that the Company will be relying on such certificate when entering into the issuer agreement and any material inaccuracy in such certificate will be deemed a breach of this Agreement. The Investor Parties acknowledge and agree that the statements and agreements of the Company in an issuer agreement are solely for the benefit of the applicable lenders party thereto and that in any dispute between the Company and the Investor Parties under this Agreement the Investor Parties shall not be entitled to use the statements and agreements of the Company in an issuer agreement against the Company.

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

Section 5.15 Participation Rights.

(a) For the purposes of this Section 5.15, "Excluded Stock" shall mean (i) shares of equity securities issued by the Company as a stock dividend payable in shares of equity securities, or upon any subdivision or split-up of the outstanding shares of capital stock, (ii)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.17 Information Rights.

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

(b) Individuals associated with the Investor Parties may from time to time serve on the Board or the equivalent governing body of the Company's Subsidiaries. The Company, on its behalf and on behalf of its Subsidiaries, recognizes that such individuals (i) will from time to time receive non-public information concerning the Company and its Subsidiaries, and (ii) may (subject to the obligation to maintain the confidentiality of such information in accordance with Section 5.04) share such information with other individuals associated with the Investor Parties who have a need to know such information for the purpose of facilitating support to such individuals in their capacity as members of the Board or such equivalent governing body

or enabling the Investor Parties, as equityholders, to better evaluate the Company's performance and prospects; provided, that such other individuals are informed about the confidential nature of such information and agree in writing to maintain the confidentiality of such information consistent with the confidentiality obligations under Section 5.04.

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

ARTICLE VI

Survival

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

ARTICLE VII

Miscellaneous

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

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

Section 7.03 Assignment(a) .

(a) Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of Law or otherwise, by any of the parties hereto without the prior written consent of the other party hereto; provided, however, that (A) without the prior written consent of the Company, the Investors or any Investor Party may assign its rights, interests and obligations set forth in (i) this Agreement, in whole or in part, to one or more of their Affiliates or (ii) Section 5.02 and, to the extent the assignment is made in connection with a Transfer of at least 10% of the then outstanding Preferred Stock (or any Common Stock issued upon conversion of such Preferred Stock), the rights, interests and obligations set forth in the Registration Rights Agreement, to a Third Party, so long as in each case of the foregoing clauses (i) and (ii), the assignee shall agree in writing to be bound by the provisions of this Agreement and, if applicable, the Registration Rights Agreement, including the rights, interests and obligations so assigned, (B) without the prior written consent of the Company, the Investors may grant a security interest in its respective rights (but not its obligations) under this Agreement in connection any Permitted Loan and (C) if the Company consolidates or merges with or into any Person and the Common Stock is, in whole or in part, converted into or exchanged for securities of a different issuer in a transaction that does not constitute a Fundamental Change, then as a condition to such transaction the Company will cause such issuer to assume all of the Company's rights and obligations under this Agreement in a written instrument delivered to the Investors; provided, further that no such assignment under clause (A) above will relieve the Investors of their respective obligations hereunder prior to the Closing. Subject to the immediately preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective successors and permitted assigns.

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

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

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

Section 7.06 Governing Law; Jurisdiction.

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

(b) All Actions arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 7.06 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 7.09 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

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

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

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

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

Western Digital Corporation
5601 Great Oaks Parkway
San Jose, California
Attention: Chief Legal Officer

Email: Michael.Ray@wdc.com

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

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

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

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

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

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

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

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

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

Section 7.12 Interpretation.

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

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

Section 7.13 Non-Recourse. Each party hereto agrees, on behalf of itself and its Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that all Actions, claims, obligations, liabilities or causes of action (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to: (A) this Agreement or any other Transaction Document, or any of the transactions contemplated hereunder or thereunder, (B) the negotiation, execution or performance of this Agreement or any of the other Transaction Documents (including any representation or warranty made in, in connection with, or as an inducement to, this Agreement or any of the other Transaction Documents), (C) any breach or violation of this Agreement or any other of the other Transaction Documents and (D) any failure of any of the transactions contemplated hereunder or under any of the other Transaction Documents or any other agreement referenced herein or therein to be consummated, in each case, may be made only against (and are those solely of) the Persons that are, in the case of this Agreement, expressly identified as parties to this Agreement or, in the case of any of the other Transaction Documents, Persons that are expressly identified as parties to such other Transaction Documents and in accordance with, and subject to the terms and conditions of this Agreement or such other Transaction Documents, as applicable. In furtherance and not in limitation of the foregoing and notwithstanding anything contained in this Agreement or any of the other Transaction Documents to the contrary and without limiting the foregoing or any other agreement referenced herein or therein or otherwise to the contrary, each party hereto covenants, agrees and acknowledges on behalf of itself and its respective Affiliates and its and their present or former directors, officers, stockholders, partners, members or employees, that no recourse under this Agreement or any of the other Transaction Documents or in connection with any of the transactions contemplated hereunder or thereunder shall be sought or had against any other Person, including any Investor Related Party, and no other Person, including any Investor Related Party, shall have any liabilities or obligations (whether in Contract or in tort, in Law or in equity or otherwise, or granted by statute or otherwise, whether by or through attempted piercing of the corporate, limited partnership or limited liability company veil or any other theory or doctrine, including alter ego or otherwise) for any claims, causes of action, obligations or liabilities arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), it being expressly agreed and acknowledged that no personal liability or losses whatsoever shall attach to, be imposed on or otherwise be incurred by any of the aforementioned, as such, arising under, out of, in connection with or related in any manner to the items in the immediately preceding clauses (A) through (D), in each case, except for claims that the Company or the Investor Parties, as applicable, may assert: (i) against any Person that is party to and solely pursuant to the terms and conditions of, Section 5.04 or (ii) against the Investor Parties solely in accordance with, and pursuant to the terms and conditions of, this Agreement. Notwithstanding anything to the contrary in this Agreement or any of the other Transaction Documents or otherwise, no party hereto or any Investor Related Party shall be responsible or liable for any multiple, consequential, indirect, special, statutory, exemplary or punitive damages or lost profits, opportunity costs, loss of business reputation, diminution in value or damages based upon a multiple of earnings or similar financial measure which may be alleged as a result of this Agreement or any of the other Transaction Documents or any of the transactions contemplated hereunder or thereunder, or the termination or abandonment of any of the foregoing.

[*Remainder of page intentionally left blank*]

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

WESTERN DIGITAL CORPORATION

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

ELLIOTT ASSOCIATES, L.P.

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

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

ELLIOTT INTERNATIONAL, L.P.

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

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

Exhibit 10.3

REGISTRATION RIGHTS AGREEMENT

by and among

WESTERN DIGITAL CORPORATION

and

AP WD HOLDINGS, L.P.

ELLIOTT ASSOCIATES, L.P.

ELLIOTT INTERNATIONAL, L.P.

Dated as of January 31, 2023

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REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (this "Agreement") is entered into as of January 31, 2023 by and among WESTERN DIGITAL CORPORATION, a Delaware corporation (the "Company"), AP WD HOLDINGS, L.P., a Delaware limited partnership, ELLIOTT ASSOCIATES, L.P., a Delaware limited partnership and ELLIOTT INTERNATIONAL, L.P., a Cayman Islands limited partnership (collectively, together with their respective successors and any Person that becomes a party hereto pursuant to Section 4.1, the "Investors" and each, an "Investor"). Capitalized terms that are used but not defined elsewhere herein are defined in Exhibit A.

WHEREAS, the Company and each of the Investors are parties to an Investment Agreement, dated as of January 31, 2023 between the Company and such Investor (each, as amended from time to time, an "Investment Agreement"), pursuant to which the Company is selling to the Investors, and the Investors are purchasing from the Company, an aggregate of 900,000 shares of Series A Convertible Perpetual Preferred Stock of the Company, par value $0.01 per share, (the "Preferred Stock"), which are convertible into shares of Common Stock. When referred to in the singular, "Investment Agreement" means the Investment Agreements with each Investor taken as a whole. When referred to an "applicable" or "each" Investment Agreement, it means the Investment Agreement specific to the applicable Investor.

WHEREAS, as a condition to the obligations of the Company and each of the Investors under the applicable Investment Agreement, the Company and the Investors are entering into this Agreement for the purpose of granting certain registration and other rights to the Investors.

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

ARTICLE I

Resale Shelf Registration

Section 1.1 Resale Shelf Registration Statement. Subject to the other applicable provisions of this Agreement, the Company shall use its reasonable best efforts to prepare and file, which shall be no later than 15 business days prior to the effectiveness date, a registration statement covering the sale or distribution from time to time by the Investors, on a delayed or continuous basis pursuant to Rule 415 of the Securities Act, of all of the Registrable Securities on Form S-3 (which may be in the form of a prospectus supplement to an existing Form S-3) (except if the Company is not then eligible to register for resale the Registrable Securities on Form S-3, then such registration shall be on another appropriate form, including a resale registration statement on Form S-1, and shall provide for the registration of such Registrable Securities for resale by the Investors in accordance with any reasonable method of distribution elected by the Investors) (the "Resale Shelf Registration Statement") and shall use its reasonable best efforts to cause such Resale Shelf Registration Statement to be declared effective by the SEC as promptly as is reasonably practicable after the filing thereof which effectiveness

date shall be no later than the first Business Day following the First Conversion Date (it being agreed that the Resale Shelf Registration Statement shall be an automatic shelf registration statement that shall become effective upon filing with the SEC pursuant to Rule 462(e) if Rule 462(e) is available to the Company). The Shelf Registration Statement may, at the Company's sole discretion, also cover any other securities of the Company so long as inclusion of such other securities of the Company does not limit the number of Registrable Securities registered for offer and sale pursuant to such Shelf Registration Statement. If the Company files any other registration statement under the Securities Act with an expected effectiveness date prior to the First Conversion Date, the effectiveness date referred to in this section shall instead be the expected effectiveness date of such other registration statement. If the Company is reasonably able to conclude that filing and effectiveness of a registration statement prior to the First Conversion Date would not contravene applicable Law (including because the Company is effecting share repurchases or it has opened the trading window for directors and officers), and after giving consideration to the availability of required financial statements and whether the Company is in possession of material non-public information, then it shall use reasonable best efforts to file and have such registration statement become effective before the First Conversion Date.

Section 1.2 Effectiveness Period. Once declared effective, the Company shall, subject to the other applicable provisions of this Agreement, use its reasonable best efforts to cause the Resale Shelf Registration Statement to be continuously effective and usable until such time as there are no longer any Registrable Securities (the "Effectiveness Period").

