SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8-K

CURRENT REPORT

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

November 12, 2002
Date of Report (Date of earliest event reported)

Quantum Corporation

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation)

1-13449	**94-2665054**
(Commission File Number)	**(IRS Employer Identification No.)**
501 Sycamore Dr., Milpitas, CA	**95035**
(Address of principal executive offices)	**(Zip Code)**

408-944-4000
(Registrant's telephone number, including area code)

Item 2. Acquisition or Disposition of Assets

On October 28, 2002, Quantum Corporation (the "Company" or "Quantum") completed the sale of the principal assets of its Network Attached Storage Division ("NAS"), to SNAP Appliance, Inc. ("SNAP") f/k/a Broadband Storage, Inc., a privately-held company. Quantum received $4.7 million cash, a $2.4 million senior secured promissory note, and $3.9 million of SNAP restricted convertible preferred securities. Quantum has an option to acquire up to an additional $1.8 million of the restricted convertible preferred securities. Quantum will also provide up to $650,000 of transition services to SNAP, the cost of which has been factored into the aggregate sale price.

Item 7. Financial Statements, Pro Forma Financial Information and Exhibits

The following unaudited pro forma condensed consolidated financial statements present financial information for Quantum giving effect to the sale of the NAS assets, which was consummated on October 28, 2002. The unaudited pro forma condensed consolidated balance sheet as of June 30, 2002 is presented as if the sale had occurred as of that date. The unaudited pro forma condensed consolidated statements of operations for the three months ended June 30, 2002 and the fiscal year ended March 31, 2002 are presented as if the sale had occurred at the beginning of the of the respective periods.

The pro forma condensed consolidated financial statements should be read in conjunction with Quantum's unaudited condensed consolidated financial statements and notes thereto included in the Company's quarterly report on Form 10-Q for the period ended June 30, 2002 and the audited consolidated financial statements and notes thereto in the Company's annual report on Form 10-K for the fiscal year ended March 31, 2002. The pro forma information may not necessarily be indicative of what the Company's results of operations or financial position would have been had the transaction been in effect as of and for the periods presented, nor is such information necessarily indicative of the Company's results of operations or financial position for any future period or date.

QUANTUM CORPORATION

PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEETS (UNAUDITED)

(In thousands)

	June 30, 2002				
	Historical	**Business to be disposed**	**Pro forma adjustments**		**Pro forma**
Assets					
Current assets:					
Cash and investments	$ 305,825	$ -	$ 4,730	A	$ 310,555
Accounts receivable, net	135,672	-	-		135,672
Inventories	110,811	(2,430)	-		108,381
Deferred income taxes	42,725	-	-		42,725
Service inventories	50,186	(548)	-		49,638
Other current assets	39,216	-	-		39,216
Total current assets	684,435	(2,978)	4,730		686,187
Long-term assets:					
Property and equipment, net	74,464	(1,700)	-		72,764
Goodwill, net	68,648	-	-		68,648
Intangible assets, net	84,018	(23,970)	-		60,048
Other assets	25,187	(172)	6,255	A	31,270
Receivable from Maxtor Corporation	95,833	-	-		95,833
Total long-term assets	348,150	(25,842)	6,255		328,563
	$ 1,032,585	$ (28,820)	$ 10,985		$ 1,014,750
Liabilities and Group Equity					
Current liabilities:					
Accounts payable	$ 101,696	$ -	$ -		$ 101,696
Accrued warranty	40,022	(1,034)	-		38,988
Short-term debt	2,654	-	-		2,654
Other accrued liabilities	138,054	-	$ 950	A	139,004
Total current liabilities	282,426	(1,034)	950		282,342
Other long term liabilities					
Deferred income taxes	35,233	-	(6,745)	B	28,488
Convertible subordinated debt	287,500	-	-		287,500
Stockholders' equity	427,426	-	(11,006)	A	416,420
	$ 1,032,585	$ (1,034)	$ (16,801)		$ 1,014,750

QUANTUM CORPORATION

PRO FORMA CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

(In thousands, except per-share amounts)

	Three months ended June 30, 2002				
	Historical	**Business to be disposed**	**Pro forma adjustments**		**Pro forma**
Product revenue	$ 165,915	$ (9,028)	$ -		$ 156,887
Royalty revenue	45,563	-	-		45,563
Total revenue	211,478	(9,028)	-		202,450
Cost of revenue	148,971	(9,534)	424	C	139,861
Gross margin	62,507	506	(424)		62,589
Operating expenses:					
Research and development	29,805	(4,354)	175	C	25,626
Sales and marketing	30,894	(4,872)	68	C	26,090

General and administrative	22,574	(687)	175	C	22,062
Special charges	4,885	(4,261)	-		624
	88,158	(14,174)	418		74,402
Loss from operations	(25,651)	14,680	(842)		(11,831)
Equity investment write-downs	(17,061)	-	-		(17,061)
Interest and other income (expense), net	(3,266)	23			(3,243)
Loss before income taxes	(45,978)	14,703	(842)		(32,117)
Income tax provision (benefit)	(9,393)	4,861	(253)	D	(4,785)
Income (loss) before cumulative effect of an accounting change	(36,585)	9,842	(589)		(27,332)
Cumulative effect of an accounting change	(94,298)	-	-		(94,298)
Net income (loss)	$ (130,883)	$ 9,842	$ (589)		$ (121,630)
Loss per share before cumulative effect of an accounting change					
Basic	$ (0.23)				$ (0.17)
Diluted	$ (0.23)				$ (0.17)
Cumulative effect per share of an accounting change					
Basic	$ (0.60)				$ (0.60)
Diluted	$ (0.60)				$ (0.60)
Net income (loss) per share					
Basic	$ (0.84)				$ (0.78)
Diluted	$ (0.84)				$ (0.78)
Weighted average common and common equivalent shares					
Basic	156,443				156,443
Diluted	156,443				156,443

QUANTUM CORPORATION

PRO FORMA CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)

(In thousands, except per-share amounts)

	Fiscal Year Ended March 31, 2002			
	Historical	**Business to be disposed**	**Pro forma adjustments**	**Pro forma**
Product revenue	$ 878,476	$ (58,117)	$ -	$ 820,359
Royalty revenue	209,316	-	-	209,316
Total revenue	1,087,792	(58,117)	-	1,029,675
Cost of revenue	701,902	(50,058)	226 C	652,070
Gross margin	385,890	(8,059)	(226)	377,605
Operating expenses:				
Research and development	126,629	(15,178)		111,451
Sales and marketing	138,476	(27,961)	218 C	110,733
General and administrative	122,191	(11,172)	2,522 C	113,541
Special charges	77,401	(4,545)	-	72,856
Purchased in-process research and development	16,499	(3,299)	-	13,200
	481,196	(62,155)	2,740	421,781
Loss from operations	(95,306)	54,096	(2,966)	(44,176)
Interest and other income (expense), net	(14,495)	59	-	(14,436)
Loss before income taxes	(109,801)	54,155	(2,966)	(58,612)
Income tax provision (benefit)	(27,331)	18,794	(1,075) D	(9,612)
Loss from continuing operations	(82,470)	35,361	(1,891)	(49,000)
Discontinued operations:				
Gain on disposition of HDD group, net of income taxes	124,972	-	-	124,972
Income (loss) from discontinued operations	124,972	-	-	124,972
Net income (loss)	$ 42,502	$ 35,361	$ (1,891)	$ 75,972
Loss per share from continuing operations				

Basic	$	(0.53)	$	(0.32)
Diluted	$	(0.53)	$	(0.32)
Income (loss) per share from discontinued operations				
Basic	$	0.81	$	0.81
Diluted	$	0.81	$	0.81
Net income (loss) per share				
Basic	$	0.27	$	0.49
Diluted	$	0.27	$	0.49
Weighted average common and common equivalent shares				
Basic		155,169		155,169
Diluted		155,169		155,169

NOTES TO UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL INFORMATION

Basis of Presentation

The above unaudited pro forma condensed consolidated financial statements present financial information for Quantum giving effect to the sale of the NAS assets, which was completed on October 28, 2002. The unaudited pro forma condensed consolidated balance sheet as of June 30, 2002 is presented as if the transaction occurred on that date. The unaudited pro forma condensed consolidated statements of operations for the three months ended June 30, 2002 and for the fiscal year ended March 31, 2002 are presented as if the transaction had occurred at the beginning of the respective periods and exclude any loss that may be realized upon disposition.

Unaudited Pro Forma Adjustments

(A) Reflects the sale of NAS assets for a total cash payment of $4.7 million. The adjustments to other assets reflect the promissory note of $2.4 million and $3.9 million of SNAP restricted convertible preferred securities at October 28, 2002, as partial consideration for the sale. The adjustments to other accrued liabilities reflect the transition service liabilities ($650,000) and estimated costs and expenses incurred in connection with the sale ($300,000). Included in retained earnings at June 30, 2002 is the resulting $11 million pro forma loss, net of tax, as if the sale occurred on June 30, 2002. The loss on disposition will be recorded in the third quarter of fiscal 2003. The actual loss amount will be determined based on the excess of proceeds received over the actual carrying value of the NAS net assets sold as of October 28, 2002 less direct costs associated with the sale. Pursuant to Article 11 of Regulation S-X, the preliminary loss to be recognized on the disposition transaction has been excluded from the pro forma condensed consolidated statements of operations for the three months ended June 30, 2002 and the fiscal year ended March 31, 2002 due to its non-recurring nature.

(B) Represents a pro forma adjustment to deferred income taxes relating to taxable loss on sale.

(C) Reflects the reversal of the cost allocation to NAS that was previously included in NAS statements of operations. Quantum will continue to incur these costs without reimbursement from SNAP, resulting in higher operating expenses going forward.

(D) Represents the tax benefit resulting from additional costs that were previously allocated to NAS.

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 hereunto duly authorized.

QUANTUM CORPORATION

By: /s/ MICHAEL J. LAMBERT

Michael J. Lambert

Executive Vice President, Chief Financial Officer

Dated: November 12, 2002

EXHIBIT INDEX

Exhibit No.	Description

Exhibit 2.1	Asset Purchase Agreement, by and between Quantum Corporation and Broadband Storage, Inc., dated as of October 7, 2002, as amended on October 28, 2002.
Exhibit 2.2	Transition Service Agreement, dated as of October 28, 2002, by and between Quantum Corporation and Broadband Storage, Inc.
Exhibit 2.3	Senior Secured Promissory Note, dated as of October 28, 2002, issued by Broadband Storage, Inc. to Quantum Corporation.
Exhibit 2.4	Security Agreement, dated as of October 28, 2002, by and between Quantum Corporation and Broadband Storage, Inc.
Exhibit 2.5	Broadband Storage, Inc. Series B Preferred Stock Purchase and Recapitalization Agreement, dated as of October 14, 2002, as amended on October 24, 2002, by and among Broadband Storage, Inc. and the purchasers of the Series B Preferred Stock.
Exhibit 2.6	Broadband Storage, Inc. Amended and Restated Investor Rights Agreement, dated as of October 15, 2002, as amended on October 24, 2002, by and among Broadband Storage, Inc. and certain purchasers of the Series B Preferred Stock.
Exhibit 2.7	Third Amended and Restated Certificate of Incorporation of Broadband Storage, Inc.
Exhibit 2.8	Broadband Storage, Inc. Amended and Restated Voting Agreement, dated as of October 15, 2002, by and among Broadband Storage, Inc. and certain purchasers of the Series B Preferred Stock.
Exhibit 99.1	Press Release, dated October 15, 2002

ASSET PURCHASE AGREEMENT

Dated as of October 7, 2002

By and Between

QUANTUM CORPORATION

and

BROADBAND STORAGE, INC.

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of October 7, 2002, by and between QUANTUM CORPORATION, a Delaware corporation ("Seller") and BROADBAND STORAGE, INC., a Delaware corporation ("Buyer"). Capitalized terms not otherwise defined in this Agreement are defined in Appendix A hereto.

RECITALS:

A. Among other things, Seller is engaged in the business of developing, manufacturing, selling and servicing Network Attached Storage ("NAS") through the SNAP and Guardian brand products (the "Relevant Product Lines"), and Buyer is interested in purchasing, and Seller is interested in selling certain assets related thereto; and

B. Buyer proposes to raise additional equity financing with certain of Buyer's current stockholders and certain new investors pursuant to a Series B Preferred Stock financing (the "Financing").Among other things, Seller is engaged in the business of developing, manufacturing, selling and servicing Network Attached

C. The parties hereto desire that Seller sell, assign, transfer and convey to Buyer, and that Buyer purchase from Seller, the Purchased Assets (as defined below) and, in connection therewith, that Buyer assume certain liabilities of Seller relating thereto, subject to the terms and conditions set forth in this Agreement (the "Acquisition").

D. Seller is willing to accept shares of Buyer's Series B Preferred Stock as partial consideration for the sale by Seller of the Purchased Assets to Buyer.