Section 1.3 Subsequent Shelf Registration Statement. If any Shelf Registration Statement ceases to be effective under the Securities Act for any reason at any time during the Effectiveness Period, the Company shall use its reasonable best efforts to as promptly as is reasonably practicable cause such Shelf Registration Statement to again become effective under the Securities Act (including obtaining the prompt withdrawal of any order suspending the effectiveness of such Shelf Registration Statement), and shall use its reasonable best efforts to as promptly as is reasonably practicable amend such Shelf Registration Statement in a manner reasonably expected to result in the withdrawal of any order suspending the effectiveness of such Shelf Registration Statement or file an additional registration statement (a "Subsequent Shelf Registration Statement") for an offering to be made on a delayed or continuous basis pursuant to Rule 415 of the Securities Act registering the resale from time to time by the Investors thereof of all securities that are Registrable Securities as of the time of such filing. If a Subsequent Shelf Registration Statement is filed, the Company shall use its reasonable best efforts to (a) cause such Subsequent Shelf Registration Statement to become effective under the Securities Act as promptly as reasonably practicable after the filing thereof (it being agreed that the Subsequent Shelf Registration Statement shall be an automatic shelf registration statement that shall become effective upon filing with the SEC pursuant to Rule 462(e) if Rule 462(e) is available to the Company) and (b) keep such Subsequent Shelf Registration Statement continuously effective and usable until the end of the Effectiveness Period. Any such Subsequent Shelf Registration Statement shall be a registration statement on Form S-3 to the extent that the Company is eligible to use such form. Otherwise, such Subsequent Shelf Registration Statement shall be on another appropriate form, including Form S-1, and shall provide for the registration of such Registrable Securities for resale by the Investors in accordance with any reasonable method of distribution elected by the Investors. The Subsequent Shelf Registration Statement may, at the Company's sole discretion, also cover any other securities of the Company so long as inclusion of such other securities of the Company does not limit the number of Registrable Securities registered for offer and sale pursuant to such Shelf Registration Statement.

Section 1.4 Supplements and Amendments. The Company shall supplement and amend any Shelf Registration Statement if required by the Securities Act or the rules, regulations or instructions applicable to the registration form used by the Company for such Shelf Registration Statement.

Section 1.5 Subsequent Investor Notice. If a Person entitled to the benefits of this Agreement becomes an Investor after a Shelf Registration Statement becomes effective under the Securities Act, the Company shall as promptly as is reasonably practicable following delivery of written notice to the Company of such Person becoming an Investor and requesting for its name to be included as a selling securityholder in the prospectus related to the Shelf Registration Statement with respect to its Registrable Securities (a "Subsequent Investor Notice"):

(a) if required and permitted by applicable law, file with the SEC a supplement to the related prospectus or a post-effective amendment to the Shelf Registration Statement so that such Investor is named as a selling securityholder in the Shelf Registration Statement and the related prospectus in such a manner as to permit such Investor to deliver a prospectus to purchasers of the Registrable Securities in accordance with applicable law;

(b) if, pursuant to Section 1.5(a), the Company shall have filed a post-effective amendment to the Shelf Registration Statement that is not automatically effective, use its reasonable best efforts to cause such post-effective amendment to become effective under the Securities Act as promptly as is reasonably practicable; and

(c) notify such Investor as promptly as is reasonably practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 1.5(a).

Section 1.6 Underwritten Offering. Subject to any applicable securities laws, any Investor or Investors may, after the Resale Shelf Registration Statement becomes effective or a Demand Registration is requested, deliver a written notice to the Company (the "Underwritten Offering Notice") specifying that the sale of some or all of the Registrable Securities subject to the Shelf Registration Statement or the Demand Registration, as the case may be, is intended to be conducted through an underwritten offering, an offering known as a "block trade" or a "registered direct" offering (the "Underwritten Offering"); provided, that the Investors may not, without the Company's prior written consent, (i) request an Underwritten Offering the anticipated gross proceeds of which shall be less than $75,000,000 (unless the Investors are proposing to sell all of their remaining Registrable Securities), or (ii) request more than three (3) Underwritten Offerings within any twelve (12) month period; provided, further that to the extent any Underwritten Offering involves meetings with prospective investors and presentations made by management, customarily known as a "road show", such requests for an Underwritten Offering involving a "road show" shall be limited to two (2) within any twelve (12) month period.

(a) In the event of an Underwritten Offering, the Investors holding a majority of the Registrable Securities on an as converted basis participating in an Underwritten Offering shall, upon consultation with the Company, select the managing underwriter(s) to administer the Underwritten Offering. The Company, the Investors or any other stockholders (subject to the Investors consent as set forth below) participating in an Underwritten Offering will enter into an underwriting agreement in customary form with the managing underwriter or underwriters selected for such offering.

(b) The Company will not include in any Underwritten Offering pursuant to this Section 1.6, Section 1.7 or Section 1.9, any securities that are not Registrable Securities without the prior written consent of the Investors participating in such Underwritten Offering. If the managing underwriter or underwriters advise the Company and the Investors in writing that in its or their good faith opinion the number of Registrable Securities (and, if permitted hereunder, other securities requested to be included in such offering) exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, the Registrable Securities of the Investors that have requested to participate in such Underwritten Offering, allocated *pro rata* among such Investors on the basis of the percentage of the Registrable Securities then-owned by such Investors, and (ii) second, any other securities of the Company that have been requested to be so included.

Section 1.7 Take-Down Notice. Subject to the other applicable provisions of this Agreement, at any time that any Shelf Registration Statement is effective, if any Investor delivers a notice to the Company (a "Take-Down Notice") stating that any such Investor intends to effect a sale or distribution of all or part of its Registrable Securities included by it on any Shelf Registration Statement (a "Shelf Offering") which may or may not be an Underwritten Offering (conducted in accordance with the terms and conditions of Section 1.6), and stating the number of the Registrable Securities to be included in such Shelf Offering, then the Company shall amend, subject to the other applicable provisions of this Agreement or supplement the Shelf Registration Statement (including by means of one or more prospectus supplements) as may be necessary in order to enable such Registrable Securities to be sold and distributed pursuant to the Shelf Offering. The number of Shelf Offerings that do not constitute an Underwritten Offering shall be unlimited, subject to applicable securities laws.

Section 1.8 Piggyback Registration.

(a) If the Company proposes to file a registration statement under the Securities Act with respect to an offering of Common Stock or securities convertible into, or exchangeable or exercisable for, Common Stock, whether or not for sale for its own account (other than a registration statement (i) on Form S-4, Form S-8 or any successor forms thereto or any successor forms thereto or (ii) filed to effectuate an exchange offer or any employee benefit or dividend reinvestment plan), then the Company shall give prompt written notice of such filing, which notice shall be given, to the extent reasonably practicable, no later than five (5) Business Days prior to the filing date (the "Piggyback Notice") to the Investors. The Piggyback Notice shall offer such Investors the opportunity to include (or cause to be included) in such registration

statement the number of shares of Registrable Securities as each such Investor may request (each, a "Piggyback Registration Statement"). Subject to Section 1.8(b), the Company shall include in each Piggyback Registration Statement all Registrable Securities with respect to which the Company has received written requests for inclusion therein (each a "Piggyback Request") promptly following delivery of the Piggyback Notice but in any event no later than two (2) Business Days prior to the filing date of a Piggyback Registration Statement. The Company shall not be required to maintain the effectiveness of a Piggyback Registration Statement beyond the earlier of (x) 180 days after the effective date thereof and (y) consummation of the distribution by the Investors of the Registrable Securities included in such registration statement.

(b) If any of the securities to be offered or sold pursuant to the registration giving rise to the rights under this Section 1.8 are to be sold in an underwritten offering, the Company shall use reasonable best efforts to cause the managing underwriter or underwriters of the proposed underwritten offering to permit Investors who have timely submitted a Piggyback Request in connection with such offering to include in such offering all Registrable Securities included in each Investor's Piggyback Request on the same terms and subject to the same conditions as any other shares of capital stock, if any, of the Company included in the offering. Notwithstanding the foregoing, if the managing underwriter or underwriters of such underwritten offering advise the Company in writing that in its or their good faith opinion the number of securities exceeds the number of securities which can be sold in such offering in light of market conditions or is such so as to adversely affect the success of such offering, the Company will include in such offering only such number of securities that can be sold without adversely affecting the marketability of the offering, which securities will be so included in the following order of priority: (i) first, to the extent the Piggyback Registration Statement relates to the offer and sale of securities for the Company's account, the securities proposed to be sold by the Company for its own account or to the extent the Piggyback Registration Statement relates to the offer and sale of securities of the Company for the account of a stockholder other than an Investor, the securities to be sold by such stockholder; (ii) second, the Registrable Securities of the Investors that have requested to participate in such underwritten offering, allocated *pro rata* among such Investors on the basis of the percentage of the Registrable Securities then-owned by such Investors; (iii) third any other securities of the Company that have been requested to be included in such offering; *provided* that Investors may, prior to the earlier of the (a) effectiveness of the registration statement and (b) the time at which the offering price or underwriter's discount is determined with the managing underwriter or underwriters, withdraw their request to be included in such registration pursuant to this Section 1.8.

Section 1.9 Demand Registration**.** At any time following the first Business Day following the First Conversion Date, any Investor or Investors may request in writing that all or part of the Registrable Securities held by them shall be registered under the Securities Act (a "Demand Registration"), to the extent the Company is not then eligible to file a Resale Shelf Registration Statement. The Company shall effect the registration of all such or such part of Registrable Securities as soon as practicable; provided that (i) the Company shall not be required to effect any registration under this Section 1.9 within a period of ninety (90) days following the effective date of a previous registration for which the Investors had an opportunity to participate, and (ii) this provision shall not apply if a Resale Shelf Registration Statement, as applicable, has been filed pursuant to Section 1.1 and is effective and available for use. The Company shall not be required to effect (x) more than two (2) registrations in any twelve (12) month period under

this Section 1.9 requested by any Investor or Investors; or (y) any offering the anticipated gross proceeds of which shall be less than $75,000,000. The Investor or Investors, as applicable, may elect to withdraw from any offering pursuant to this Section 1.9 by giving written notice to the Company and the underwriter(s) of its request to withdraw prior to the effectiveness of the registration statement filed with the SEC with respect to such Demand Registration. If the Investor or Investors, as applicable, withdraw from a proposed offering relating to a Demand Registration then either the Investor or Investors, as applicable, shall reimburse the Company for the costs associated with the withdrawn Demand Registration (in which case such registration shall not count as a Demand Registration provided for in this Section 1.9) or such withdrawn registration shall count as a Demand Registration provided for in this Section 1.9. Notwithstanding any other provision of this Section 1.9, if the managing underwriter advises the Investor or Investors, as applicable, in writing that marketing factors require a limitation on the dollar amount or the number of shares to be underwritten, then the amount of Registrable Securities proposed to be registered shall be reduced appropriately; provided that in any event all Registrable Securities held by the Investors and which are requested to be included must be included in such registration prior to any other shares of the Company, including shares held by persons other than the Investors. The Company shall not register securities for sale for its own account in any registration requested pursuant to this Section 1.9 unless permitted to do so by the written consent of the Investor or Investors, as applicable.