E. In connection with the Acquisition, at the Closing, Buyer and Seller shall enter into a Strategic Partnership Agreement, pursuant to which Buyer and Seller will agree to detail processes, plans and terms for developing, executing and managing go-to-market opportunities and engineering and product integration opportunities for certain NAS-related products.

NOW, THEREFORE, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises contained herein, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE I.

PURCHASE AND SALE OF THE ASSETS;
PURCHASE PRICE; POSSESSION

1.1 Assets and Liabilities

(a) Acquired Assets. Upon the terms and subject to the conditions of this Agreement, as of the Closing (as defined in Section 6.1), Buyer shall purchase from Seller, and Seller shall sell, assign, transfer and convey to Buyer, all of Seller's right, title and interest in and to all of the assets, properties, rights, interests and claims set out or described in Sections 1.1(a)(i) through 1.1(a)(ix) (collectively the "Purchased Assets")

(i) Intellectual Property Assets. Subject to the agreements listed on Schedule 2.12(a) and to end user agreements entered into in the ordinary course of business, the Purchased Software, Purchased Technology and Purchased Intellectual Property Rights. Seller further grants, conveys and assigns to Buyer all its right, title and interest in and to any and all causes of action and rights of recovery for past infringement of the Purchased Patents, as well as the right to prosecute the Purchased Patents. With respect to the Purchased Trademarks, the foregoing assignment includes the assignment of all goodwill appurtenant thereto.

(ii) Customer Lists. All customer or vendor lists, customer credit limits, manuals, and data, sales, marketing and advertising materials used by Seller in connection with the Purchased Assets.

(iii) Contracts. All of Seller's rights and interests under the contracts, instruments, agreements, commitments or other understandings or arrangements attributable to the Purchased Assets or the Assumed Liabilities that are listed on Schedule 1.1(a)(iii) (the "Purchased Contracts").

(iv) Records and Documentation. Originals or, at Seller's option, copies of all business and financial records, tax information, files, books and form contracts specifically relating to the Purchased Assets described in the other clauses of this Section 1.1(a) or to the Assumed Liabilities, including, but not limited to, books and records, if any, which reflect the principal terms of each Purchased Contract.

(v) Authorizations. All federal, foreign, state, local or other governmental consents, licenses, permits, grants, or authorizations (including dba registrations) and the like owned, held or utilized by Seller in connection with the use or ownership of the Purchased Assets, which Seller is not legally prohibited from assigning to Buyer, all of which are listed on Schedule 1.1(a)(v) (the "Authorizations").

(vi) Inchoate Rights. All rights, claims, credits, causes of action or rights of set-off with respect to or arising out of (A) the Purchased Assets, (B) the Assumed Liabilities or (C) proceeds paid or payable under insurance contracts relating to the Purchased Assets.

(vii) Balance Sheet Inventory. Inventory for the Relevant Product Lines (the "Balance Sheet Inventory") that are reflected on the balance sheet of Seller as of the Closing Date, which are listed on Schedule 1.1(a)(vii).

(viii) Furniture, Equipment, etc. All items of furniture, equipment, computers, computer software (to the extent assignable or transferable), photocopy machines and office supplies, whether owned or leased by Seller that are used in connection with the Purchased Assets and are listed on Schedule 1.1(a)(viii) (the "Furniture and Equipment").

(ix) Other Items of Property. All other items of property, supplies or other assets, that are used by Seller in connection with the Purchased Assets or Assumed Liabilities to the extent that Seller has any rights or interests therein that are assignable and are listed on Schedule 1.1(a)(ix) ("Other Items of Property").

(b) Excluded Assets and Certain Known Liabilities. Seller shall not sell, assign, transfer or convey to Buyer, and Buyer shall not purchase (i) assets, properties, rights, interests or claims of Seller of any kind or nature whatsoever other than the Purchased Assets and (ii) any known liabilities set forth on Schedule 1.1(b) (collectively, Section 1.1(b)(i) and 1.1(b)(ii) are known as the "Excluded Assets and Certain Known Liabilities").

(c) Liabilities Assumed by Buyer. Upon the terms and subject to the conditions of this Agreement, and in reliance on the representations, warranties, covenants and agreements made by Seller herein, effective as of the Closing Date, Buyer shall assume and be obligated pursuant to this Agreement to pay when due, perform, or discharge only the debts, claims, liabilities, obligations, and expenses described below and on Schedule 1.1(c) (collectively, the "Assumed Liabilities"):

(i) executory obligations arising from the Purchased Contracts which are to be performed after the Closing Date; provided, however, that Buyer shall not assume any (x) costs or expenses arising from any liabilities not specifically assumed hereby, (y) obligations arising from any contracts, instruments, agreements, commitments or other understandings or arrangements attributable or relating to the Purchased Assets, the rights to which are not, for any reason, assigned to Buyer as required pursuant to the terms of this Agreement, and (z) obligations which are past due or arise as a result of or in connection with a breach or default by Seller under any of the Purchased Contracts or a violation of any law or public policy which occurred on or prior to the Closing Date; and

(ii) up to $1,600,000 of liabilities of Seller to accept returns or to provide product warranty services to those customers who purchased any NAS product from Seller or any of its distributors on or prior to the Closing Date, as more specifically set forth in Section 4.5.

1.2 Purchase Price and Payment Terms.

(a) The aggregate purchase price for the Purchased Assets is (i) the issuance of the Buyer's Series B Preferred Stock (the "Stock Consideration") with a total aggregate value of $3,900,000 (with an option to acquire an additional $1,800,000 in aggregate value of Stock Consideration at any subsequent closing of the Financing, if at all); (ii) Five Million Dollars ($5,000,000) in cash adjusted, as the case may be, by (A) either (I) subtracting an amount equal to (x) $54,000 multiplied by (y) that number of Designated Employees in excess of forty who are given a Bona Fide Offer, or (II) adding an amount equal to (x) $54,000 multiplied by (y) that number of Designated Employees less than forty who are given a Bona Fide Offer and (B) subtracting an amount equal to the Gross Variable Margin of inventory of the Relevant Product Lines in excess of seven (7) weeks in the aggregate, calculated by dividing the Seller's North American distribution channel inventory value as of the Closing Date for the Relevant Product Lines by the average weekly distributor sales (POS) of the Relevant Product Lines for the Seller's prior fiscal quarter (the "Cash Purchase Price"), (iii) a secured promissory note in the original principal amount of $2,354,788, in form and substance reasonably satisfactory to Buyer and Seller (the "Note"), and (iv) assumption of the Assumed Liabilities (collectively items (i) through (iv), the "Purchase Price"). As used herein, "Gross Variable Margin" means the difference between the selling price to the distributor and the purchase price of components for the manufacturer.

(b) At Closing, Buyer shall (i) deliver to Seller the Stock Consideration and the Note; (ii) the Cash Purchase Price and (iii) assume the Assumed Liabilities.

1.3 Possession. The assignment to Buyer of Seller's rights in the Purchased Assets, and the transfer of the Assumed Liabilities to Buyer, will be effective as between Seller and Buyer as of 5:00 p.m. pacific standard time on the Closing Date. Buyer shall be responsible for the costs of delivering the Purchased Assets, including title thereto, to Buyer

1.4 Sales, Use and Transfer Taxes. Buyer shall reimburse Seller for all expenses associated with documentary transfer taxes and any sales, use or other similar taxes, duties, fees and governmental exactions (the "Transfer Taxes") imposed by reason of the transfer of the Purchased Assets provided hereunder and any deficiency, interest or penalty asserted with respect thereto.

1.5 Allocation of Purchase Price and Adjustments. The Purchase Price shall be allocated in relation to the Purchased Assets as set forth on Schedule 1.5 hereto. Each party agrees that it will not, in its Tax returns or elsewhere, take a position inconsistent with the allocations provided for in this Section.

1.6 Termination Costs. Seller shall pay all costs associated with terminating any non-manufacturing contracts relating to the Purchased Assets that are not a part of the Purchased Assets.

ARTICLE II.
REPRESENTATIONS AND WARRANTIES OF SELLER

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller makes the following representations and warranties to Buyer as of the date of this Agreement and as of the Closing Date, subject to the exceptions set forth on the Schedule of Exceptions attached hereto as Exhibit B, which Schedule of Exceptions specifically identifies relevant Sections to which the exceptions set forth therein relate, as follows:

2.1 Organization. Seller is a corporation, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to conduct business as it is presently being conducted and to own and lease its properties and assets. Seller is duly qualified to do business as a foreign corporation, and is in good standing in every jurisdiction in which the failure to be so qualified would have a Material Adverse Effect.

2.2 Authorization. The execution and delivery of this Agreement and the other documents executed in connection herewith (collectively, the "Ancillary Documents") by Seller and the performance of all obligations hereunder and thereunder have been duly authorized and no other corporate action or approval is necessary for the execution, delivery or performance of this Agreement or the Ancillary Documents by Seller. Seller has full right, power, authority and capacity to execute, deliver and perform this Agreement and the Ancillary Documents and such other agreements and instruments as are contemplated hereby. Each of this Agreement and the Ancillary Documents has been duly executed and delivered by Seller and is a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect, relating to or limiting creditors' rights generally and (b) general principles of equity (whether considered in an action in equity or at law).

2.3 No Conflict. Neither the execution and delivery of this Agreement and the Ancillary Documents by Seller, nor the consummation of the transactions contemplated hereunder nor the fulfillment by Seller of any of the terms of this Agreement will:

(a) except for such conflicts, breaches or defaults as would not have a Material Adverse Effect, conflict with or result in a breach by Seller, or constitute a default by Seller under, or create an event that, with the giving of notice or the lapse of time, or both, would be a default under or breach of, any of the terms, conditions or provisions of (i) any mortgage, lease, deed of trust, pledge, loan or credit agreement, license agreement, or any other material contract, arrangement or agreement to which any of the Purchased Assets is subject, (ii) the Certificate of Incorporation or Bylaws of Seller or (iii) any judgment, order, writ, injunction, decree or demand of any Governmental Entity, which would have a material adverse effect upon Seller's ability to convey the Purchased Assets;

(b) result in the creation or imposition of any Encumbrance upon the Purchased Assets; or

(c) cause a loss or adverse modification of any permit, license, or other authorization granted by a Governmental Entity to or otherwise held by Seller which would have a Material Adverse Effect.

Except for this Agreement, Seller has no obligation, absolute or contingent, to any other Person to sell the Purchased Assets or to enter into any agreement with respect thereto.

2.4 Intentionally Deleted.

2.5 Absence of Certain Facts or Events. Since June 30, 2002, there has not been:

(a) any Material Adverse Effect;

(b) any material damage, destruction or loss to the assets used in connection with the Purchased Assets, whether covered by insurance or not;

(c) any increase in the compensation payable or to become payable by Seller to any Designated Employee or in the coverage or benefits under any bonus, insurance, pension or other benefit plan (excluding annual length-of-service and similar adjustments to the benefits of individual participants) relating to any Designated Employee;

(d) any obligations, expenditures or decisions of financial impact related to the Purchased Assets or Assumed Liabilities that are in any manner out of the ordinary course of business;

(e) any transfer or sale of a substantial portion of the assets used in connection with the Purchased Assets, to any Person (other than sales of inventory in the ordinary course of business);

(f) any sale, assignment or transfer of any contractual rights, claims or other assets used in connection with the Purchased Assets valued at more than $25,000 individually, or more than $25,000 in the aggregate, other than in the ordinary course of business consistent with past practice;

(g) any intentional or, to the Knowledge of Seller, other waiver of any rights related to the Purchased Assets of substantial value to the Purchased Assets or any amendment or termination of any agreement to which Seller is a party which has had or is reasonably likely to have a Material Adverse Effect;

(h) any material transaction entered into or consummated by Seller, related to the Purchased Assets, except in the ordinary course of business consistent with past practice;

(i) any material addition to or modification of the benefit plans of Seller or other arrangements or practices, in either case affecting any Designated Employees, not in the ordinary course of business consistent with past practice;

(j) any transfer or sale of a substantial portion of the assets used in connection with the Purchased Assets, to any Person (other than sales of inventory in the ordinary course of business);

(k) any oral or written notification to Seller from any supplier of the Purchased Assets that such supplier anticipates its accommodations, sales or services provided in connection with the Purchased Assets will decrease in any material respect;

(l) any oral or written notification to Seller from any Designated Employee that such employee intends to leave his or her position of employment with Seller or not become an employee of Buyer;

(m) any oral or written notification to Seller from any sales representative or any manufacturer's representative of the Purchased Assets that such person anticipates that their sales of the Purchased Assets will decrease in any material respect; or

(n) any oral or written notification to Seller from any independent contractor performing services for the Purchased Assets that such contractor anticipates its services provided in connection with the Purchased Assets will decrease in any material respect.