ARTICLE II

Additional Provisions Regarding Registration Rights

Section 2.1 Registration Procedures. Subject to the other applicable provisions of this Agreement, in the case of each registration of Registrable Securities effected by the Company pursuant to Article I, the Company shall:

(a) prepare and promptly file with the SEC a registration statement with respect to such securities and use reasonable best efforts to cause such registration statement to become and remain effective for the period of the distribution contemplated thereby, in accordance with the applicable provisions of this Agreement;

(b) prepare and file with the SEC such amendments (including post-effective amendments) and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to keep such registration statement effective for the period specified in paragraph (a) above and comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement in accordance with the Investors' intended method of distribution set forth in such registration statement for such period;

(c) furnish to the Investors' legal counsel copies of the registration statement and the prospectus included therein (including each preliminary prospectus) proposed to be filed and provide such legal counsel a reasonable opportunity to review and comment on such registration statement;

(d) if requested by the managing underwriter or underwriters, if any, or the Investors, promptly include in any prospectus supplement or post-effective amendment such information as the managing underwriter or underwriters, if any, or the Investors may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement or post-effective amendment as soon as reasonably practicable after the Company has received such request;

(e) in the event that the Registrable Securities are being offered in an Underwritten Offering, furnish to the Investors and to the underwriters of the securities being registered such reasonable number of copies of the registration statement, preliminary prospectus and final prospectus as the Investors or such underwriters may reasonably request in order to facilitate the public offering or other disposition of such securities;

(f) as promptly as is reasonably practicable notify the Investors at any time when a prospectus relating thereto is required to be delivered under the Securities Act or of the Company's discovery of the occurrence of any event as a result of which the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing, and, subject to Section 2.2, at the request of the Investors, prepare promptly and furnish to the Investors a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing;

(g) use reasonable best efforts to register and qualify (or exempt from such registration or qualification) the securities covered by such registration statement under such other securities or "blue sky" laws of such jurisdictions within the United States as shall be reasonably requested in writing by the Investors; provided, however, that the Company shall not be required in connection therewith or as a condition thereto to (i) qualify to do business in any jurisdictions where it would not otherwise be required to qualify but for this subsection, (ii) take any action that would subject it to general service of process in any such jurisdictions or (iii) subject itself to taxation in any such jurisdictions;

(h) in the event that the Registrable Securities are being offered in an underwritten public offering, enter into an underwriting agreement in accordance with the applicable provisions of this Agreement;

(i) in connection with an Underwritten Offering, the Company shall cause its officers to use their reasonable best efforts to support the marketing of the Registrable Securities covered by such offering (including participation in "*road shows*" or other similar marketing efforts);

(j) in connection with an Underwritten Offering, furnish, at the Company's expense, (a) on the date that such Registrable Securities are delivered either (x) to the underwriters for sale, if such securities are being sold through underwriters or (y) to the purchasers thereof, if so requested by one or more purchasers or any placement agent in connection with such Underwritten Offering (the "Delivery Date"), (i) an opinion, dated the Delivery Date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, or to the purchasers, as the case may be, and to the placement agent, if any, and (ii) a "negative assurances letter", dated the Delivery Date, of the legal counsel representing the Company for the purposes of such registration, in form and substance as is customarily given to underwriters in an underwritten public offering, addressed to the underwriters, if any, or to the purchasers, as the case may be, and to the placement agent, if any, and (b) on the trade date, a "cold comfort" letter, dated as of the trade date, from the independent certified public accountants of the Company and a customary bring down of such letter as of the Delivery Date, in form and substance as is customarily given by independent certified public accountants to underwriters or placement agents in an Underwritten Offering, addressed to the underwriters, if any, or placement agents, as the case may be, and cause such authorized officers of the Company to execute customary certificates as may be reasonably requested by any underwriter or placement agent of such Registrable Securities;

(k) use reasonable best efforts to list the Registrable Securities (other than the Preferred Stock) covered by such registration statement with any securities exchange on which the Common Stock is then listed;

(l) provide a transfer agent and registrar for all such Registrable Securities not later than the effective date of such registration statement;

(m) in connection with a customary due diligence review, make available for inspection by the Investors, any underwriter participating in any such disposition of Registrable Securities, if any, and any counsel or accountants retained by the Investors or underwriter (collectively, the "Offering Persons"), upon reasonable prior written notice and at the offices where normally kept, during regular business hours, all financial and other records and pertinent corporate documents (unless covered by attorney-client privilege) of the Company and its subsidiaries, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information and participate upon reasonable prior written notice and during regular business hours, in customary due diligence sessions in each case reasonably requested by any such representative, underwriter, counsel or accountant in connection with such registration statement, provided, however, that any information that is not generally publicly available at the time of delivery of such information shall be kept confidential by such Offering Persons unless (i) disclosure of such information is required by court or administrative order or in connection with an audit or examination by, or a blanket document request from, a regulatory or self-regulatory authority, bank examiner or auditor, (ii) disclosure of such information, in the reasonable judgment of the Offering Persons, is required by law or applicable legal process (including in connection with the offer and sale of securities pursuant to the rules and regulations of the SEC), (iii) such information is or becomes generally available to the public other than as a result of a non-permitted disclosure or failure to safeguard by such Offering Persons in violation of this Agreement or (iv) such information (A) was known to such Offering Persons or their representatives from a source other than the Company when such source, to the knowledge of the Offering Persons, was not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information, (B) becomes available to the

Offering Persons from a source other than the Company when such source, to the knowledge of the Offering Persons, is not bound by any contractual, legal or fiduciary obligation of confidentiality to the Company with respect to such information or (C) was developed independently by the Offering Persons or their respective representatives without the use of, or reliance on, information provided by the Company; provided, further, that each Investor agrees that it and its Affiliates will not use, and will restrict the other Offering Persons from using, any information obtained pursuant to this clause (m) for any purpose other the distribution of Registrable Securities;

(n) cooperate with the Investors and each underwriter or agent participating in the disposition of Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA, including the use of reasonable best efforts to obtain FINRA's pre-clearance or pre-approval of the registration statement and applicable prospectus upon filing with the SEC; and

(o) as promptly as is reasonably practicable notify the Investors (i) when the prospectus or any prospectus supplement or post-effective amendment has been filed and, with respect to such registration statement or any post-effective amendment, when the same has become effective, (ii) of any request by the SEC or other federal or state governmental authority for amendments or supplements to such registration statement or related prospectus or to amend or to supplement such prospectus or for additional information, (iii) of the issuance by the SEC of any stop order suspending the effectiveness of such registration statement or the initiation of any proceedings for such purpose, (iv) if at any time the Company has reason to believe that the representations and warranties of the Company contained in any agreement (including any underwriting agreement contemplated by Section 2.1(f) above) cease to be true and correct or (v) 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.

Section 2.2 Suspension. The Company shall be entitled, (a) following the announcement of a Spin-Off or other spin-off or split-off of all or substantially all of the Flash Business, for a period not to exceed six (6) months and (b) on one (1) occasion in any six (6) month period, for a period of time not to exceed sixty (60) days in the aggregate in any such six (6) month period, in the case of either clause (a) or (b), to (x) defer any registration of such Registrable Securities and shall have the right not to file and not to cause the effectiveness of any registration covering such Registrable Securities, (y) suspend the use of any prospectus and registration statement covering such Registrable Securities, and (z) require the Investors to suspend any offerings or sales of such Registrable Securities pursuant to a registration statement, if the Company delivers to the Investors a certificate signed by an executive officer certifying that the board of directors has determined that such registration and offering would (i) require the Company to make an Adverse Disclosure, (ii) upon the happening of any event described in Section 2.1(f), Section 2.1(o)(ii) or Section 2.1(o)(iii) or (iii) materially interfere with any *bona fide* material financing, acquisition, disposition or other similar transaction involving the Company or any of its subsidiaries then under consideration. Such certificate shall not contain a statement of the reasons for such suspension, but shall contain the anticipated length of such suspension. The Company expressly agrees that the Investors shall not receive any material non-

public information. If the Company defers any registration of Registrable Securities in response to an Underwritten Offering Notice, or requires the Investors to suspend any Underwritten Offering, the Investors shall be entitled to withdraw such Underwritten Offering Notice and if it does so, such request shall not be treated for any purpose as the delivery of an Underwritten Offering Notice pursuant to Section 1.6.

Section 2.3 Expenses of Registration. All Registration Expenses incurred in connection with any registration shall be borne by the Company, provided that each Investor participating in an offering shall pay all applicable underwriting discounts and commissions, brokers' commissions and stock transfer taxes, if any, on the Registrable Securities sold by such Investor and the fees and expenses of any counsel to the Investors (other than such fees and expenses of any counsel to the Investors or otherwise, in each case expressly included in Registration Expenses).