2.6 Property, Leases and Encumbrances; Title to and Sufficiency of Assets.

(a) Schedules 1.1(a)(viii) and 1.1(a)(ix) hereto accurately set forth all items of equipment and other tangible personal property of Seller which are used in connection with the development, manufacture, sales and servicing of the Relevant Product Lines (individually, a "Leased or Owned Property" and collectively, the "Leased or Owned Properties") and contain with respect to each of the Leased or Owned Properties a list of (i) all leases and other agreements or restrictions relating to such property and (ii) any Encumbrance on any such Leased or Owned Property, specifying the nature thereof and the holder of such Indebtedness. The leases or other agreements listed in Schedules 1.1(a)(viii) and 1.1(a)(ix) are in full force and effect without any default or waiver by Seller or, to the Knowledge of Seller, by any other party thereto.

(b) Seller has good, valid and marketable title to all Purchased Assets (other than the Purchased Software, Purchased Technology and Purchased Intellectual Property Rights) free and clear of all Encumbrances.

(c) All Leased or Owned Properties of Seller (i) are in a good operating condition and repair (subject to ordinary wear and tear), and (ii) have been properly operated, serviced, and maintained, and (iii) are suitable for the uses for which they are presently being used.

2.7 Contracts and Commitments .

(a) None of the Purchased Assets or Assumed Liabilities contain any of the following: (i) collective bargaining agreement, or any agreement that contains any severance pay liabilities or obligations; (ii) employment, consulting or similar agreements, contracts or commitments that are not terminable without penalty or cost by Seller on notice of thirty (30) calendar days or less or which contain an obligation of Seller to pay and/or accrue more than $50,000 per year; (iii) notes or other evidences of Indebtedness for borrowed money or the deferred purchase price of property or services, which involve a liability of more than $50,000; (iv) agreement of guaranty or indemnification; (v) agreement, contract or commitment limiting the freedom of Seller to engage in any line of business or compete with any Person; (vi) agreement, contract or commitment (written or oral) with a supplier of Seller that provided more than $50,000 in goods or services to Seller in fiscal year 2001 or is reasonably expected to provide such amount or more in fiscal year 2002; (vii) agreement, contract or commitment (written or oral) with customers or other Persons which involves $50,000 or more and, by its terms, is not cancelable without penalty or cost within sixty (60) calendar days or (viii) any of the foregoing, whether above or below the thresholds referred to therein, which involves $125,000 or more in the aggregate.

(b) (i) Seller is not in breach of, nor has Seller received in writing any claim or assertion that it has breached, any of the terms or conditions of any of the Purchased Contracts and there are no obligations owed by Seller under the Purchased Contracts; (ii) each Purchased Contract is in full force and effect in the form delivered to Buyer, there is no material breach or default by Seller or, to Seller's Knowledge, any party thereto, and Seller has not received any notice (in writing or otherwise) that any party thereto wishes to cancel or not renew such Purchased Contract; (iii) to Seller's Knowledge, there are no facts or conditions that exist, have occurred, or are anticipated which, through the passage of time or the giving of notice, or both, would constitute a material default under any Purchased Contract or would cause the acceleration of any obligation of any party thereto or the creation of an Encumbrance, and (iv) neither the execution, delivery and performance of this Agreement or the documents or instruments executed in connection herewith, nor consummation of the transactions contemplated hereby or thereby, will cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Purchased Contract.

2.8 Permits and Authorizations.

(a) Schedule 1.1(a)(v) lists each Authorization held or utilized by Seller in connection with its ownership or use of the Purchased Assets. All Authorizations are in full force and effect and, to Seller's Knowledge, constitute all Authorizations that are required to permit Seller to own or use the Purchased Assets as historically owned or used prior to the Closing Date. Section 2.8(a) of Exhibit B also discloses all proposed or pending applications for Authorizations, and all applications for variances from compliance, or postponement of the dates for compliance with any laws or regulations affecting the Purchased Assets.

(b) Section 2.8(b) of Exhibit B identifies all Authorizations which (i) materially restrict the present sale or use of the Purchased Assets, (ii) limit the term of possession or operation of any material Purchased Asset, or (iii) which pertain to any Environmental Law.

(c) Seller has not received any written notification and, to the Knowledge of Seller, the Authorizations will be renewed upon their expiration without new conditions, requirements or restrictions which would materially restrict the ownership or use of the Purchased Assets or necessitate additional operating or capital costs in excess of $25,000.

(d) Seller is not in breach of, nor has Seller received in writing or, to Seller's Knowledge, otherwise any claim or assertion that it has breached, any of the terms or conditions of any Authorization.

2.9 No Violations; Other Consents.

(a) Seller is in compliance with each applicable law, statute, order, rule or regulation promulgated or judgment entered (or known by Seller to be proposed) by any Governmental Entity applicable to the Purchased Assets, except for such failures to comply as would not have a Material Adverse Effect.

(b) No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity or any other Person is required to be made or obtained by Seller in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transaction contemplated hereby, or to Seller's Knowledge, the continued ownership or use of the Purchased Assets by Buyer.

2.10 Claims, Investigations and Proceedings. Section 2.10 of Exhibit B lists all claims, investigations, suits, actions, arbitrations, mediations and legal or administrative proceedings and governmental investigations, currently or at any time within the last 12 months pending or threatened against the Assumed Liabilities or the Purchased Assets or the ownership or use thereof. There are no facts which are reasonably likely to lead to the instigation of any other suit, action or legal or administrative proceeding or any other claim, controversy or governmental investigation against or affecting the Assumed Liabilities or the Purchased Assets that is reasonably likely to have a Material Adverse Effect. There is no outstanding judgment, order, decree, award, stipulation or injunction of any Governmental Entity against or affecting the Purchased Assets.

2.11 Insurance. There are no insurance policies principally related to the Purchased Assets under which Seller is an insured or a beneficiary or for which it is liable to pay premiums and further sets forth the name of the insurer, type of coverage, policy limits and deductibles, if any, and annual premium for each such policy.

2.12 Intellectual Property Rights.

(a) Except for agreements listed on Schedule 2.12(a) hereto and end user agreements entered into in the ordinary course of business, Seller owns and has the full right and power to grant the licenses to the Licensed Trade Secrets pursuant to Section 9.3 free and clear from all Encumbrances and other licenses.

(b) Except for agreements listed on Schedule 2.12(a) hereto and end user agreements entered into in the ordinary course of business, Seller owns all rights, and has the full right and power to transfer title, to the Purchased Software, Purchased Technology and Purchased Intellectual Property Rights free and clear from all Encumbrances and other licenses.

(c) Neither the execution, delivery and performance of this Agreement or the documents or instruments executed in connection herewith, nor consummation of the transactions contemplated hereby or thereby, will (i) cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Purchased Software, Purchased Technology, or Purchased Intellectual Property Rights; or (ii) materially impair the right of Buyer to use, possess, sell or license any Purchased Software, Purchased Technology, or Purchased Intellectual Property Right or portion thereof. Seller is not required to make or accrue any royalties, honoraria, fees or other payments to any Person in connection with the use of any of the Purchased Software, Purchased Technology, or Purchased Intellectual Property Rights and the transfer of the Purchased Software, Purchased Technology, or Purchased Intellectual Property Rights to Buyer will not give rise to royalties, honoraria, fees or other payments (other than Taxes or other payments to Governmental Entities).

(d) The Purchased Software, Purchased Technology, and Purchased Trademarks, when used in the manner used by Seller as of the Closing Date, do not infringe any Person's Patents, Copyrights or Trademarks and Seller is not a party to any agreement that could materially impair Buyer's use of the Purchased Patents, Purchased Copyrights or Purchased Trademarks. The Licensed Trade Secrets, when used in the manner used by Seller as of the Closing Date, do not misappropriate any Person's Trade Secrets. Seller has not received written notice from any Person claiming that the Purchased Software, Purchased Technology, Purchased Trademarks or Licensed Trade Secrets infringe or misappropriate the Intellectual Property Rights of any Person. There is no basis for any claim contesting the validity, ownership or right of Seller to use, possess, sell, market, advertise, license or dispose of the Purchased Software, Purchased Technology, Purchased Intellectual Property Rights or Licensed Trade Secrets.

(e) To Seller's Knowledge, no employee, consultant or independent contractor of Seller ("Seller Personnel"): (i) is in violation of any employment contract, patent disclosure agreement, invention assignment agreement, non-disclosure agreement, non-competition agreement or any other contract or agreement with any other Party as a result of such Seller Personnel being employed by or performing services for Seller in connection with the development, or ownership of, the Purchased Software, Purchased Technology, Purchased Intellectual Property Rights and Licensed Trade Secrets; or (ii) has developed any portion of the Purchased Software or Purchased Technology that is subject to an agreement pursuant to which such Seller Personnel has assigned or otherwise granted to any third party any rights (including, without limitation, Purchased Intellectual Property Rights) in or to such Purchased Software or Purchased Technology.

(f) Seller has taken all reasonable steps that are required to protect Seller's rights in the Licensed Trade Secrets. All Seller Personnel having access to the Licensed Trade Secrets and Seller's customers, suppliers or other third parties having access to the Licensed Trade Secrets, have executed an agreement with Seller regarding the protection of the Licensed Trade Secrets. All Seller Personnel who were involved in the development of the Purchased Software and Purchased Technology have executed written agreements with Seller assigning all of their rights in and to the Purchased Software and Purchased Technology including, without limitation, the Purchased Intellectual Property Rights to Seller.

(g) Except as noted on Schedule 2.12(g), Seller has no licenses, sublicenses and other agreements to which Seller is a party and pursuant to which any Person is authorized to use or have access to the Purchased Software in source code format.

(h) With respect to all Purchased Intellectual Property that is Registered IP, all such Registered IP is currently in compliance with formal legal requirements (including payment of filing, examination and maintenance fees and proofs of use). For the purpose of this representation the term "Registered IP" shall mean all United States, international and foreign: (i) Patents; (ii) registered Trademarks, applications to register Trademarks, intent-to-use applications, or other registrations or applications related to trademarks or service marks; (iii) domain name registrations; and (v) any other Intellectual Property Rights that are the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any state, government or other public legal authority.

2.13 Intentionally Deleted.

2.14 Employment Laws.

(a) Seller is in compliance with all federal, state or other applicable laws respecting employment and employment practices, terms and conditions of employment, wages and hours and occupational safety with respect to the ownership and use of the Purchased Assets (except for violations or failures to comply which are not reasonably likely to result in a Material Adverse Effect), and has not received notice of, and, to the Knowledge of Seller, is not engaged in, any unfair labor practice with respect to the ownership or use of the Purchased Assets.

(b) There is no unfair labor practice complaint against Seller pending before the National Labor Relations Board ("NLRB").

(c) There is no labor strike, dispute, slowdown or stoppage pending or, to Seller's Knowledge, threatened against or affecting the Purchased Assets.

(d) There are no claims, grievances or arbitration proceedings, workers' compensation proceedings, labor disputes (including charges of violations of any federal, state or local laws or regulations relating to current or former employees (including retirees) or current or former applicants for employment), governmental investigations or administrative proceedings of any kind pending or, to the Knowledge of Seller, threatened against or relating to the Purchased Assets, its employees or employment practices, or operations as they pertain to conditions of employment; nor is Seller subject to any order, judgment, decree, award or administrative ruling arising from any such matter.

(e) No collective bargaining agreement is currently in existence or being negotiated by Seller with respect to the operation of business in connection with the Purchased Assets and, as of the date of this Agreement, no labor organization has been certified or recognized as the representative of any employees employed in connection with the use and operation of the Purchased Assets or, to the Knowledge of Seller, is seeking such certification or recognition.

2.15 Environmental Laws.

(a) (i) The Purchased Assets have been operated in compliance in all respects with all applicable Environmental Laws (except for such failures to comply as have not, and will not have, had a Material Adverse Effect) and (ii) Seller has not received from any Governmental Entity or any other Person nor has there been commenced or, to Seller's Knowledge, threatened, any notice of violation, notice to comply, compliance schedule, administrative or judicial complaint, information request, order, enforcement action or lien with respect to alleged or potential violations of or liabilities under Environmental Laws by or on behalf of Seller, or any proceeding or inquiry with respect to any actual or alleged violation of or liability under any Environmental Law or any Release or alleged Release of a Hazardous Material by or on behalf of Seller, in each case in connection with the ownership and use of the Purchased Assets.

(b) "Environmental Law" shall mean all applicable laws, statutory or otherwise, regulations, rules, ordinances, decrees and orders, as currently in effect, which purport to regulate the generation, processing, production, storage, treatment, transport or Release of Hazardous Materials to the environment, or impose requirements, conditions or restrictions relating to environmental protection, management, planning, reporting or notice or public or employee health and safety.

(c) "Hazardous Material(s)" shall mean any substance which is (i) defined as a hazardous substance, hazardous material, hazardous waste, pollutant, toxic substance, pesticide, contaminant or words of similar import under any Environmental Law, (ii) a petroleum hydrocarbon, including crude oil or any fraction thereof, (iii) hazardous, toxic, corrosive, flammable, explosive, infectious, radioactive, carcinogenic or a reproductive toxicant, or (iv) regulated pursuant to any Environmental Law; provided, however, that "Hazardous Material(s)" shall exclude office and janitorial supplies properly and safely maintained in the ordinary course of business.

(d) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other receptacles containing any Hazardous Material).

(e) There is no documentation in Seller's possession, custody or control relating to environmental matters related to the ownership or use of the Purchased Assets.

2.16 Intentionally Deleted.

2.17 No Insider Transactions. To Seller's Knowledge, no Affiliate of Seller has (a) any interest in any Person that engages in a business that is the same or similar to the business of developing, marketing, selling and servicing NAS, (b) any interest in any Person that purchases from or sells or furnishes to Seller any goods or services that constitute or are directly related to the NAS, (c) a beneficial interest in any contract, commitment, agreement or understanding to which Seller is a party or by which it may be bound or affected related to the Purchased Assets, or (d) any claim against any of the Purchased Assets; provided, however, that this Section 2.17 shall not apply to any ownership interest in any publicly-traded company held by Seller or any Affiliate of Seller where such interest does not exceed 1% of the outstanding ownership of such entity.

2.18 Intentionally Deleted.

2.19 Inventories. The Balance Sheet Inventory is in all material respects of a quality and quantity usable and saleable in the normal course of Seller conducting its business, subject to the reserves set forth in Section 2.19 of Exhibit B, which Seller has established in good faith. Schedule 1.1(a)(vii) lists all inventory that relates to the Relevant Product Lines, including, but not limited to, inventories of raw materials, finished goods and packaging supplies owned or in the custody of Seller.

2.20 Intentionally Deleted.

2.21 Warranties. Section 2.21 of Exhibit B contains a copy of Seller's written warranty terms to the customers of the Relevant Product Lines. Seller has not given or made any other written or oral warranties to any Person with respect to any products sold or services performed that are related to the Relevant Product Lines. Seller has received no written or oral notice of a claim against the Relevant Product Lines, whether or not covered by insurance, for products liability or liability on account of any express or implied warranty, except for warranty obligations and returns in the ordinary course of business consistent with past practice for which appropriate reserves have been reflected in the Seller's financial statements.

2.22 No Finders or Brokers. Seller has not entered into any agreement, arrangement or understanding with any Person which could result in the obligation to pay any finder's fee, brokerage commission, advisory fee or similar payment in connection with this Agreement or the transactions contemplated hereby. With respect to any professional fees (including accounting and attorney's fees) incurred by Seller with respect to the transactions contemplated by this Agreement, all such fees, commissions, professional fees or similar amounts payable shall be paid Seller, and not by Buyer.

2.23 Accuracy of Information Furnished by Seller. No representation or warranty set forth in this Article II or in any list or Schedule referred to herein, and no information provided to Buyer or its representatives by Seller contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

Notwithstanding anything to the contrary in this Agreement, (i) no investigation by Buyer shall affect the representations and warranties of Seller under this Agreement or contained in any document, certificate or other writing furnished or to be furnished to Buyer in connection with the transactions contemplated hereby and (ii) such representations and warranties shall not be affected or deemed waived by reason of the fact that Buyer knew or should have known that any of the same is or might be inaccurate in any respect.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to Seller as of the date of this Agreement and as of the Closing Date, subject to the exceptions set forth on the Schedule of Exceptions attached hereto as Exhibit C, which Schedule of Exceptions specifically identifies relevant Sections to which the exceptions set forth therein relate, as follows:

3.1 Organization. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to perform its obligations under this Agreement. Buyer is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction necessary to perform its obligations under this Agreement.

3.2 Authorization. The execution and delivery of this Agreement by Buyer and the performance of its obligations hereunder have been duly authorized by Buyer and no other action or approval by Buyer is necessary for the execution, delivery or performance of this Agreement by Buyer. Buyer has full right, power, authority and capacity to execute, deliver and perform this Agreement and such other agreements and instruments as are contemplated hereby. This Agreement has been duly executed and delivered by Buyer and is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to or limiting creditors' rights generally, and (b) general principles of equity (whether considered in an action in equity or at law).

3.3 No Conflict. Neither the execution and delivery of this Agreement by Buyer nor the consummation of the transactions contemplated hereunder nor the fulfillment by Buyer of any of its terms will:

(a) conflict with or result in a breach by Buyer of, or constitute a default by Buyer under, or create an event that, with the giving of notice or the lapse of time, or both, would be a default under or breach of, any of the terms, conditions or provisions of (i) any material indenture, mortgage, lease, deed of trust, pledge, loan or credit agreement, license agreement or any other material contract, arrangement or agreement to which Buyer is a party or to which a material portion of Buyer's assets is subject, (ii) the Certificate of Incorporation or Bylaws of Buyer, or (iii) any judgment, order, writ, injunction, decree or demand of any Governmental Entity which materially affects Buyer or which materially affects Buyer's ability to conduct its business or perform its obligations under this Agreement;

(b) result in the creation or imposition of any Encumbrance upon any material portion of the assets of Buyer or which materially affects Buyer's ability to conduct its business as conducted prior to the date of this Agreement or perform its obligations under this Agreement; or

(c) cause a loss or adverse modification of any permit, license, or other authorization granted by any Governmental Entity to or otherwise held by Buyer which is necessary or materially useful to Buyer's business or otherwise necessary to allow Buyer to perform its obligations under this Agreement.

3.4 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Entity or other person is required to be made or obtained by Buyer in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

3.5 No Finders or Brokers. Buyer has not entered into any agreement, arrangement or understanding with any Person which could result in an obligation to pay any finder's fee, brokerage commission, advisory fee or similar payment in connection with this Agreement or the transactions contemplated hereby.

3.6 Issuance of Stock Consideration. Buyer has duly authorized the issuance of the Stock Consideration. Upon the delivery of the certificates for the Stock Consideration pursuant to Section 1.2(b) and the consummation of the transactions contemplated hereby, the Stock Consideration will have been duly authorized and issued and fully paid and non-assessable.

ARTICLE IV:
COVENANTS

4.1 Fulfillment of Conditions.

(a) Seller will use all commercially reasonable efforts to perform, comply with and fulfill all obligations, covenants and conditions required by Seller under this Agreement. Buyer will use all commercially reasonable efforts to perform, comply with and fulfill all obligations, covenants and conditions required by Buyer under this Agreement.

(b Seller will use all commercially reasonable efforts to secure all necessary consents, waivers, permits, approvals, licenses and authorizations and will use all commercially reasonable efforts to make, all necessary filings in order to enable Seller to consummate the transactions contemplated hereby. Buyer will use all commercially reasonable efforts to secure all necessary consents, waivers, permits, approvals, licenses and authorizations and will make all necessary filings in order to enable Buyer to consummate the transactions contemplated hereby.

4.2 Access to Records and Inspection Rights. Seller and Buyer, through their respective authorized representatives, shall allow the other party and the other party's lenders, counsel, accountants and other consultants and representatives reasonable access to inspect the properties and records of the other party and to discuss the affairs and accounts of the other party with such representatives of Seller or Buyer, as the case may be, during normal business hours and upon reasonable advance notice.

4.3 Operation in Ordinary Course. During the period from the execution of this Agreement until the Closing, Seller shall own and use the Purchased Assets only in a manner consistent with its present and historical practice and to refrain from taking any action which could reasonably be expected to have a Material Adverse Effect, and Seller shall promptly notify Buyer upon becoming aware of any potentially adverse event.

4.4 Exclusivity. During the period from the date of this Agreement to the earlier to occur of the Closing Date or the termination of this Agreement pursuant to Section 6.2, Seller shall refrain from taking, any action to, directly or indirectly, encourage, initiate or engage in discussions or negotiations with, or provide any information to, any Person, other than Buyer or as required by law, concerning any purchase of the Purchased Assets whether through the sale of the Purchased Assets or any similar transaction involving Seller, other than the sale of Inventory in the ordinary course of business consistent with past practices.

4.5 Warranty/Servicing Obligations.

(a) Warranty Service in the U.S. To the extent that Buyer or Seller is presented with a product warranty claim from a customer in the United States who purchased a NAS product from Seller or any of its distributors on or prior to the Closing Date, then Buyer and Seller agree that Buyer shall assume responsibility for such claim and may settle, litigate, arbitrate, pay, adjust or otherwise discharge such claim in Buyer's sole discretion. Seller shall promptly reimburse Buyer for all reasonable costs and expenses (but in no event any profit margin) in excess of $1,600,000 incurred by Buyer in connection with resolving any such claims.

(b) Warranty Service Outside the U.S. To the extent that Buyer or Seller is presented with a product warranty claim from a customer outside of the United States who purchased a NAS product from Seller or any of its distributors on or prior to the Closing Date, then Buyer and Seller agree that Seller shall assume responsibility for such claim and may settle, litigate, arbitrate, pay, adjust or otherwise discharge such claim in Seller's sole discretion; provided, however, that Seller shall exercise such discretion as if Seller were in the business of selling and serving NAS products on an on-going basis. Buyer shall promptly reimburse Seller for all reasonable costs and expenses (but in no event any profit margin) incurred by Seller in connection with resolving any such claims up to a maximum amount equal to (x) $1,600,000 minus (y) the amount incurred by Buyer in connection with the transactions contemplated by Section 4.5(a). Any costs and expenses incurred by Seller over the maximum amount set forth in this Section 4.5(b) shall be paid by Seller. If Seller does not resolve any claim under this Section 4.5(b) within a reasonable time after Seller is notified of such claim, then Buyer may, at its option, assume responsibility for such claim and may settle, litigate, arbitrate, pay, adjust or otherwise discharge such claim in Buyer's sole discretion. In addition to the obligations of Seller set forth elsewhere in this Section 4.5(b), Seller shall reimburse Buyer for all reasonable costs and expenses incurred by Buyer in connection therewith to the extent they exceed the amount that would have been charged by Seller if it had fulfilled its obligations set forth in the first sentence of this Section 4.5(b).

(c) Technical Support Service in the U.S. At no cost to Seller, Buyer shall provide all Technical Support Service for service requests from customers in the United States who purchased a NAS product from Seller or any of its distributors prior to the Closing Date where such request is not covered by a warranty.

(d) Technical Support Service Outside the U.S. To the extent that Buyer or Seller is presented with a service request from a customer outside the United States who purchased a NAS product from Seller or any of its distributors prior to the Closing Date which is not covered by a warranty, at no cost to Buyer, Seller shall provide "Level 1" Technical Support Service for such customer. Buyer shall provide any and all Technical Support Service for such customer beyond "Level 1." Seller agrees that Seller shall provide such service as if Seller were in the business of selling and serving NAS products on an on-going basis.

(e) On-Site Service Agreements. The parties agree that the Purchased Contracts do not contain any on-site service agreements or provisions in effect on the Closing Date or associated with inventory of the Relevant Product Lines held by distributors on the Closing Date. Seller shall retain such agreements after the Closing Date and Seller agrees to discharge its obligations under such agreements when due and in the manner provided for in such agreements.

(f) Service Level Agreement. Buyer and Seller agree to use their commercially reasonable efforts to agree to the terms and provisions of a service level agreement, in form and substance reasonable satisfactory to Buyer and Seller, which specifies in more detail the levels of service to be provided by each party to fulfill their obligations under this Section 4.5 and certain reporting obligations with respect thereto (the "Service Level Agreement")

4.6 Employees.

(a) Employment Offer. On or prior to the Closing Date, Buyer shall provide Seller with the names of those employees of Seller that will be given a Bona Fide Offer (collectively, the "Designated Employees"), and Buyer shall make such offers on or prior to the Closing Date.

(b) Seller's Obligations and Liabilities.

(i) Seller shall file all tax returns with respect to its employment of any Seller employee through the Closing Date

(ii) Seller shall pay all liabilities with respect to Seller's termination of employment of any Seller employee on or prior to the Closing Date, including, without limitation, all accrued and unpaid wages and accrued vacation.

(iii) Seller shall pay or otherwise discharge any liability for claims filed with respect to any employee of Seller eligible for and entitled to coverage, reimbursement and/or benefits under the terms of any of Seller's benefit plans, provided such liability (A) accrued or became payable during the period of such employee's employment with Seller prior to the Closing Date or (B) arose out of Seller's termination of such employee's employment on or prior to the Closing Date.

(c) Employee Severance Package. For ninety (90) days after the Closing Date, if Buyer terminates the employment of any Designated Employee without Cause, then Buyer agrees to provide such terminated employee with the amount of severance set forth on Schedule 4.6(c) hereto.

(d) No Rights Conferred Upon Employees. The parties hereby acknowledge that, except as otherwise provided in clause (a) of this Section 4.6, Buyer is not under any obligation to employ any current or future employee of Seller or any Affiliate thereof. Further, Buyer shall not be under any obligation to continue the employment of any Designated Employees after Closing and nothing in this Agreement shall confer any rights or remedies under this Agreement on any such employee.