Section 2.4 Information by Investors. The Investor or Investors included in any registration shall furnish to the Company such information regarding such Investor or Investors and their Affiliates, the Registrable Securities held by them and the distribution proposed by such Investor or Investors and their Affiliates as the Company may reasonably request and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement. It is understood and agreed that the obligations of the Company under Article I are conditioned on the timely provisions of the foregoing information by such Investor or Investors and, without limitation of the foregoing, will be conditioned on compliance by such Investor or Investors with the following:

(a) such Investor or Investors will, and will cause their respective Affiliates to, cooperate with the Company in connection with the preparation of the applicable registration statement and prospectus and, for so long as the Company is obligated to keep such registration statement effective, such Investor or Investors will and will cause their respective Affiliates to, provide to the Company, in writing and in a timely manner, for use in such registration statement (and expressly identified in writing as such), all information regarding themselves and their respective Affiliates and such other information as may be required by applicable law to enable the Company to prepare or amend such registration statement, any related prospectus and any other documents related to such offering covering the applicable Registrable Securities owned by such Investor or Investors and to maintain the currency and effectiveness thereof;

(b) during such time as such Investor or Investors and their respective Affiliates may be engaged in a distribution of the Registrable Securities, such Investor or Investors will, and they will cause their Affiliates to, comply with all laws applicable to such distribution, including Regulation M promulgated under the Exchange Act, and, to the extent required by such laws, will, and will cause their Affiliates to, among other things (i) not engage in any stabilization activity in connection with the securities of the Company in contravention of such laws; (ii) distribute the Registrable Securities acquired by them solely in the manner described in the applicable registration statement and (iii) if required by applicable law, cause to be furnished to each agent or broker-dealer to or through whom such Registrable Securities may be offered, or to the offeree if an offer is made directly by such Investor or Investors or their respective Affiliates, such copies of the applicable prospectus (as amended and supplemented to such date) and documents incorporated by reference therein as may be required by such agent, broker-dealer or offeree;

(c) such Investor or Investors shall, and they shall cause their respective Affiliates to, (i) permit the Company and its representatives to examine such documents and records and will supply in a timely manner any information as they may be reasonably requested to provide in connection with the offering or other distribution of Registrable Securities by such Investor or Investors and (ii) execute, deliver and perform under any agreements and instruments reasonably requested by the Company or its representatives to effectuate such registered offering, including opinions of counsel and questionnaires; and

(d) on receipt of any notice from the Company of the occurrence of any of the events specified in Section 2.1(f) or clauses (ii) or (iii) of Section 2.1(o), or that otherwise requires the suspension by such Investor or Investors and their respective Affiliates of the offering, sale or distribution of any of the Registrable Securities owned by such Investor or Investors, such Investors shall, and they shall cause their respective Affiliates to, cease offering, selling or distributing the Registrable Securities owned by such Investor or Investors until the offering, sale and distribution of the Registrable Securities owned by such Investor or Investors may recommence in accordance with the terms hereof and applicable law.

Section 2.5 Rule 144 Reporting. With a view to making available the benefits of Rule 144 to the Investors, the Company agrees that, for so long as an Investor owns Registrable Securities, the Company will use its reasonable best efforts to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the date of this Agreement; and

(b) so long as an Investor owns any Restricted Securities, furnish to the Investor upon written request a written statement by the Company as to its compliance with the reporting requirements of the Exchange Act.

Section 2.6 Holdback Agreement. If during the Effectiveness Period or from the time a Demand Registration is requested until such time as there are no longer any Registrable Securities, as applicable, the Company both (a) files a registration statement (other than in connection with the registration of securities issuable pursuant to an employee stock option, stock purchase or similar plan or pursuant to a merger, exchange offer or a transaction of the type specified in Rule 145(a) under the Securities Act) with respect to an underwritten public offering of Common Stock or securities convertible into, or exchangeable or exercisable for, such securities or otherwise informs the Investors that it intends to conduct such an offering utilizing an effective registration statement or pursuant to an underwritten Rule 144A and/or Regulation S offering, in each case, for its own account, and (b) provides the Investors the opportunity to participate in such offering in accordance with Section 1.8, the Investors shall, if requested by the managing underwriter or underwriters, enter into a customary "lock-up" agreement relating to the sale, offering or distribution of Registrable Securities, in the form reasonably requested by the managing underwriter or underwriters (in each case on substantially the same terms and conditions as all other stockholders who execute such customary "lock-up" agreements with respect to the Common Stock or securities convertible into, or exchangeable or

exercisable for, such securities), covering the period commencing on the date of the prospectus pursuant to which such offering may be made and continuing until no more than 60 days from the date of such prospectus, or such shorter period as shall be required by any director, executive officer or other stockholder who is required to execute a "lock-up" agreement; provided that such obligation shall only apply where (i) all "Section 16" executive officers, directors and other stockholders of the Company party hereto or to other agreements with the Company containing corresponding requirements are similarly bound and (ii) the terms of the Investors' lock-up are no more restrictive than the terms of the lock-ups applicable to any other stockholder who has registration rights with respect to the Common Stock or securities convertible into, or exchangeable or exercisable for, such securities that has executed such a lockup (and, if the Company agrees to waive any such lockup for any such other stockholder, the Company shall also waive the Investors' lockup to the same extent).

Section 2.7 Future Registration Rights. The Company shall not grant any shelf, demand, piggyback or incidental registration rights that are senior to, or pari passu with (with respect to priority on underwriting cutbacks) or otherwise conflict with the rights granted to the Investors hereunder to any stockholder or any other Person without the prior written consent of the Investors holding a majority of Registrable Securities on an as-converted basis.

ARTICLE III

Indemnification

Section 3.1 Indemnification by Company. To the fullest extent permitted by applicable law, the Company will, with respect to any Registrable Securities covered by a registration statement or prospectus, or as to which registration, qualification or compliance under applicable "blue sky" laws has been effected pursuant to this Agreement, indemnify and hold harmless each Investor, each Investor's current and former officers, directors, partners, members, managers, stockholders, accountants, attorneys, agents and employees, and each Person controlling such Investor within the meaning of Section 15 of the Securities Act and such Investor's current and former officers, directors, partners, members, managers, stockholders, accountants, attorneys, agents and employees, and each underwriter thereof, if any, and each Person who controls any such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Company Indemnified Parties"), from and against any and all expenses, claims, losses, damages, costs (including costs of preparation and reasonable attorney's fees and any legal or other fees or expenses actually incurred by such party in connection with any investigation or proceeding), judgments, fines, penalties, charges, amounts paid in settlement and other liabilities, joint or several, (or actions in respect thereof) (collectively, "Losses") to the extent arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" (as such term is defined in Rule 433 under the Securities Act) or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on 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, or any violation by the Company of the Securities Act, the Exchange Act, any state securities law or any rules or regulations thereunder applicable to the Company and (without limiting the preceding portions of this Section 3.1), the

Company will reimburse each of the Company Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this Section 3.1, settling any such Losses or action, as such expenses are incurred; provided that the Company's indemnification obligations shall not apply to amounts paid in settlement of any Losses or action if such settlement is effected without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed), nor shall the Company be liable to an Investor in any such case for any such Losses or action to the extent that it arises out of or is based upon a violation or alleged violation of any state or federal law (including any claim arising out of or based on any untrue statement or alleged untrue statement or omission or alleged omission in the registration statement or prospectus) which occurs in reliance upon and in conformity with written information regarding such Investor furnished to the Company by such Investor expressly for use in connection with such registration by any such Investor.

Section 3.2 Indemnification by Investors. To the fullest extent permitted by applicable law, each Investor will, if Registrable Securities held by such Investor are included in the securities as to which registration or qualification or compliance under applicable "blue sky" laws is being effected, indemnify, severally and not jointly with any other Investors, the Company, each of its representatives, each Person who controls the Company or such underwriter within the meaning of Section 15 of the Securities Act (collectively, the "Investor Indemnified Parties"), against all Losses (or actions in respect thereof) to the extent arising out of or based on any untrue statement (or alleged untrue statement) of a material fact contained in any registration statement, prospectus, preliminary prospectus, offering circular, "issuer free writing prospectus" or other document, in each case related to such registration statement, or any amendment or supplement thereto, or based on 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, and will reimburse each of the Investor Indemnified Parties for any reasonable and documented out-of-pocket legal expenses and any other reasonable and documented out-of-pocket expenses actually incurred in connection with investigating, defending or, subject to the last sentence of this Section 3.2, settling any such Losses or action, as such expenses are incurred, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such registration statement, prospectus, offering circular, "issuer free writing prospectus" or other document in reliance upon and in conformity with written information regarding such Investor furnished to the Company by such Investor and stated to be specifically for use therein; provided, however, that in no event shall any indemnity under this Section 3.2 payable by any Investor exceed an amount equal to the net proceeds received by such Investor in respect of the Registrable Securities sold pursuant to the registration statement. The indemnity agreement contained in this Section 3.2 shall not apply to amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected without the prior written consent of the applicable Investor (which consent shall not be unreasonably withheld or delayed).

Section 3.3 Notification. If any Person shall be entitled to indemnification under this Article III (each, an "Indemnified Party"), such Indemnified Party shall give prompt notice to the party required to provide indemnification (each, an "Indemnifying Party") of any claim or of the commencement of any proceeding as to which indemnity is sought. The Indemnifying Party shall have the right, exercisable by giving written notice to the Indemnified Party as promptly as is reasonably practicable after the receipt of written notice from such Indemnified Party of such claim or proceeding, to assume, at the Indemnifying Party's expense, the defense of any such claim or litigation, with counsel reasonably satisfactory to the Indemnified Party and, after notice from the Indemnifying Party to such Indemnified Party of its election to assume the defense thereof, the Indemnifying Party will not (so long as it shall continue to have the right to defend, contest, litigate and settle the matter in question in accordance with this paragraph) be liable to such Indemnified Party hereunder for any legal expenses and other expenses subsequently incurred by such Indemnified Party in connection with the defense thereof; provided, however, that an Indemnified Party shall have the right to employ separate counsel in any such claim or litigation, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless the Indemnifying Party shall have failed within a reasonable period of time to assume such defense and the Indemnified Party is or would reasonably be expected to be materially prejudiced by such delay. The failure of any Indemnified Party to give notice as provided herein shall relieve an Indemnifying Party of its obligations under this Article III only to the extent that the failure to give such notice is materially prejudicial or harmful to such Indemnifying Party's ability to defend such action. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the prior written consent of each Indemnified Party (which consent shall not be unreasonably withheld or delayed), consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. The indemnity agreements contained in this Article III shall not apply to amounts paid in settlement of any claim, loss, damage, liability or action if such settlement is effected without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed. The indemnification set forth in this Article III shall be in addition to any other indemnification rights or agreements that an Indemnified Party may have. An Indemnifying Party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such Indemnifying Party with respect to such claim, unless in the reasonable judgment of any Indemnified Party a conflict of interest may exist between such Indemnified Party and any other Indemnified Parties with respect to such claim.