(e) Employee Restrictions. If any Designated Employees become employed by Buyer, Seller agrees to waive and release such persons from any restrictions of any nature whatsoever to the extent that such restrictions would restrict such persons from working on or in connection with the Purchased Assets, and Seller acknowledges that the confidential information regarding the Purchased Assets is now owned by Buyer to the extent such information constitutes a Purchased Asset.

4.7 Orders of Material Components. Without the prior written consent of Buyer, Seller shall not, directly or through its contract manufacturers or otherwise, order any material components for the Relevant Product Lines after the date of this Agreement.

4.8 Seller Purchase Option. Buyer hereby agrees that Seller shall have the right to acquire an additional $1,800,000 in aggregate value of Buyer's Series B Preferred at any subsequent closing of the Financing.

ARTICLE V
CONDITIONS OF CLOSING

5.1 Conditions to Obligations of Buyer. The obligation of Buyer to consummate the purchase of the Purchased Assets pursuant to this Agreement is subject to the satisfaction, at or before the Closing, of the following conditions, any of which may be waived by Buyer:

(a) Representations and Warranties; Performance of Obligations. The representations and warranties Seller made to Buyer set forth in Article II hereof and all Ancillary Documents shall be true and correct as of the date hereof and as of the Closing Date as though made on and as of the Closing Date, except to the extent that such inaccuracies would not have a Material Adverse Effect. Seller shall have performed in all material respects the agreements and obligations necessary to be performed by each under this Agreement prior to the Closing Date.

(b) Certificates and Deliveries by Sellers. Buyer shall have received an officer's certificate dated the Closing Date, executed by a duly authorized officer of Seller, certifying that the conditions specified in Section 5.1(a) have been fulfilled.

(c) No Injunction. No preliminary or permanent injunction or order that would prohibit or restrain the consummation of the transactions contemplated hereunder shall be in effect, and no Governmental Entity or other Person shall have commenced or, to Seller's Knowledge, threatened to commence, an action or proceeding seeking to enjoin the consummation of such transactions or to impose liability in excess of $25,000 on the parties hereto in connection therewith.

(d) Consents and Approvals. Seller shall have received all consents and approvals required to be obtained in connection with the consummation of the transactions contemplated hereunder.

(e) Bill of Sale and Assumption Agreement. Seller shall have executed and delivered to Buyer a Bill of Sale and Assumption Agreement, substantially in the form of Exhibit D hereto.

(f) Due Diligence. Buyer shall have completed its interviews with distributors and contract manufacturers of Seller's NAS business and review of the Purchased Contracts, and the results of such investigation shall be satisfactory to Buyer in its sole discretion.

(g) No Material Adverse Effect. There shall not have occurred any Material Adverse Effect since the date of this Agreement.

(h) Employees. The Designated Employees set forth on Schedule 5.1(h) (the "Key Employees") shall have accepted employment with Buyer effective on or before the Closing Date.

(i) Transition Services Agreement. Seller shall have executed and delivered to Buyer a transition services agreement, in form and substance reasonable satisfactory to Buyer and Seller, which, for six months after the Closing Date and for no additional cost up to $650,000 incurred by Seller, provides for (A) access and the right to use Seller's facilities outside the United States for sales related activities and Seller's facilities located at 2001 Logic Drive, San Jose, California 95124 pursuant to the terms of a mutually agreeable sublease or sublicense, as the case may be, and (B) assistance and use of Seller's personnel and facilities to provide transition services to Buyer, including, without limitation, in the area of finance, as well as Seller's data centers (the "Transition Services Agreement").

(j) Service Level Agreement. Seller shall have executed and delivered to Buyer the Service Level Agreement.

(k) Purchased Patents and Trademarks. Seller shall have executed and delivered to Buyer assignment and transfer documents, reasonably satisfactory to Buyer, to file with the United States Patent and Trademark Office and the Copyright Office to evidence the transfer of the Purchased Patents and Purchased Trademarks and dbas which are a part of the Purchased Assets.

(l) Financing Closing. Buyer shall have closed or shall, simultaneously with the Closing of the Acquisition, close the Initial Closing of the Financing substantially in accordance with the terms of, and as defined in, the Series B Preferred Stock Purchase and Recapitalization Agreement attached hereto as Exhibit E.

5.2 Conditions to Obligations of Seller. The obligations of Seller to consummate the sale of the Purchased Assets pursuant to this Agreement are subject to the satisfaction, at or before the Closing, of the following conditions, any of which may be waived by Seller:

(a) Representations and Warranties; Performance of Obligations. The representations and warranties of Buyer set forth in Article III hereof and all Ancillary Documents shall be true and correct in all material respects as of the date hereof and as of the Closing Date as though made on and as of the Closing Date. Buyer shall have performed in all material respects the agreements and obligations necessary to be performed by Buyer under this Agreement prior to the Closing Date.

(b) Certificates and Deliveries by Buyer. Seller shall have received an officer's certificate dated the Closing Date, executed by a duly authorized officer of Buyer, certifying that the conditions specified in Section 5.2(a) have been fulfilled.

(c) Secretary's Certificate. Seller shall have received a certificate dated the Closing Date, executed by the secretary of Buyer, certifying as to the valid adoption of resolutions of the Board of Directors and stockholders approving the Acquisition and the consummation of the transactions contemplated hereby.

(d) No Injunction. No preliminary or permanent injunction or order that would prohibit or restrain the consummation of the transactions contemplated hereunder shall be in effect, and no Governmental Entity or other Person shall have commenced or, to Buyer's Knowledge, threatened to commence, an action or proceeding seeking to enjoin the consummation of such transactions or to impose liability in excess of $25,000 on the parties hereto in connection therewith.

(e) Consents and Approvals. Buyer shall have received all consents and approvals required to be obtained in connection with the consummation of the transactions contemplated hereunder, except those consents and approvals of which the failure to obtain would not have a material adverse effect on Seller.

(f) Bill of Sale and Assumption Agreement. Buyer shall have executed and delivered to Seller a Bill of Sale and Assumption Agreement, substantially in the form of Exhibit D hereto.

(g) Transition Services Agreement. Buyer shall have executed and delivered to Seller the Transition Services Agreement and the sublease or sublicense, as the case may be, referred to in Section 5.1(i).

(h) Service Level Agreement. Buyer shall have executed and delivered to Seller the Service Level Agreement.

(i) Financing Closing. Buyer shall have closed or shall, simultaneously with the Closing of the Acquisition, close the Initial Closing of the Financing substantially in accordance with the terms of, and as defined in, the Series B Preferred Stock Purchase and Recapitalization Agreement attached hereto as Exhibit E, and on the Closing Date after taking into account the issuance of the Stock Consideration, Seller shall own less than 18% of the equity interest of Buyer, as determined based on the number of shares outstanding (and excluding any warrants, options and other rights to purchase capital stock of Buyer).

(j) Purchase Price. Seller shall have received the Note, stock certificates representing the Stock Consideration and the Cash Purchase Price.

ARTICLE VI
CLOSING DATE AND TERMINATION OF AGREEMENT

6.1 Closing Date. Subject to the satisfaction or waiver of each of the conditions set forth in Article V, the closing for the consummation of the purchase and sale contemplated by this Agreement (the "Closing") shall, unless another date or place is agreed to in writing by Buyer and Seller, take place at the offices of Paul, Hastings, Janofsky &Walker LLP located at 695 Town Center Drive, Costa Mesa, California, on the date that is one (1) business day following the satisfaction or, if permitted pursuant to the terms of Article V hereof, waiver of the conditions to Closing set forth in Article V hereof, and shall be deemed effective on such date (the "Closing Date").

6.2 Termination of Agreement. This Agreement may be terminated and abandoned at any time prior to the Closing:

(a) by mutual consent of Buyer and Seller;

(b) by Buyer, (i) if Seller shall breach in any material respect any of its representations, warranties, covenants or obligations hereunder and such breach shall not have been cured within five (5) business days of receipt by Seller of written notice of such breach or in any event on or before October 31, 2002 (and Buyer shall not have willfully breached any of its covenants hereunder, which breach is not cured) (it being understood that, for purposes of determining the accuracy of such representations and warranties in connection with this clause (i), all representations and warranties which are qualified "Material Adverse Effect" or other qualifications based on the word "material" or similar phrases shall be true and correct in all respects), or (ii) upon written notice to Seller at any time, if satisfaction of any of the conditions specified in Section 5.1 becomes impossible and such condition has not been waived by Buyer (but only if such impossibility arises principally for reasons other than the action or inaction of Buyer);

(c) by Seller, (i) if Buyer shall breach in any material respect any of its representations, warranties, covenants or obligations hereunder and such breach shall not have been cured within five (5) business days of receipt by Buyer of written notice of such breach or in any event on or before October 31, 2002 (and Seller shall not have willfully breached any of its covenants hereunder, which breach is not cured) (it being understood that, for purposes of determining the accuracy of such representations and warranties in connection with this clause (i), all representations and warranties which are qualified "Material Adverse Effect" or other qualifications based on the word "material" or similar phrases shall be true and correct in all respects), or (ii) upon written notice to Buyer at any time, if satisfaction of any of the conditions specified in Section 5.2 becomes impossible and such condition has not been waived by Seller (but only if such impossibility arises principally for reasons other than the action or inaction of Seller);

(d) by either Buyer or Seller, if, without fault of the terminating party, the Closing shall not have occurred on or before October 31, 2002 (provided a later date may be agreed upon in writing by the parties hereto; and provided further that the right to terminate this Agreement under this Section 6.2(d) shall not be available to any party whose action or failure to act has been the cause of or resulted in the failure of the Closing to occur on or before such date and such action or failure to act constitutes a breach of this Agreement or would constitute a breach after notice and a failure to cure); or

(e) by either Buyer or Seller if a Governmental Entity shall have issued an order, decree or ruling or taken any other action (including the failure to have taken an action), in any case having the effect of permanently restraining, enjoining or otherwise prohibiting this Agreement or the transactions contemplated hereby, which order, decree, ruling or other action is final and nonappealable.

6.3 Effect of Termination. In the event of termination of this Agreement as provided in Section 6.2, written notice thereof shall be promptly given by the terminating party to the other parties and thereafter this Agreement shall forthwith become void; provided, however, that any party which breached this Agreement shall remain responsible for any damages caused to the other party due to such breach.

6.4 Cost of Termination. If this Agreement is terminated by Buyer pursuant to Sections 6.2(b)(i) or by Seller for any reason other than pursuant to Sections 6.2(a), 6.2(c)(i), 6.2(d), 6.2(e) or 6.2(c)(ii), then Seller shall promptly pay to Buyer in immediately available funds an amount equal to $1,300,000. If this Agreement is terminated by Seller pursuant to Sections 6.2(c)(i) or by Buyer for any reason other than pursuant to Sections 6.2(a), 6.2(b)(i), 6.2(d), 6.2(e) or 6.2(b)(ii), then Buyer shall promptly pay to Seller in immediately available funds an amount equal to $1,300,000.

ARTICLE VII
INDEMNIFICATION

7.1 Indemnification by Seller.
Subject to the additional provisions set forth in this Article VII, Seller shall indemnify Buyer and its respective Affiliates including, without limitation, its stockholders, officers, directors, employees and representatives (each a "Buyer Indemnitee") against, and hold each Buyer Indemnitee harmless from, any and all claims, losses, damages, liabilities, payments and obligations, and all expenses, including, without limitation, reasonable legal fees (collectively "Losses"), incurred, suffered, sustained or required to be paid, directly or indirectly, by, or imposed upon, such Buyer Indemnitee resulting from, related to or arising out of (i) any breach or inaccuracy of any representation or warranty of Seller contained in this Agreement or in any document delivered to Buyer pursuant to the provisions of this Agreement; (ii) any failure of Seller to perform any of the covenants contained in this Agreement or in any document delivered to Buyer pursuant to the provisions of this Agreement; (iii) the Excluded Assets, (iv) any liabilities not specifically assumed hereby, including, without limitation, liabilities and obligations of noncompliance with the WARN Act or similar plant closing laws; (v) except to the extent specifically assumed by Buyer, any claim by any third party brought against any Buyer Indemnitee in connection with the Purchased Assets arising from the ownership or use of the Purchased Assets prior to the Closing Date; and (vi) any Losses associated with the matters set forth in Schedule 7.1.

7.2 Indemnification by Buyer.
Subject to the additional provisions set forth in this Article VII, Buyer shall indemnify Seller and its respective Affiliates including, without limitation, its stockholders, officers, directors, employees and representatives (each a "Seller Indemnitee") against, and hold each Seller Indemnitee harmless from, any and all Losses, incurred, suffered, sustained or required to be paid, directly or indirectly, by, or imposed upon, such Seller Indemnitee resulting from, related to or arising out of (i) any breach or inaccuracy of any representation or warranty of Buyer contained in this Agreement or in any document delivered to Seller pursuant to the provisions of this Agreement; (ii) any failure of any Buyer to perform any of the covenants contained in this Agreement or in any document delivered to Seller pursuant to the provisions of this Agreement; (iii) the Assumed Liabilities; (iv) the Transfer Taxes and (v) any claim by any third party brought against any Seller Indemnitee in connection with the Purchased Assets arising from the ownership or use of the Purchased Assets (unless such claim arises from a breach of a representation or warranty by Seller) following the Closing Date.

7.3 Third Party Claims.

(a) If any Buyer Indemnitee or Seller Indemnitee (each referred to as an "Indemnitee") receives notice of the assertion by any third party of any claim or of the commencement by any such third party of any action (any such claim or action being referred to herein as an "Indemnifiable Claim") with respect to which Seller or Buyer (each referred to as "Indemnitor") are or may be obligated to provide indemnification, the Indemnitee shall promptly notify the Indemnitor in writing (the "Claim Notice") of the Indemnifiable Claim; provided, that the failure to provide such notice shall not relieve or otherwise affect the obligation of the Indemnitor to provide indemnification hereunder, except to the extent that any Damages directly resulted or were caused by such failure.

(b) The Indemnitors shall have thirty days after receipt of the Claim Notice (unless the claim or action requires a response before the expiration of such thirty-day period, in which case the Indemnitors shall have until the date that is six days before the required response date) to acknowledge responsibility and undertake, conduct and control, through counsel of its own choosing, and at its expense, the settlement or defense thereof, and the Indemnitees shall cooperate with the Indemnitor in connection therewith; provided, that (i) the Indemnitor shall permit the Indemnitee to participate in such settlement or defense through counsel chosen by the Indemnitee, provided that the fees and expenses of such counsel shall be borne by the Indemnitee, (ii) the Indemnitor shall not settle any Indemnifiable Claim without the Indemnitee's consent if the settlement requires the Indemnitee to admit wrongdoing, pay any fines or refrain from any action and (iii) if, in the opinion of counsel to the Indemnitor, the Indemnitee has separate defenses from the Indemnitor or that there is a conflict of interest between the Indemnitor and Indemnitee or if there is any danger of criminal liability of the Indemnitee, then the Indemnitee shall be permitted to retain special counsel of its own choosing at the expense of the Indemnitor. So long as the Indemnitor is vigorously contesting any such Indemnifiable Claim in good faith, the Indemnitee shall not pay or settle such claim without the Indemnitor's prior consent, which consent shall not be unreasonably withheld.

(c) If the Indemnitor does not notify the Indemnitee within thirty days after receipt of the Claim Notice (or before the date that is six days before the required response date, if the claim or action requires a response before the expiration of such thirty day period), that it acknowledges responsibility and elects to undertake the defense of the Indemnifiable Claim described therein, the Indemnitee shall have the right to contest, settle or compromise the Indemnifiable Claim in the exercise of its reasonable discretion at the expense of the Indemnitees (subject to Section 7.5 hereof); provided, that the Indemnitee shall notify the Indemnitor of any compromise or settlement of any such Indemnifiable Claim.

7.4 Survival Period. Each Indemnitor's obligation to indemnify and hold harmless Indemnitees with respect to the breach of any representations or warranties contained herein shall expire six months from the date hereof, except that the representations and warranties in Section 2.2 (Authorization) and Section 2.6(b) (Title to Assets) shall survive indefinitely. In the event notice of any claim for indemnification under this Article VII shall have been given within the applicable survival period, the representations and warranties that are the subject of such indemnification claim shall survive until such time as such claim is finally resolved.

7.5 Limitations on Indemnification.

(a) Seller's indemnification obligations under Section 7.1(i) and, with respect to any failure of Seller to perform any of the covenants contained in Section 4.3, Seller's indemnification obligations under Section 7.1(ii), and Buyer's obligations under Section 7.2(i) shall not exceed an aggregate amount equal to $910,000 (the "Cap Amount").

(b) Notwithstanding any other provision of this Article 7 to the contrary, any Losses incurred by any Indemnitee shall not be subject to the Cap Amount to the extent they arise from (i) in the case of a Buyer Indemnitee, a breach of any of the representations and warranties contained in Section 2.2 (Authorization) or Section 2.6(b) (Title to Assets), or (ii) in the case of any Indemnitee, a breach of any representation or warranty which was given fraudulently.

(c) At Buyer's option, Buyer may offset any Losses owed by Seller to Buyer under this Agreement against the amounts owed under the Note; provided that prior to such offset, Buyer shall provide Seller with fifteen (15) days prior written notice of Buyer's intention to offset the Note for any Losses and prior to offsetting any amounts owed under the Note Buyer agrees to work in good faith with Seller for fifteen (15) days after delivery of such notice to resolve any claim associated with such Losses. In the event that Buyer offsets any Losses against the Note pursuant to this Section 7.5(c), Seller shall continue to have available all rights and remedies otherwise available to Seller under Article VII and Section 10.14 of this Agreement as if such offset had not occurred.

(d) Notwithstanding the terms of this Article 7, no Indemnitor shall be liable for the first $25,000 (the "Threshold Amount") in aggregate Losses sustained by Indemnitees pursuant to Section 7.1(i) or 7.2(i), as applicable; provided Indemnitees shall be entitled to indemnification for Losses in excess of such Threshold Amount subject to the Cap Amount, in the event Losses to Indemnitees exceed such Threshold Amount.

(e) Except in the case of fraud or with respect to a breach of the terms and provisions of Sections 4.1, 4.2 or 4.4, Article VIII or Section 10.11, the rights contained in this Article 7 are the sole and exclusive rights of the parties with respect to any breach of this Agreement by any party hereto.

ARTICLE VIII
COVENANTS NOT TO COMPETE

8.1 Covenant Not to Compete. Seller hereby agrees that for a period of three (3) years following the Closing Date, neither Seller, nor any of its Affiliates will, directly or indirectly, own, manage, operate, join, control or participate in the ownership, management, operation or control of, or be connected as a shareholder, member, manager, director, officer, employee, partner, consultant or otherwise with, any profit or non-profit business, firm, entity or organization, which, directly or indirectly, competes with any product in the Field anywhere worldwide, including, without limitation, the counties in California listed on Exhibit F, whether by selling or manufacturing such product.

8.2 No Solicitation. Buyer and Seller hereby agrees for a period of one (1) year following the Closing Date, that neither party shall solicit or attempt to influence any of the other party's current or future employees to become employees or render services to any business or employer, other than such other party, or to terminate their employment with such other party; provided, however, that nothing in this Section 8.2 shall restrict either party from making solicitations by means of general advertisements.

8.3 Severability. In the event any of the covenants in this Article VIII shall be determined by any court of competent jurisdiction to be unenforceable by reason of its extending for too great a period of time, or over too great a geographical area, or by reason of its being too extensive in any other respect, it shall be interpreted to extend only over the maximum period of time for which it may be enforceable, and/or over the maximum geographical area as to which it may be enforceable and/or to the maximum extent in all other respects as to which it may be enforceable, all as determined by such court in such action.

8.4 Specific Performance. Seller acknowledges that a breach of the covenants contained in Article VIII will cause irreparable damage to Buyer, the exact amount of which will be difficult to ascertain, and that the remedies at law for any such breach will be inadequate. Accordingly, Seller agrees that if it breaches the covenants contained in Article VIII in addition to any other remedy which may be available at law or in equity, Buyer shall be entitled to specific performance and injunctive relief, without, in the event of a final judgment, posting a bond or other security.

ARTICLE IX
INTELLECTUAL PROPERTY ASSIGNMENT AND LICENSES

9.1 License to Licensed Trade Secrets. Seller hereby grants to Buyer a worldwide, nontransferable (except as provided in Section 9.2), irrevocable, perpetual, nonexclusive, royalty-free, fully paid-up right and license under the Licensed Trade Secrets to (i) use the Licensed Trade Secrets solely to service, make, use, design, import, offer for sale, lease, sell, and/or otherwise transfer product, and (ii) have products made by another manufacturer for the use, importation, offer for sale, lease, sale and/or other transfer by Buyer and its distribution channels.

9.2 Transferability. The rights and licenses to Buyer under Section 9.1 hereunder shall be transferable to any acquirer of all or a portion of Buyer, its business units, or Intellectual Property Rights whether by merger or otherwise, or to any acquirer of all or substantially all of Buyer's business to which the Purchased Intellectual Property Rights pertain. Any attempted assignment of the rights under Section 9.1 in violation of this Section shall be null and void.

9.3 License to Buyer Purchased Intellectual Property Rights. Seller hereby reserves and retains, for the benefit of itself and its subsidiaries, affiliates, successors, and assigns:

(a) under any right, title and interest in the Purchased Software and Purchased Technology, an irrevocable, perpetual, transferable, nonexclusive, worldwide, fully paid-up, royalty-free right and license (with right to sublicense) to copy, reproduce, modify, execute, translate into any language or form, distribute, display, perform and to prepare Derivative Works of the Purchased Software in source code and object code formats and Purchased Technology and any works covered by the Purchased Copyrights to provide warranty and technical support to existing Seller customers as of the Closing Date; provided, however, that Seller shall not have the right to provide third parties with the Purchased Software in source code format except to those third party contractors for the purposes permitted in this Section 9.3 and of Seller pursuant to a confidentiality agreement.

(b) under any right, title and interest in the Purchased Patents, an irrevocable, perpetual, transferable, nonexclusive, worldwide, fully paid-up, royalty-free right and license to make, use, sell, offer for sale, have made and import products and services to provide warranty and technical support to existing Seller customers as of the Closing Date;

(c) under any right, title and interest in the Purchased Software and Purchased Technology, an irrevocable, perpetual, nontransferable (except as provided in Section 9.4), nonexclusive, worldwide, fully paid-up, royalty-free right and license (but not the right to sublicense, distribute or provide to others) to copy, reproduce, modify, execute, translate into any language or form, distribute, display or perform and to prepare Derivative Works of the Purchased Software in source code and object code formats and Purchased Technology and any works covered by the Purchased Copyrights for its own internal operations (but not to provide product to third parties); and

(d) under any right, title and interest in the Purchased Patents, an irrevocable, perpetual, non-transferable (except as provided in Section 9.4), nonexclusive, worldwide, fully paid-up, royalty-free right and license to (i) use the Purchased Patents for its own internal operations (but not to provide product to third parties) and, notwithstanding the foregoing, (ii) use the Purchased Patents to manufacture and sell, and have manufactured and sold, products outside of the Field for which Buyer owns the product specifications.

All Derivative Works (but not the underlying Purchased Software, Purchased Technology or Purchased Intellectual Property Rights), enhancements and modifications created by Seller or its subsidiaries, affiliates, successors, and assigns pursuant to the rights and licenses reserved hereunder will be owned by Seller.

9.4 Transferability. The rights and licenses under Section 9.3 may not be assigned by Seller without the prior written consent of Buyer such consent not to be unreasonably withheld. Notwithstanding the foregoing, Seller may, without Buyer's consent, assign such rights and licenses to any purchaser of all or substantially all of Seller's assets or to any successor by way of merger, consolidation or otherwise. Any attempted assignment of the rights under Section 9.3 in violation of this Section shall be null and void.

9.5 No Implied Licenses. Nothing contained in this Agreement will be construed as conferring any rights by implication, estoppel or otherwise, under any Intellectual Property Rights, other than the rights expressly granted in this Agreement.

ARTICLE X.
MISCELLANEOUS

10.1 Further Actions. From time to time, as and when requested by any party hereto, each other party shall execute and deliver, or cause to be executed and delivered, such documents and instruments and shall take, or cause to be taken, such further or other actions as the requesting party may reasonably deem necessary or desirable to carry out the intent and purposes of this Agreement (including, without limitation, the transfer of the assets which make up the products in the Relevant Product Lines), to transfer, assign and deliver the Purchased Assets to Buyer and its successors and assigns effective as of the Closing (or to evidence the foregoing) and to consummate and give effect to the other transactions, covenants and agreements contemplated hereby. To the extent that the rights of Seller under any contract may not be assigned without the consent of another person which has not been obtained by Seller prior to the Closing, neither this Agreement nor the Assignment and Assumption Agreement shall constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful. If any such consent has not been obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the instrument in question so that Buyer would not effectively acquire the benefit of all such rights, then Seller, to the maximum extent permitted by law and the instrument, shall, at Buyer's request, act as Buyer's agent in order to obtain for Buyer the benefits thereunder and cooperate, to the maximum extent permitted by law and the instrument, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer (including, without limitation, by entering into an equivalent arrangement). Notwithstanding Buyer's decision to consummate the Closing in the absence of any such consent, after the Closing Seller shall use its commercially reasonable efforts to obtain all such consents and, if and when any is obtained, Seller shall promptly assign the instrument in question to Buyer.

10.2 Expenses. Except as expressly set forth herein, Seller and Buyer shall each bear their own legal fees and other costs and expenses with respect to the negotiation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder.