Section 3.4 Contribution. If the indemnification provided for in this Article III is held by a court of competent jurisdiction to be unavailable to an Indemnified Party, other than pursuant to its terms, with respect to any Losses or action referred to therein, then, subject to the limitations contained in this Article III, the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses or action in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other, in connection with the actions, statements or omissions that resulted in such Losses or action, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party, on the one hand, and the Indemnified Party, on the other hand, shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact, has been made (or omitted) by, or relates to information supplied by such Indemnifying Party or such

Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent any such action, statement or omission. The Company and the Investors agree that it would not be just and equitable if contribution pursuant to this Section 3.4 was determined solely upon *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding sentence of this Section 3.4. Notwithstanding the foregoing, the amount any Investor will be obligated to contribute pursuant to this Section 3.4 will be limited to an amount equal to the net proceeds received by such Investor in respect of the Registrable Securities sold pursuant to the registration statement which gives rise to such obligation to contribute. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

Section 3.5 Survival. The indemnification provided for under this Article III shall survive the sale or other transfer of the Registrable Securities and the termination of this Agreement.

ARTICLE IV

Transfer, Assumption and Termination of Registration Rights

Section 4.1 Transfer of Registration Rights. Any rights to cause the Company to register the resale of securities granted to an Investor under this Agreement may be transferred or assigned to any Person in connection with a Transfer (as defined in the Investment Agreement) of Preferred Stock or Common Stock issued upon conversion of Preferred Stock to such Person in a Transfer permitted by the Investment Agreement (including the minimum transfer size requirement set forth in Section 7.03(a)(A)(ii) of the applicable Investment Agreement); provided, however, that (i) prior written notice of such assignment of rights is given to the Company, and (ii) such transferee agrees in writing to be bound by, and subject to, this Agreement as an "Investor" pursuant to a written instrument in the form of Exhibit B hereto.

Section 4.2 Assumption of Registration Rights. In the event that the Investors exchange an amount of Preferred Stock equal to the Specified Assumed Amount for shares of SpinCo Preferred Stock in a Standalone Spin-Off in accordance with Section 5.10(b) of the Investment Agreement, then as a condition to the consummation of such Standalone Spin-Off, SpinCo shall enter into a registration rights agreement in form and substance substantially similar to this Registration Rights Agreement; provided that the definition of "Registrable Securities" with respect to SpinCo shall apply to the common stock of SpinCo to be issued in connection with conversion of such SpinCo Preferred Stock or as otherwise may be acquired by the Investors from time to time in the same manner as provided in the definition of Registrable Securities herein. Capitalized terms used and not otherwise defined in this Section 4.2 shall have the meanings given to them in the applicable Investment Agreement.

Section 4.3 Termination of Registration Rights. The rights of any particular Investor to cause the Company to register securities under Article I shall terminate with respect to such Investor upon the date upon which such Investor no longer holds any Registrable Securities. The registration rights set forth in this Agreement shall terminate on the date on which all shares of Preferred Stock and shares of Common Stock issuable (or actually issued) upon conversion of the Preferred Stock cease to be Registrable Securities.

ARTICLE V

Miscellaneous

Section 5.1 Amendments and Waivers. Subject to compliance with applicable law, this Agreement may be amended or supplemented in any and all respects by written agreement of the Company and the Investors holding a majority of Registrable Securities on an as-converted basis; provided that for so long as an Investor and its Affiliates own Registrable Securities representing at least such Investor's and its Affiliates' 25% Beneficial Holding Requirement (as defined in the applicable Investment Agreement), such Investor's rights under this Agreement may not be amended or waived without such Investor's prior written consent.

Section 5.2 Extension of Time, Waiver, Etc. The parties hereto may, subject to applicable law, (a) extend the time for the performance of any of the obligations or acts of any other party or (b) waive compliance by any other party with any of the agreements contained herein applicable to such party or, except as otherwise provided herein, waive any of such party's conditions. Notwithstanding the foregoing, no failure or delay by the parties hereto in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

Section 5.3 Assignment. Except as provided in Section 4.1, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned, in whole or in part, by operation of law or otherwise, by any of the parties hereto without the prior written consent of the other parties hereto.

Section 5.4 Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile or electronic mail), each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered to the other parties hereto.

Section 5.5 Entire Agreement; No Third Party Beneficiary. This Agreement, including the Transaction Documents, constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, among the parties and their Affiliates, or any of them, with respect to the subject matter hereof and thereof. No provision of this Agreement shall confer upon any Person other than the parties hereto and their permitted assigns any rights or remedies hereunder.

Section 5.6 Governing Law; Jurisdiction.

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

(b) All legal or administrative proceedings, suits, investigations, arbitrations or actions ("Actions") arising out of or relating to this Agreement shall be heard and determined in the Chancery Court of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over any Action, any state or federal court within the State of Delaware) and the parties hereto hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum or lack of jurisdiction to the maintenance of any such Action. The consents to jurisdiction and venue set forth in this Section 5.6 shall not constitute general consents to service of process in the State of Delaware and shall have no effect for any purpose except as provided in this paragraph and shall not be deemed to confer rights on any Person other than the parties hereto. Each party hereto agrees that service of process upon such party in any Action arising out of or relating to this Agreement shall be effective if notice is given by overnight courier at the address set forth in Section 5.9 of this Agreement. The parties hereto agree that a final judgment in any such Action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law; provided, however, that nothing in the foregoing shall restrict any party's rights to seek any post-judgment relief regarding, or any appeal from, a final trial court judgment.

Section 5.7 Liquidated Damages. If the Company breaches any of its obligations under Article 1 (the "Company Breach"), then the Company shall pay to the Investors an amount in cash (in aggregate, the "Liquidated Damages") for so long as any such breach is continuing as set forth below:

(a) in respect of any Registrable Securities that are Preferred Stock, at a rate per annum of 0.25% of the Stated Value (as defined in the Certificate of Designations) of such Preferred Stock for the first 90 days after the occurrence of the Company Breach and 0.50% of the Stated Value (as defined in the Certificate of Designations) of such Preferred Stock after the first 90 days; and

(b) in respect of any Registrable Securities that are shares of Common Stock into which the Preferred Stock has been converted, at a rate per annum of 0.25% of the then applicable Conversion Price (as defined in the Certificate of Designations) for the first 90 days after the occurrence of the Company Breach and 0.50% of the then applicable Conversion Price (as defined in the Certificate of Designations) after the first 90 days.

The Company's payment of the Liquidated Damages is the Company's sole liability and entire obligation and the Investors' exclusive remedy for any Company Breach (other than a Company Breach of Section 1.8).

Section 5.8 Waiver of Jury Trial. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE IT HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ANY OF THE AGREEMENTS DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (C) IT MAKES SUCH WAIVER VOLUNTARILY AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVER AND CERTIFICATIONS IN THIS SECTION 5.8.

Section 5.9 Notices. All notices, requests and other communications to any party hereunder shall be in writing and shall be deemed given if delivered personally, emailed (which is confirmed) or sent by overnight courier (providing proof of delivery) to the parties at the following addresses:

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

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

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

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

(b) If to the Investors at:

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

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

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

and

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

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

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

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

Section 5.10 Severability. If any term, condition or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, provisions and conditions of this Agreement shall nevertheless remain in full force and effect. Upon such determination that any term, condition or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible to the fullest extent permitted by applicable law.

Section 5.11 Expenses. Except as provided in Section 2.3 and in the definition of Registration Expenses, all costs and expenses, including fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

Section 5.12 Interpretation. The rules of interpretation set forth in Section 8.12 of the Investment Agreements shall apply to this Agreement, *mutatis mutandis*.

[*Signature pages follow*]

IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first above written.

COMPANY:

WESTERN DIGITAL CORPORATION

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

INVESTORS:

AP WD HOLDINGS, L.P.

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

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

ELLIOTT ASSOCIATES, L.P.

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

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

ELLIOTT INTERNATIONAL, L.P.

By: Hambledon, Inc., Its General Partner

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

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

EXHIBIT A

DEFINED TERMS

1. The following capitalized terms have the meanings indicated:

"Adverse Disclosure" means public disclosure of material non-public information that, in the good faith judgment of the Company (after consultation with external legal counsel): (i) would be required to be made in any registration statement filed with the SEC by the Company so that such registration statement would not be materially misleading; (ii) would not be required to be made at such time but for the filing, effectiveness or continued use of such registration statement; and (iii) the Company has a bona fide business purpose for not disclosing publicly.

"Affiliates" shall have the meaning given to such term in the applicable Investment Agreement.

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

"Business Day" shall have the meaning given to such term in the Investment Agreement.

"Certificate of Designations" means the Form of Certificate of Designations, Preferences and Rights of Series A Convertible Perpetual Preferred Stock of Western Digital Corporation attached to each Investment Agreement as Exhibit A, as it may be amended from time to time.

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

"Common Stock" means all shares currently or hereafter existing of the Company's common stock, par value $0.01 per share.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"FINRA" means the Financial Industry Regulatory Authority, Inc.

"First Conversion Date" means the earlier of (i) the closing of the Spin-Off and (ii) the date that is 12 months following the date of this Agreement (i.e., January 31, 2024); provided, that if the Company enters into a definitive agreement to spin-off or split-off (including the Spin-Off) and sell, merge or otherwise transfer all or substantially all of the Company's Flash Business to a third party within such 12-month period, then such 12-month period for purposes of determining the First Conversion Date shall be extended until the earlier of (x) the consummation of such sale, merger or transfer and (y) the termination of such definitive agreement.

"Flash Business" shall have the meaning given to such term in the Investment Agreement.

"Original Issue Date" shall have the meaning given to such term in the Certificate of Designations.

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

"register", "registered" and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act, and the declaration or ordering of the effectiveness of such registration statement or the automatic effectiveness of such registration statement, as applicable.

"Registration Expenses" means all expenses incurred by the Company in complying with Article I, including all registration, qualification, listing and filing fees, printing expenses, escrow fees, fees and disbursements of counsel and accountants, fees and expenses in connection with complying with state securities or "blue sky" laws, FINRA fees, fees of transfer agents and registrars, transfer taxes, all expenses related to any customary "*road show*" for any underwritten public offering (including the reasonable and documented out-of-pocket expenses of the Investors), including all travel, meals and lodging, and fees and expenses of one outside legal counsel and any local counsel, as may be required, to the Investors retained in connection with each registration contemplated hereby, but excluding underwriting discounts and commissions, brokers' commissions and stock transfer taxes, if any, in each case to the extent applicable to the Registrable Securities of any selling Investors.