10.3 Entire Agreement. This Agreement, which includes the Schedules and the Exhibits hereto, and the other documents, agreements and instruments executed and delivered pursuant to this Agreement, contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and supersedes all prior arrangements, understandings, proposals, prospectuses, projections and related materials with respect thereto, including without limitation, the letter of intent among the parties hereto dated September 2, 2002.

10.4 Descriptive Headings. The descriptive headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

10.5 Notices. All notices or other communications which are required or permitted hereunder shall be in writing and shall be sufficiently given if (a) delivered personally, (b) sent by registered or certified mail, postage prepaid, (c) sent by overnight courier with a nationally recognized courier or (d) sent via facsimile confirmed in writing in any of the foregoing manners, as follows:

If to Seller:	Quantum Corporation 501 Sycamore Drive Milpitas, California 95035 Attention: Shawn Hall, General Counsel Facsimile No.: (408) 944-6581
with a copy to:	Wilson Sonsini Goodrich & Rosati, P.C. 650 Page Mill Road Palo Alto, California 94306 Attention: Steve Bochner Facsimile No.: (650) 461-5375
If to Buyer:	Broadband Storage, Inc. 5141 California, Suite 200 Irvine, California 92612 Attention: Eric Kelly Facsimile No.: _____
with a copy to:	Paul, Hastings, Janofsky & Walker LLP 695 Town Center Drive, 17th Floor, Costa Mesa, CA 92626 Attn: William J. Simpson, Esq. Facsimile No.: (714) 979-1921

If sent by mail, notice shall be considered delivered five (5) business days after the date of mailing, and if sent by any other means set forth above, notice shall be considered delivered upon receipt thereof. Any party may by notice to the other parties change the address to which notice or other communications to it are to be delivered or mailed.

10.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California (other than the choice of law principles thereof).

10.7 Assignability. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This Agreement shall not be assignable by any party without the written consent of the other parties and any such purported assignment by any party without such consent shall be void, except that

(a) Any or all rights of Buyer to receive the performance of the obligations of Seller hereunder and rights to assert claims against Seller in respect of any inaccuracy in or breach of any representations, warranties or covenants of Seller hereunder, may be assigned by Buyer to a direct or indirect subsidiary of Buyer or to a purchaser of all or a portion of the Purchased Assets, and

(b) Buyer may assign to any bank, insurance or other financial institution providing financing or extending credit to Buyer any or all of its rights to assert claims against Seller in respect of any inaccuracy in or breach of representations, warranties or covenants under this Agreement.

10.8 Waivers and Amendments. Any amendment or supplementation of this Agreement shall be effective only if in writing signed by each of the parties hereto. Any waiver of any term or condition of this Agreement shall be effective only if in writing signed by the party giving the waiver. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit or waive a party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement, except to the extent such future rights are specifically included within the scope of such written waiver.

10.9 Third Party Rights. Notwithstanding any other provision of this Agreement, and except as expressly provided in Article VII hereof or as permitted pursuant to Section 10.7 hereof, this Agreement shall not create benefits on behalf of any shareholder or employee of Buyer, or any other Person (including without limitation any broker or finder), and this Agreement shall be effective only as between the parties hereto, their successors and permitted assigns.

10.10 Public Announcements. Prior to the Closing, Buyer and Seller will consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement, and neither Buyer nor Seller shall issue any such press release or make any such public statement without the prior approval of the other parties both as to the making of such release or statement and as to the form and content thereof, except to the extent that such party is advised by counsel, in good faith, that such release or statement is required as a matter of law.

10.11 Confidential and Proprietary Information.

(a) Seller's Obligations. Seller has in the past had access, and shall continue to have access, to certain Confidential and Proprietary Information of Buyer or related to the Purchased Assets and Assumed Liabilities. Except as expressly permitted under Sections 9.3 and 9.4, Seller agrees that it will not, either directly or indirectly, disclose to any Person or use any of such Confidential and Proprietary Information.

(b) Seller's Waivers. Seller hereby waives any restrictions or limitations in any agreement or arrangement between Seller and any Designated Employee who is hired by Buyer only during the period while such employee is employed by Buyer and solely to the extent any such restrictions or limitations may prohibit such employee from using the Licensed Trade Secrets or Purchased Assets, or completing his or her duties with Buyer.

For purposes of this Agreement, "Confidential and Proprietary Information" means (i) any information relating to the Purchased Assets that is not generally known to competitors, suppliers and customers of Seller and (ii) any other information which would constitute a "Trade Secret" under the California Uniform Trade Secrets Act as in force and effect in the State of California.

10.12 Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable such term or provision in any other jurisdiction, the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or enforceable.

10.13 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Facsimile signatures shall be treated as if they were originals.

10.14 Dispute Resolution. The parties hereto agree to the following as their sole means of resolving any disputes arising from or in any way relating to this Agreement, provided that the parties hereto shall have the right to seek an injunction or other equitable remedy in the event of a breach of Article VIII of this Agreement. In the event of a dispute, the parties shall first attempt to negotiate in good faith to resolve such dispute among themselves for a period not to exceed 60 calendar days. If after 60 calendar days, the dispute remains unresolved, the parties agree to in good faith select a neutral third party to mediate their dispute. If the parties are unable to agree upon a mediator, any party to this Agreement may submit a request to the American Arbitration Association (the "AAA") to appoint a mediator. If the AAA refuses to appoint a mediator, or if either party fails to pay the fees requested by the AAA for the appointment of a mediator, then the party seeking mediation may file a petition with the Superior Court of the County of Orange, California, for the appointment of a mediator in accordance with the procedures specified in Section 1281.6 of the California Code of Civil Procedure, as if an arbitrator were being appointed. Any fees and costs of mediation shall be shared one-half by Buyer and one-half by Seller. Although the parties have agreed to participate in good faith in efforts to mediate any disputes, the results of any mediator's recommendations shall not be binding upon any party and mediation shall produce a binding agreement only if all parties agree to be bound by the results thereof. If after 90 calendar days from the day it was submitted to mediation, the dispute remains unresolved, any party may submit the dispute to binding arbitration through the AAA, pursuant to the AAA rules of commercial arbitration or any successor rules thereto, at the office of the AAA located in Orange County, California, or such other location as is mutually agreed to by the parties. The arbitrator shall apply the laws of the State of California in the resolution of all disputes, controversies or claims and shall have the right and authority to determine how his or her decision or determination as to each issue or matter in dispute may be implemented or enforced. Any decision or award of the arbitrator shall be final and conclusive on the parties to this Agreement and their respective affiliates, and there shall be no appeal therefrom other than from gross negligence or willful misconduct. The costs of arbitration, including the fees and expenses of the arbitrator, shall be paid equally by the parties unless the arbitration award provides otherwise. Each party shall bear the cost of preparing and presenting its case unless the arbitration award provides otherwise. The parties agree that the arbitrator shall have no power or authority to make any award that provides for punitive or exemplary damages. The arbitrator's decision shall be final and binding. The award may be confirmed and enforced in any court of competent jurisdiction. The parties hereto agree that any action to compel arbitration pursuant to this Agreement may be brought in the appropriate federal or state court located in Orange County, California, and in connection with such action to compel the laws of the State of California to control. The parties hereto hereby consent to the jurisdiction of the arbitrator and of such court and waive any objection to the jurisdiction of such arbitrator and court.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the undersigned have executed and delivered this Agreement as of the date first above written.

"SELLER" QUANTUM CORPORATION,

a Delaware corporation

By: /s/ LARRY ORECKLIN

Name: Larry Orecklin

Title: President, SSG

"BUYER" BROADBAND STORAGE, INC.,

a Delaware corporation

By: /s/ ERIC L KELLY

Name: Erick L. Kelly

Title: CEO

APPENDIX A

DEFINITIONS

Capitalized terms in this Agreement shall have the meanings ascribed to them in this Appendix A unless such terms are defined elsewhere in this Agreement.

AAA shall have the meaning ascribed to it in Section 10.14.

Acquisition shall have the meaning ascribed to it in Recital C.

Act shall have the meaning ascribed to it in Section 2.24(c).

Affiliate: With respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" means the power to direct the management and policies of another Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

Agreement shall have the meaning ascribed to it in the Preamble.

Ancillary Documents shall have the meaning ascribed to it in Section 2.2.

Assumed Liabilities shall have the meaning ascribed to it in Section 1.1(c).

Authorizations shall have the meaning ascribed to it in Section 1.1(a)(v).

Balance Sheet Inventory shall have the meaning ascribed to it in Section 1.1(a)(vii)

Bona Fide Offer shall mean an offer of employment with Buyer (a) at market rates and (b) for a position with equivalent duties and responsibilities as such Person has with Seller.

Buyer shall have the meaning ascribed to it in the Preamble.

Buyer Indemnitee shall have the meaning ascribed to it in Section 7.1

Cap Amount shall have the meaning ascribed to it in Section 7.5(a).

Cash Purchase Price shall have the meaning ascribed to it in Section 1.2(a).

Cause shall mean termination of employment for any one or more of the following: (i) repeated neglect by the Designated Employee of his or her assigned duties, or repeated intentional refusal by the Designated Employee to perform his or her assigned duties (other than by reason of disability); (ii) an act of dishonesty by the Designated Employee intended to result in gain or personal enrichment of the Designated Employee; (iii) the Designated Employee personally engaging in illegal conduct which causes harm to the reputation of the Buyer, as determined by the Buyer's Chief Executive Officer; (iv) the Designated Employee committing a felony or misdemeanor relating to an act of dishonesty or fraud against, or a misappropriation of property belonging to, the Buyer; (v) the Designated Employee personally engaging in any act of moral turpitude that causes harm to the reputation of the Buyer; (vi) the Designated Employee breaching in any material respect the terms of any non-disclosure agreement with the Buyer; (vii) the Designated Employee commencing employment with another company while he or she is an employee of the Buyer or (viii) repeated failure, in the reasonable judgment of the Chief Executive Officer of the Buyer, of the Designated Employee to perform his or her assigned duties or responsibilities as directed or assigned by the Chief Executive Officer (other than a failure resulting from the Designated Employee's disability).

Claim Notice shall have the meaning ascribed to it in Section 7.3(a).

Closing shall have the meaning ascribed to it in Section 6.1.

Closing Date shall have the meaning ascribed to it in Section 6.1.

Common Stock shall mean the common stock of Buyer having a par value of $.001 per share.

Confidential and Proprietary Information shall have the meaning ascribed to it in Section 10.11.

Copyrights shall mean all U.S. and foreign rights associated with works of authorship, including rights to copy, reproduce, distribute copies of, modify, publicly perform and display the copyrighted work and all Derivative Works thereof.

Derivative Works shall mean a work which is based upon one or more preexisting works, including, but not limited to, a revision, modification, translation, abridgment, condensation, expansion or any other form in which such preexisting works may be recast, transformed or adapted including any implementation of software as firmware or into a semiconductor device that performs a function or functions similar to such Software.

Designated Employees shall have the meaning ascribed to it in Section 4.6(a).

Encumbrance: Any lien (including, without limitation, tax liens), mortgage, pledge, security interest, charge or encumbrance of any kind, whether voluntary or involuntary, (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and, with respect to capital stock, any option or other right to purchase or any restriction on voting or other rights.

Environmental Law shall have the meaning ascribed to it in Section 2.15(b).

Excluded Assets and Certain Known Liabilities shall have the meaning ascribed to it in Section 1.1(b).

Field shall mean the Network Attached Storage operating system marketplace and the Network Attached Storage devices as they currently exist and as they are currently contemplated to exist by Seller, as set forth in the road map attached as Schedule X.

Financing shall have the meaning ascribed to it in Recital B.

Furniture and Equipment shall have the meaning ascribed to it in Section 1.1(a)(ix).

Governmental Entity: Any nation or any state, commonwealth, territory, possession or tribe and any political subdivision, courts, departments, commissions, boards, bureaus, agencies or other instrumentalities of any of the foregoing.

Gross Variable Margin shall have the meaning ascribed to it in Section 1.1(a).

Hazardous Material(s) shall have the meaning ascribed to it in Section 2.15(c).

Indebtedness: With respect to any Person (a) all indebtedness for borrowed money; (b) that portion of obligations with respect to capital leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (c) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (d) any obligation owed for all or any part of the deferred purchase price of property or services if the purchase price is due more than six (6) months from the date the obligation is incurred or is evidenced by a note or similar written instrument; and (e) all indebtedness secured by any Encumbrance on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person.

Indemnifiable Claim shall have the meaning ascribed to it in Section 7.3(a).

Indemnitee shall have the meaning ascribed to it in Section 7.3(a).

Indemnitor shall have the meaning ascribed to it in Section 7.3(a).

Intellectual Property Rights shall mean any and all (i) Copyrights; (ii) Trademarks; (iii) rights in and relating to the protection of Trade Secrets and Confidential and Proprietary Technology; (iv) Patents; and (v) other intellectual and industrial property and proprietary rights worldwide (of every kind and nature however designated) relating to intangible property that are analogous to any of the foregoing rights.