"Registrable Securities" means, as of any date of determination, any shares of Preferred Stock owned by any Investor and any shares of Common Stock acquired by any Investor pursuant to the conversion of any Preferred Stock or otherwise, and any other securities issued or issuable with respect to any such shares of Preferred Stock or Common Stock by way of share split, share dividend, distribution, recapitalization, merger, exchange, replacement or similar event or otherwise. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (i) such securities are sold or otherwise transferred pursuant to an effective registration statement under the Securities Act, (ii) such securities shall have ceased to be outstanding or are repurchased by the Company or any Subsidiary of the Company, (iii) such securities have been transferred in a transaction in which the Investor's rights under this Agreement are not assigned to the transferee of the securities or (iv) such securities are sold in a broker's transaction under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met.

"Restricted Securities" means any Common Stock required to bear the legend set forth in Section 5.07(a) of the Investment Agreement.

"Rule 144" means Rule 144 promulgated under the Securities Act and any successor provision.

"Rule 462(e)" means Rule 462(e) promulgated under the Securities Act and any successor provision.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

"Shelf Registration Statement" means the Resale Shelf Registration Statement or a Subsequent Shelf Registration Statement, as applicable.

"Spin-Off" shall have the meaning given to such term in the Investment Agreement.

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

"Transaction Documents" shall have the meaning given to such term in the applicable Investment Agreement.

2. The following terms are defined in the Sections of the Agreement indicated:

INDEX OF TERMS

Term	**Section**
Actions	Section 5.6(b)
Agreement	Preamble
Company	Preamble
Company Indemnified Parties	Section 3.1
Delivery Date	Section 2.1(j)
Demand Registration	Section 1.9
Effectiveness Period	Section 1.2
Investor Indemnified Parties	Section 3.2
Indemnified Party	Section 3.3
Indemnifying Party	Section 3.3
Interruption Period	Section 2.1(o)
Investment Agreement	Recitals
Investors	Preamble
Losses	Section 3.1
Offering Persons	Section 2.1(m)
Piggyback Notice	Section 1.8(a)
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Piggyback Request	Section 1.8(a)
Preferred Stock	Recitals
Resale Shelf Registration Statement	Section 1.1
Shelf Offering	Section 1.7
Subsequent Investor Notice	Section 1.5

Term	Section
Subsequent Shelf Registration Statement	Section 1.3
Take-Down Notice	Section 1.7
Underwritten Offering	Section 1.6
Underwritten Offering Notice	Section 1.6

EXHIBIT B

JOINDER TO REGISTRATION RIGHTS AGREEMENT

The undersigned is executing and delivering this Joinder pursuant to the Registration Rights Agreement, dated as of January 31, 2023 (the "Registration Rights Agreement"), by and among Western Digital Corporation (the "Company") and AP WD Holdings, L.P., a Delaware limited partnership, Elliott Associates, L.P., a Delaware limited partnership and Elliott International, L.P., a Cayman Islands limited partnership (collectively, together with their respective successors and any Person that becomes a party hereto pursuant to Section 4.1 of the Registration Rights Agreement, the "Investors" and each, an "Investor"). Capitalized terms used and not defined herein shall have the meanings set forth in the Registration Rights Agreement.

By executing and delivering this Joinder to the Company, the undersigned hereby agrees to become a party to, to be bound by, and to comply with the provisions of the Registration Rights Agreement as an Investor as of the date hereof in the same manner as if the undersigned were an original signatory to the Registration Rights Agreement.

Accordingly, the undersigned has executed and delivered this Joinder as of [•], 20[ ].

[INVESTOR]

By: _____
Name:
Title:

Exhibit 10.4

AMENDED AND RESTATED LETTER AGREEMENT

January 31, 2023

Reference is made to that certain letter agreement dated June 7, 2022, by and between Western Digital Corporation ("***Western Digital***" or "***WDC***") and Elliott Investment Management L.P. ("***Elliott***") (the "***Original Agreement***", a copy of which is attached hereto as Exhibit 1). Western Digital and Elliott are each referred to herein as a "***Party***" and collectively as the "***Parties***." Accordingly, in consideration of the mutual promises contained herein and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, from and after the Effective Date (as defined below) to amend and restate the Original Agreement in its entirety, as follows (as amended and restated herein, this "***Agreement***"):

1. Elliott agrees, on behalf of itself and its affiliates, that during the Standstill Period, neither it nor its controlling and controlled (and under common control) affiliates shall, in any manner:

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

(b) make or in any way participate in any "solicitation" of "proxies" (whether or not relating to the election or removal of directors), as such terms are used in the rules of the Securities and Exchange Commission, to vote any voting securities of WDC or call or seek to call a meeting of WDC's stockholders or initiate any stockholder proposal or referendum of WDC's stockholders, or seek election to or to place a representative on the Board (other than pursuant to this Agreement) or seek the removal of any director from the Board;

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

(d) make any public proposal with respect to (i) any change in the number, term or identity of directors of WDC or the filling of any vacancies on the Board (other than as provided under this Agreement), (ii) any change in the capitalization, capital allocation policy or dividend policy of WDC or sale, spin-off, split-off or other similar separation of one or more business units, (iii) any other change to the Board or WDC's management or corporate or governance structure, (iv) any

waiver, amendment or modification to WDC's certificate of incorporation and bylaws, each as amended to the date of this Agreement, (v) causing the Common Stock to be delisted from, or to cease to be authorized to be quoted on, any securities exchange or (vi) causing the Common Stock to become eligible for termination of registration pursuant to Section 12(g)(4) of the Exchange Act;

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

(f) enter into any negotiations, arrangements or understandings with any Third Party (including security holders of WDC, but excluding, for the avoidance of doubt, any Investor Parties) to take any action Elliott and its affiliates are prohibited from taking pursuant to this paragraph 1, including forming, joining or in any way participating in a "group" (as defined in Section 13(d)(3) of the Exchange Act) with any Third Party with respect to any of the foregoing;

(g) request WDC or any of its Representatives to amend or waive any provision of this paragraph 1, provided that this clause shall not prohibit the Investor Parties from privately making a request to WDC seeking an amendment or waiver of the provisions of this paragraph 1, which WDC may accept or reject in its sole discretion, so long as any such request is made in a manner that does not require public disclosure thereof by WDC; or

(h) contest the validity of this paragraph 1 or make, initiate, take or participate in any Action to amend, waive or terminate any provision of this paragraph 1;

provided, however, that nothing in this paragraph 1 will limit (1) the Investor Parties' ability to vote, Transfer (as such term is defined in, and subject to Section 5.06 of, the Investment Agreement), convert (subject to Section 8 of the Certificate of Designations), purchase Proposed Securities (subject to Section 5.15 of the Investment Agreement) or otherwise exercise rights under, its Common Stock or Preferred Stock, or (2) the ability of any Elliott Director to vote or otherwise exercise its fiduciary duties or otherwise act in its capacity as a member of the Board; provided, further that notwithstanding anything to the contrary in this paragraph 1, Elliott and its affiliates may at any time communicate privately with WDC's directors, officers or advisors, or privately submit to the Board one or more proposals or offers for a transaction (including a transaction that, if consummated, would result in a Fundamental Change), so long as, in each case, such communications and submissions are not intended to, and would not reasonably be expected to, require any public disclosure by WDC of such communications or submissions, as applicable.

In addition, notwithstanding anything in this Agreement to the contrary, following the Closing, Elliott may not directly or indirectly acquire beneficial ownership of any additional shares of Common Stock or any other Company Securities (including, without limitation, pursuant to the exchange or conversion of any Company Securities), other than (x) the acquisition of shares of Common Stock issuable upon conversion of the Preferred Stock, (y) the purchase, exercise or settlement at any time of any options, derivative securities or Hedging Arrangements, in each case that are cash-settled or (z) the exercise of the Investor Parties' rights pursuant to Section 5.15 of the Investment Agreement (such exceptions set forth in clauses (x) through (z), collectively, the "***Specified Exceptions***"), until the twelve (12)-month anniversary of the Closing; provided that, if WDC enters into a definitive agreement to spin-off or split-off (including pursuant to the Spin-Off) and sell, merge or otherwise transfer all or substantially all of the Flash Business within such twelve (12)-month period, then such twelve (12)-month period shall be extended until the earlier

of the consummation of such spin-off/split-off and sale, merger or transfer or the termination of the definitive agreement; and provided further that, if such spin-off/split-off (including pursuant to the Spin-Off) and sale, merger or transfer is consummated within such twelve (12)-month period, or if such definitive agreement is terminated within such twelve (12)-month period, then such twelve (12)-month period shall be limited and shall end upon the consummation of such transaction or the termination of the agreement, as applicable. Notwithstanding the foregoing, WDC shall use its commercially reasonable efforts to determine, in reasonable consultation with Elliott, whether the acquisition of any additional shares of Common Stock or any other Company Securities that would otherwise be prohibited hereunder would reasonably be expected to prevent WDC from obtaining a "will" level tax opinion from its advisors that the Spin-Off (or other relevant spin-off or split-off) would not be taxable pursuant to Section 355(e) of the Code. If WDC reasonably determines that such acquisition would not have such impact, then such acquisition shall not be subject to this paragraph (the provisions of this paragraph 1, the "***Standstill***").

2. During the Standstill Period, WDC and Elliott shall each refrain from making, and shall cause its respective controlling and controlled (and under common control) affiliates and its and their respective principals, directors, members, general partners, officers and employees (collectively, "***Covered Persons***") not to make or cause to be made any statement or announcement, including in any document or report filed with or furnished to the U.S. Securities Exchange Commission or through the press or media, that constitutes an ad hominem attack on, or otherwise disparages, defames, slanders, impugns or is reasonably likely to damage the reputation of, (a) in the case of statements or announcements by any of Elliott and its Covered Persons, Western Digital or any of its affiliates, subsidiaries or advisors, or any of its or their respective current, former or future Covered Persons, and (b) in the case of statements or announcements by Western Digital and its Covered Persons, Elliott or any of its affiliates or advisors, or any of its or their respective current, former or future Covered Persons. The foregoing shall not (i) restrict the ability of any person to comply with any subpoena or other legal process or respond to a request for information (provided that such request is not targeted at this Agreement or the other party hereto) from any governmental or regulatory authority with jurisdiction over the party from whom information is sought, or (ii) apply to any private communications between Elliott, its affiliates and its and their respective Covered Persons, on the one hand, and any of WDC, its affiliates and its and their respective Covered Persons, on the other hand.

3. Prior to the 2025 Annual Stockholder Meeting, as long as the Minimum Condition and the Elliott Affiliated Representative Condition are met, Elliott will have the right to select one individual (the "***Elliott Director***") for appointment to the Board, which individual shall be acceptable to WDC (WDC's acceptance not to be unreasonably withheld, conditioned, or delayed). The Board and all applicable committees thereof will take such actions as are necessary to appoint the Elliott Director to the Board as promptly as practicable. All committee assignments will be provided to the Elliott Director as determined by the Nominating and Governance Committee after consultation with the Elliott Director (and subject to applicable legal requirements, including stock exchange corporate governance rules). If any Elliott Director is unable or unwilling to serve as a director, resigns as a director, is removed as a director or ceases to be a director for any other reason prior to the 2025 Annual Stockholder Meeting, subject to the Minimum Condition and the Elliott Affiliated Representative Condition being met, Elliott and WDC will cooperate in good faith to select, and the Board and all applicable committees thereof will take such actions as are

necessary to appoint to the Board, a substitute director mutually agreed upon between the Parties; provided, however, that if Elliott identifies and proposes an employee of Elliott or its affiliates to serve as the substitute director, WDC's agreement to such person shall not be unreasonably withheld, conditioned, or delayed. In the event that Elliott seeks to exercise its right to the appointment of the Elliott Director, or a substitute director under the immediately preceding sentence, Elliott will provide a written certification to WDC that Elliott satisfies the Minimum Condition upon appointment. Upon the occurrence of the Fall-Away of Board Rights, at the written request of the Board, the Elliott Director or substitute director, as applicable, shall resign, and Elliott shall cause the Elliott Director or substitute director, as applicable, promptly to resign, from the Board and each committee such director serves on, effective as of the date of the Fall-Away of Board Rights, and Elliott shall no longer have any designation and nomination rights under this Agreement.

4. The Elliott Director shall, at the time of his or her nomination or appointment as a director and at all times thereafter until such individual ceases to serve as the Elliott Director:

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

(b) to the extent applicable, meet and comply with any requirements under applicable law or stock exchange listing rules for membership on the applicable committee of the Board;

(c) not be subject to any order, decree or judgment of any governmental authority prohibiting service as a director of any public company;

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

(e) to the extent such attendance would reasonably be expected to present an actual or likely conflict of interest for the Elliott Director in the good faith opinion of the Board or the applicable committee thereof, waive notice of and recuse himself or herself from any meetings, deliberations or discussion of the Board or any committee thereof, as applicable, regarding any Investment Transaction Document, the Investment Transactions (other than a Spin-Off or Subsequent Transaction) or any other transactions involving the Investor Parties.

5. WDC shall at all times provide the Elliott Director (in his or her capacity as a member of the Board) with the same rights to indemnification and exculpation that it provides to other members of the Board. In addition, in his or her capacity as a member of the Board or any applicable committee of the Board on which he or she formally serves as a member, the Elliott Director shall be entitled to receive, unless waived by the Elliott Director, (a) any and all applicable director and committee fees and compensation that are payable to WDC's non-management directors as part of WDC's director compensation plan, and (b) reimbursement of all reasonable, documented out-of-pocket expenses that he or she incurs in connection with performing Board and any applicable committee duties consistent with WDC's expense reimbursement policy applicable to non-management directors.

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

7. WDC acknowledges that (a) certain directors, principals, officers, employees, members, partners and/or other representatives of Elliott or any Elliott Entity, or of investment funds or vehicles affiliated with an Elliott Entity or any of its respective affiliates may be an Elliott Director and, accordingly, serve as a director of WDC, and (b) each of Elliott or investment funds or vehicles affiliated with Elliott may now engage, may continue to engage, and/or may, in the future, decide to engage, in the same or similar activities or related lines of business as those in which WDC or any of its subsidiaries, directly or indirectly, now engage or may engage and/or other business activities that overlap with, are complementary to or compete with those in which WDC or any of its subsidiaries, directly or indirectly, now engage or may engage. In recognition and anticipation of the foregoing, the provisions of this paragraph 7 are set forth to regulate and define the conduct of certain affairs of WDC and its subsidiaries with respect to certain classes or categories of business opportunities as they may involve Elliott or any of its affiliates and the powers, rights, duties and liabilities of WDC, its subsidiaries, and their respective directors, officers and stockholders in connection therewith. To the fullest extent permitted by applicable Law, WDC, on behalf of itself and each of its subsidiaries, hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate (or analogous) or business opportunity for Elliott or any of its affiliates, or any Elliott Director (collectively, "***Identified Persons***" and, individually, an "***Identified Person***") and WDC or any of its affiliates. To the fullest extent permitted by applicable Law, in the event that any Identified Person acquires knowledge of a potential transaction or other corporate (or analogous) or business opportunity which may be a corporate (or analogous) or business opportunity for itself, herself or himself and WDC or any of its affiliates, such Identified Person shall have no duty to communicate, offer or otherwise make available such transaction or other corporate (or analogous) or business opportunity to WDC or any of its affiliates and

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

8. For purposes of this Agreement:

(a) "Action" means a legal or administrative proceeding, suit, audit, charge, claim, investigation, arbitration or action

(b) "affiliates" has the meaning set forth in Rule 12b-2 promulgated under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), provided that "affiliates" of a person shall not include any entity, solely by reason of the fact that one or more of such person's employees or principals serves as a member of its board of directors or similar governing body, unless such person otherwise controls such entity (as the term "control" is defined in Rule 12b-2 promulgated under the Exchange Act), provided, further, that Elliott's "affiliates" shall not include any portfolio operating company (as such term is understood in the private equity industry) of Elliott or any of Elliott's Associates.

(c) "Annual Stockholder Meeting" means the annual meeting of stockholders of Western Digital for the referenced year.

(d) "Associates" means:

(A) with respect to Western Digital's Associates, (i) Western Digital's, Western Digital's joint venture with Kioxia Holdings Corporation, or their respective affiliates' directors, officers, employees, representatives, financing sources, consultants, accountants, attorneys and advisors, and (ii) any other person whom Elliott has authorized in advance in writing (including by e-mail) (and which, in the case of third party representatives, may be identified on an entity-level basis); and

(B) with respect to Elliott's Associates, Elliott's controlled affiliates (for the avoidance of doubt, not including Toshiba Corporation and its affiliates, including Kioxia Holdings Corporation), advisors (including attorneys, accountants, consultants and financial advisors) of any of the foregoing and Elliott's and their respective directors, officers, partners (excluding limited partners), employees and agents.

(e) "beneficial owner," "beneficially own" and "beneficial ownership" shall have the respective meanings set forth in Rule 13d-3 promulgated by the SEC under the Exchange Act.

(f) "Board" means the board of directors of WDC.

(g) "Closing" means the closing of the sale and purchase of the shares of Preferred Stock pursuant to the Investment Agreement.

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

(i) "Common Stock" means WDC's common stock, par value $0.01 per share.

(j) "Company Securities" means (i) outstanding shares of capital stock of, or other equity or voting interests in, WDC, (ii) outstanding securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, WDC other than obligations under the WDC stock plans, (iii) outstanding options, warrants, rights or other commitments or agreements to acquire from WDC or any subsidiary, or that obligate WDC or any subsidiary to issue, any capital stock of, or other equity or voting interests (or voting debt) in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interests in, WDC other than obligations under the WDC stock plans, and (iv) obligations of WDC or any subsidiary to grant, extend or enter into any subscription, warrant, right, debt, convertible or exchangeable security or other similar agreement or commitment relating to any capital stock of, or other equity or voting interests in, WDC.

(k) "Competitor" means any transferee listed on Exhibit D of the Investment Agreement and its controlled affiliates, which list may be updated in writing from time to time by the Board with respect to additional bona fide competitors of WDC.

(l) "Effective Date" means January 31, 2023.

(m) "Elliott Affiliated Representative Condition" means Elliott must satisfy each of the following conditions: (i) if having an Elliott employee or affiliate serving on the Board is reasonably determined by WDC (in consultation with its counsel) to be prohibited under Section 8 of the Clayton Act of 1914, then the Elliott Director will not be an employee or affiliate of Elliott and (ii) the Elliott Director shall have delivered customary documents, such as D&O questionnaires and agreement to customary WDC policies such as confidentiality and securities trading policies, to the extent that WDC's independent directors are requested to sign such documents.

(n) "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(o) "Fall Away of Board Rights" means the first day on which the Minimum Condition is not met.

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

(q) "Fundamental Change" shall have the meaning set forth in the Certificate of Designation.

(r) "Hedging Arrangement" means any "short sale" (as defined in Rule 200 of Regulation SHO under the Exchange Act) of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a "short sale" (as defined in Rule 200 of Regulation SHO under the Exchange Act) of or the purpose of which is to offset the loss which results from a decline in the market price of, any Preferred Stock (or any Common Stock issued upon conversion of any Preferred Stock), or otherwise establish or increase, directly or indirectly, a put equivalent position, as defined in Rule 16a-1(h) under the Exchange Act, with respect to the Preferred Stock or Common Stock.

(s) "Investment Agreement" means that certain investment agreement, dated January 31, 2023, by and between Western Digital and Elliott.

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

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

(v) "Investor Parties" means Elliott and each of its affiliates to whom shares of Preferred Stock or Common Stock are transferred in accordance with the terms of the Investment Agreement.

(w) "Minimum Condition" means that Elliott and its affiliates have aggregate net long economic exposure equal to at least 9,041,591 shares of Common Stock, including but not limited to such number of shares of Common Stock issuable upon conversion of shares of Preferred Stock without regard to any restrictions on Elliott's or its affiliates' right to convert shares of the Preferred Stock (including under Section 5.08 of the Investment Agreement).

(x) "Permitted Loan" means a total return swap or a bona fide loan or other financing arrangement, including pledging, hypothecating or otherwise granting a security interest in shares of Preferred Stock and/or shares of Common Stock issued upon conversion of shares of Preferred Stock to one or more lending institutions as collateral or security for any bona fide loan, advance or extension of credit and any transfer upon foreclosure (or in lieu of foreclosure) upon such shares of Preferred Stock or Common Stock.

(y) "person" shall be interpreted broadly to include, among others, any individual, general or limited partnership, corporation, limited liability or unlimited liability company, joint venture, estate, trust, group, association or other entity of any kind or structure.

(z) "Preferred Stock" means WDC's Series A Convertible Perpetual Preferred Stock, par value $0.01 per share.

(aa) "Proposed Securities" means the securities proposed to be issued pursuant to the Investment Agreement.

(bb) "Registration Rights Agreement" means that certain Registration Rights Agreement, entered into by the Company and Elliott, dated January 31, 2023.

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

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

(ee) "Standstill Period" means the period from and after the Effective Date until January 31, 2024; provided that, (x) if WDC enters into a definitive agreement with respect to a Subsequent Transaction before January 31, 2024, then the Standstill Period shall be extended until the earliest of (A) the consummation of such Subsequent Transaction, (B) the termination of the definitive agreement with respect to such Subsequent Transaction and (C) the day following the 2024 Annual Stockholder Meeting and (y) Elliott will be subject to the Standstill during any period commencing on the date on which an Elliott Director joins the Board and ending on the forty-fifth (45th) day following the date on which such Elliott Director is no longer serving on the Board; provided, that, in each case, the Standstill Period shall immediately terminate and expire (and the Standstill shall cease to apply and shall be of no further force and effect) at the earlier of: (i) WDC entering into a definitive written agreement to consummate a Fundamental Change (regardless of the form of such transaction) and (ii) the Board approving (or, in the case of a tender or exchange offer, failing to recommend against such tender or exchange offer within ten (10) Business Days of the commencement thereof) a transaction that, if consummated, would result in a Fundamental Change.

(ff) "Subsequent Transaction" means a spin-off or split-off (including the Spin-Off) which is followed by the sale, merger, combination or other transfer of all or substantially all of the Flash Business, in one or more related transactions, to or with a Third Party.

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

(h) "Third Party" means a person other than Elliott and each of its affiliates.

9. The Parties' obligations under this Agreement will terminate effective upon the termination of the Standstill Period, except as otherwise specifically provided herein.

10. This Agreement sets forth the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between them with respect to the subject matter hereof. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver, nor shall any single or partial exercise preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

11. This Agreement is made under and shall be construed according to the laws of the State of Delaware, excluding that body of Delaware law concerning conflicts of law. Each of the Parties (a) irrevocably and unconditionally submits to the exclusive jurisdiction of the Delaware Court of Chancery (or, only if the Delaware Court of Chancery declines to accept jurisdiction over a particular matter, the federal, or other state courts located in Wilmington, Delaware), (b) agrees that it will not attempt to deny or defeat such jurisdiction by motion or other request for leave from any such courts, (c) agrees that any actions or proceedings arising in connection with this Agreement or the transactions contemplated by this Agreement shall be brought, tried, and determined only in such courts, (d) waives any claim of improper venue or any claim that those courts are an inconvenient forum and (e) agrees that it will not bring any action relating to this Agreement or the transactions contemplated hereunder in any court other than the aforesaid courts.

12. All modifications to this Agreement must be made in writing and must be signed by each of the Parties. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party. References to specified rules promulgated by the Securities and Exchange Commission shall be deemed to refer to such rules in effect as of the date of this Agreement.

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Very truly yours,

WESTERN DIGITAL CORPORATION

By: /s/ Michael. C Ray
Name: Michael C. Ray
Title: Executive Vice President, Chief Legal Officer and Secretary

Accepted and Agreed as of the Effective Date:

ELLIOTT INVESTMENT MANAGEMENT L.P.

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

[Signature Page to Amended and Restated Letter Agreement]

Exhibit 1

(Agreement)

Western Digital Announces $900 Million Convertible Preferred Equity Investment Led by Apollo-Managed Funds

Apollo Provides Long-Term Strategic and Capital Support to Company Alongside Existing Investor Elliott Investment Management

San Jose, Calif., – January 31, 2023 – Western Digital Corporation ("Western Digital") (Nasdaq: WDC) today announced that funds managed by affiliates of Apollo Global Management, Inc. ("Apollo") led the purchase of $900 million of convertible preferred stock of Western Digital, along with Elliott Investment Management L.P. (together with its affiliates, "Elliott") who also invested in the convertible offering. The investment strengthens Western Digital's financial position and flexibility as the company continues its review of strategic alternatives aimed at further optimizing long-term value for its shareholders.

"This investment was the result of a comprehensive outreach and evaluation process to appropriately capitalize the company and retain optionality for future strategic decision making," said David Goeckeler, CEO, Western Digital. "We have tremendous respect for Apollo and Elliott. Their partnership and perspectives as experienced capital investors will help us facilitate the next stages of Western Digital's strategic review. We look forward to working together in advancing our goal of creating value and finalizing the best possible strategic outcome for our shareholders."

"Western Digital is an iconic American business that is critical to the global digital infrastructure, with a strong, long-term track record as a leading developer and producer of storage technology," said Reed Rayman, a Partner in private equity at Apollo. "We see substantial opportunity and value creation ahead for Western Digital and are excited to make this investment, which enables Western Digital to continue executing on its innovation-led strategy and producing market-leading products for its customers. We look forward to working with David and the Board as they position the company for long-term success."

Elliott Managing Partner Jesse Cohn and Senior Portfolio Manager Jason Genrich said, "We are pleased to participate in this investment and are encouraged by the progress Western Digital has made in its strategic review process to date. Our participation follows our previous offer to provide strategic resources and additional capital to help the company realize the full value of both its HDD and Flash businesses. We are strong believers in Western Digital's compelling growth opportunity, and we look forward to continuing our support for David and his management team's execution, strategic vision and focus on shareholder value."

In connection with the Apollo funds' investment, Rayman was appointed to Western Digital's Board of Directors.

Western Digital will file a Form 8-K with the Securities and Exchange Commission in regards to this investment.

Terms of the Transaction

The preferred stock has an initial conversion price of $47.75 per share of Western Digital's stock, subject to customary anti-dilution and other adjustments. The initial conversion price of $47.75 represents a 25% premium to the volume-weighted average closing price of the common stock over the 20-day period ending on January 30, 2023, and a 44% premium to the closing price on January 4, 2023, the last trading day prior to merger rumors involving Western Digital. The preferred stock will bear a cumulative and compounding dividend at a rate of 6.25% per annum over the initial liquidation preference of $1,000.00, until the seven-year anniversary of the closing, at which time the dividend shall increase to 7.25% per annum until the ten-year anniversary of the closing, at which time the dividend shall increase to 8.25% per annum. Additional information regarding this announcement may be found in the Form 8-K.

Amendment to Western Digital/Elliott June 7, 2022 Letter Agreement

Also announced today, Western Digital and Elliott revised their June 7, 2022 letter agreement to provide Elliott with a board seat right subject to certain conditions outlined in the Form 8-K.

Advisors

Qatalyst Partners, Lazard and J.P. Morgan are serving as Western Digital's financial advisors and Skadden, Arps, Slate, Meagher & Flom LLP is serving as Western Digital's legal counsel.

Paul, Weiss, Rifkind, Wharton & Garrison LLP is serving as the Apollo funds' legal counsel.

Gibson, Dunn & Crutcher LLP is serving as Elliott's legal counsel.

About Western Digital

Western Digital is on a mission to unlock the potential of data by harnessing the possibility to use it. With Flash and HDD franchises, underpinned by advancements in memory technologies, we create breakthrough innovations and powerful data storage solutions that enable the world to actualize its aspirations. Core to our values, we recognize the urgency to combat climate change and have committed to ambitious carbon reduction goals approved by the Science Based Targets initiative. Learn more about Western Digital and the Western Digital®, SanDisk® and WD® brands at www.westerndigital.com.

About Apollo

Apollo is a global, high-growth alternative asset manager. In the asset management business, Apollo seeks to provide its clients excess return at every point along the risk-reward spectrum from investment grade to private equity with a focus on three business strategies: yield, hybrid, and equity. For more than three decades, Apollo's investing expertise across its fully integrated platform has served the financial return needs of its clients and provided businesses with innovative capital solutions for growth. Through Athene, Apollo's retirement services business, it specializes in helping clients achieve financial security by providing a suite of retirement savings products and acting as a solutions provider to institutions. Apollo's patient, creative, and knowledgeable approach to investing aligns its clients, businesses it invests in, its team members, and the communities it impacts, to expand opportunity and achieve positive outcomes. As of September 30, 2022, Apollo had approximately $523 billion of assets under management. To learn more, please visit www.apollo.com.

About Elliott

Elliott Investment Management L.P. manages approximately $55.7 billion of assets as of June 30, 2022. Its flagship fund, Elliott Associates, L.P., was founded in 1977, making it one of the oldest funds under continuous management. The Elliott funds' investors include pension plans, sovereign wealth funds, endowments, foundations, funds-of-funds, high net worth individuals and families, and employees of the firm.

Forward-Looking Statements:

This press release contains forward-looking statements within the meaning of federal securities laws, including statements regarding the company's review of strategic alternatives; growth opportunities; market positioning; and strategy execution. The company's review of strategic alternatives may not result in a separation of the company or any other transaction, and any transaction that occurs may not increase shareholder value. The forward-looking statements contained in this press release are based on management's current expectations and are subject to risks and uncertainties that could cause actual results to differ materially from those expressed or implied in the forward-looking statements, including: volatility in global economic conditions; future responses to and effects of the COVID-19 pandemic or other similar global health crises; impact of business and market conditions; the outcome and impact of our ongoing strategic review, including with respect to customer and supplier relationships, regulatory and contractual restrictions, stock price volatility and the diversion of management's attention from ongoing business operations and opportunities; impact of competitive products and pricing; our development and introduction of products based on new technologies and expansion into new data storage markets; risks associated with cost saving initiatives, restructurings, acquisitions, divestitures, mergers, joint ventures and our strategic relationships; difficulties or delays in manufacturing or other supply chain disruptions; hiring and retention of key employees; our level of debt and other financial obligations; changes to our relationships with key customers; disruptions in operations from cybersecurity incidents or other system security risks; actions by competitors; risks associated with compliance with changing legal and regulatory requirements and the outcome of legal proceedings; and other risks and uncertainties listed in the company's filings with the Securities and Exchange Commission (the "SEC"), including the company's Form 10-K filed with the SEC on August 25, 2022, to which your attention is directed. You should not place undue reliance on these forward-looking statements, which speak only as of the date hereof, and the company undertakes no obligation to update or revise these forward-looking statements to reflect new information or events, except as required by law.

For more information please contact:

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