Key Employees shall have the meaning ascribed to it in Section 5.1(h).

Knowledge of Buyer or**Buyer's Knowledge** about facts or circumstances recognized by Buyer shall refer to the actual knowledge, after reasonable inquiry of Eric Kelly, Kevin Anderson, Mark Pollard and Greg Bolstad.

Knowledge of Seller or**Seller's Knowledge** about facts or circumstances recognized by Seller shall refer to the actual knowledge, after reasonable inquiry of Seller's officers and directors, the Key Employees and Seller's employees that are (i) at least a director-level employee and (ii) principally employed or retained in connection with the Purchased Assets or Assumed Liabilities.

Leased or Owned Property shall have the meaning ascribed to it in Section 2.6(a).

Licensed Trade Secrets shall mean the Trade Secret rights (a) embodied in the Purchased Software and Purchased Technology; (b) which are directly related to, embodied in or derived from the Purchased Software and Purchased Technology and are retained in the memories of any employee who is hired by Buyer pursuant to Section 4.6 or (c) otherwise learned by Buyer in connection with the transactions contemplated by the Agreement.

Losses shall have the meaning ascribed to it in Section 7.1.

Material Adverse Effect shall mean, whether individually or in the aggregate, a material adverse effect on or change in the ownership, operation, use or condition of the Purchased Assets if the amount of Losses that would be imposed upon or sustained by Buyer exceed $100,000; provided further that any diminution in the fair market value of the Balance Sheet Inventory, Furniture and Equipment and any other tangible personal property that constitutes the Purchased Assets shall not be considered in the calculation of such $100,000 to the extent that such diminution in value occurs for any reason other than the action or inaction of Seller with respect to such assets.

NAS shall have the meaning ascribed to it in Recital A.

NLRB shall have the meaning ascribed to it in Section 2.14(b).

Non-U.S. Facilities shall have the meaning ascribed to it in Section 4.8(b).

Note shall have the meaning ascribed to it in Section 1.2(a).

Other Items of Property shall have the meaning ascribed to it in Section 1.1(a)(x).

Patents shall mean U.S. or foreign patent applications and patents, and all divisions, continuations, continuations-in-part, and substitutions thereof; all patent applications corresponding to the preceding applications; and all U.S. and foreign patents issuing on any of the preceding applications, including extensions, reissues and re-examinations.

Person shall mean an individual, corporation, limited liability company, partnership, joint venture, trust or unincorporated organization or association or other

form of business enterprise or a Governmental Entity.

Purchase Price shall have the meaning ascribed to it in Section 1.2(a).

Purchased Assets shall have the meaning ascribed to it in Section 1.1(a).

Purchased Contracts shall have the meaning ascribed to it in Section 1.1(a)(iii).

Purchased Copyrights shall mean those Copyrights embodied in the Purchased Software and Purchased Technology.

Purchased Intellectual Property Rights shall have the mean Purchased Copyrights, Purchased Trademarks and Purchased Patents.

Purchased Patents shall mean those Patents described on Schedule 1.1(a)(i).

Purchased Software shall mean the Software described on Schedule 1.1(a)(i).

Purchased Technology shall mean the Technology described on Schedule 1.1(a)(i).

Purchased Trademarks shall mean those Trademarks described on Schedule 1.1(a)(i).

Release shall have the meaning ascribed to it in Section 2.15(d).

Relevant Product Lines shall have the meaning ascribed to it in Recital A.

Seller Indemnitee shall have the meaning ascribed to it in Section 7.2.

Seller shall have the meaning ascribed to it in the Preamble.

Series B Preferred shall mean the Series B Preferred Stock of Buyer having a par value of $.001 per share.

Service Level Agreement shall have the meaning ascribed to it in Section 4.5(f).

Software shall mean any and all computer software and code, including assemblers, applets, compilers, source code, object code, data (including image and sound data), design tools and user interfaces, in any form or format, however fixed. Software shall include source code listings and documentation.

Stock Consideration shall have the meaning ascribed to it in Section 1.2(a).

Tax shall mean any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities (including, without limitation, income, minimum or alternative minimum tax, gross receipts, ad valorem, value added, environmental tax, turnover, sales, use, personal property (tangible and intangible), stamp, leasing, lease, user, leasing use, excise, payroll, franchise, transfer, fuel, excess profits, occupational, interest equalization and other taxes), together with any and all penalties, fines, additions to tax and interest thereon.

Technical Service Support shall mean accepting end-user help calls and inquiries and the provisioning of initial (“first line”) technical support services in response thereof.

Technology shall mean any algorithms, routines, documentation, specifications, drawings, mask works, designs, files, records and data, inventions (whether or not patentable), improvements, and technology, proprietary and confidential information, show how, know how and techniques, processes, devices, prototypes, test methodologies and hardware development tools and all instantiations of the foregoing in any form and embodied in any media.

Trademarks shall mean all trade names, logos, trademarks and service marks; trademark and service mark registrations and applications and rights to Uniform Resource Locators, Web site addresses and domain names.

Trade Secret shall have the meaning set forth in the California Uniform Trade Secrets Act as in force and effect in the State of California.

Transfer Taxes shall have the meaning ascribed to it in Section 1.4.

Transition Services Agreement shall have the meaning ascribed to it in Section 5.1(h).

Threshold Amount shall have the meaning ascribed to it in Section 7.5(d).

U.S. Facilities shall have the meaning ascribed to it in Section 4.8(a).

EXHIBITS AND SCHEDULES

Exhibit A – Intentionally Deleted
Exhibit B – Schedule of Exceptions - Seller
Exhibit C – Schedule of Exceptions - Buyer
Exhibit D - Bill of Sale and Assumption Agreement
Exhibit E – Series B Preferred Stock Purchase and Recapitalization Agreement
Exhibit F – Counties in California

Schedules

Schedule 1.1(a)(i) Purchased Software, Purchased Technology, Purchased Patents and Purchased Trademarks

Schedule 1.1(a)(iii) Purchased Contracts

Schedule 1.1(a)(v) Authorizations

Schedule 1.1(a)(vii) Balance Sheet Inventory

Schedule 1.1(a)(viii) Furniture and Equipment

Schedule 1.1(a)(ix) Other Items of Property

Schedule 1.1(b) Excluded Assets and Certain Known Liabilities

Schedule 1.1(b)(i) Excluded Assets and Certain Known Liabilities

Schedule 1.1(b)(ii) Excluded Assets and Certain Known Liabilities

Schedule 1.1(c) Assumed Liabilities

Schedule 1.5 Allocation of Purchase Price and Adjustments

Schedule 2.1(a) Intellectual Property Rights

Schedule 2.12(g) Intellectual Property Rights

Schedule 4.6(c) Severance Package for Designated Employees

Schedule 5.1(h) – Key Employees

Schedule 7.1 - Indemnification

Exhibit A – Intentionally Deleted

Exhibit B – Schedule of Exceptions - Seller

See Attached

Exhibit C – Schedule of Exceptions - Buyer

Section 3.2

The consent of Buyer’s stockholders is necessary to close the transactions contemplated by this Agreement and the Financing.

Exhibit D

BILL OF SALE AND ASSUMPTION AGREEMENT

This Bill of Sale and Assumption Agreement (this "Bill of Sale") is entered into as of October ___, 2002 by and between Broadband Storage, Inc., a Delaware corporation (“Buyer”), and Quantum Corporation, a Delaware corporation (“Seller”).

1. **Definitions**. Unless specifically designated otherwise, capitalized terms used in this Bill of Sale shall have the meanings given them in that certain Asset Purchase Agreement between Seller and Buyer dated as of October 7, 2002 (the "Asset Purchase Agreement"). The terms of the Asset Purchase Agreement are incorporated herein by this reference.

2. **Sale of Assets**. Subject to the terms, conditions and limitations set forth in the Asset Purchase Agreement, Seller, for valuable consideration, the receipt of which is hereby acknowledged, hereby sells, assigns, grants and conveys all of Seller's right, title and interest in and to all of the Purchased Assets to Buyer, its successors and assigns, to its and their own use and benefit, forever.

3. **Assumption**. Subject to the terms, conditions and limitations set forth in the Asset Purchase Agreement, Buyer hereby assumes and agrees to observe and perform all of the duties, obligations, terms, provisions and covenants of, and to pay and discharge all of, the Assumed Liabilities.

4. **Miscellaneous**.

   (a) Seller and Buyer hereby agree that they will, from time to time, execute and deliver such further instruments of conveyance and transfer as may be reasonably required to implement and effect (i) the sale of the Purchased Assets pursuant to the Asset Purchase Agreement, and (ii) the assumption of the Assumed Liabilities pursuant to the Asset Purchase Agreement.

   (b) This Bill of Sale has been executed to implement the Asset Purchase Agreement and nothing contained herein shall be deemed or construed to impair or alter any of the provisions of the Asset Purchase Agreement.

   (c) This Bill of Sale is executed and delivered in, and shall be construed and enforced in accordance with the laws of the State of California, without reference to conflict of law provisions, and shall be binding upon and shall inure to the benefit of the respective successors and assigns of the parties to this Bill of Sale.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale on the date first above written.

"BUYER"	**"SELLER"**
BROADBAND STORAGE, INC.	**QUANTUM CORPORATION**
By: /s/ ERICK L. KELLY	By: /s/ LARRY ORECKLIN
Name: Erick L. Kelly	Name: Larry Orecklin
Title: CEO	Title: President , SSG

Exhibit E – Series B Preferred Stock Purchase and Recapitalization Agreement

See Attached

Exhibit F - Counties in California

Alameda	Marin	San Mateo
Alpine	Mariposa	Santa Barbara
Amador	Mendocino	Santa Clara
Butte	Merced	Santa Cruz
Calaveras	Modoc	Shasta
Colusa	Mono	Sierra
Contra Costa	Monterey	Siskiyou
Del Norte	Napa	Solano
El Dorado	Nevada	Sonoma
Fresno	Orange	Stanislaus

Glenn	Placer	Sutter
Humboldt	Plumas	Tehama
Imperial	Riverside	Trinity
Inyo	Sacramento	Tulare
Kern	San Benito	Tuolumne
Kings	San Bernardino	Ventura
Lake	San Diego	Yolo
Lassen	San Francisco	Yuba
Los Angeles	San Joaquin	
Madera	San Luis Obispo	

Schedule 1.1(a)(i)

Purchased Software

1. Snap Operating Systems

Server to Server Synchronization software

Version 2.4

Version 3.4

Code for prior versions

2. Current Guardian Operating Systems

Version 2.0

Version 2.1

Version 2.2 in the form developed as of the Closing Date (FCS scheduled for Nov. 2002)

Version 2.3 in the form developed as of the Closing Date (FCS scheduled for March 2003)

Version 3.0 in the form developed as of the Closing date that is in preliminary elemental stages and is comprised only of flow charts, prototyping, and similar items.

3. Proprietary Software Tools

Automated Software Build-source code

Automated Software Testing-source code

Stress and Performance Lab-source code

Purchased Technology

1. All technology owned by Seller that is contained in Snap Server Models 1000, 1100, 2000, 2200, 4000, 4100. The Purchased Technology shall specifically include, without limitation, the following with respect to such Snap Models:

Motherboard designs

Chassis design

Drawings: including schematics and mechanical drawings

Specifications

Bezel and chassis designs

User documentation and manuals

Data contained in the bug database

Data contained in the engineering document control database

2. All technology owned by Seller that is contained in Snap Server Model 12000; Guardian 14000. The Purchased Technology shall specifically include, without limitation, the following with respect to such Snap and Guardian Models:

Chassis design

Schematics, mechanical drawings

Specifications

Bezel and chassis design

User documentation and manuals

Data contained in the bug database

Data contained in the engineering document control database

3. All technology owned by Seller that is contained in Guardian 4400. The Purchased Technology shall specifically include, without limitation, the following with respect to such Guardian Models:

Bezel design

User documentation and manuals

Data contained in bug database

Data contained in the engineering document control database

4. Other

Development, Test Methodology and Procedures documentation

Stress and Performance Lab documentation

Manufacturing Test

Data comprising the Test Case Database documentation and procedures

Procedures for testing networking and interoperability.

Purchased Patents and Purchased Trademarks

1. **SNAP OS**

PATENTS		
Number	Title	Issue Date
US 6,442,661	Self Tuning Memory Management for Computer Systems	08/27/02

TRADEMARKS			
Mark	Serial No.	Status	Classes
Snap! Server	75387211	Registered (**No. 2421713**) as of 01/16/01	IC 009; US 021, 023, 026, 036, 038
Network Storage Made Simple	75409441	Registered (**No. 2428674**) as of 02/13/01	IC 009; US 021, 023, 026, 036, 038
Snap Appliances		Common law right	
Snap Appliance	78/178,397	Trademark Application	Filed October 25, 2002

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2. **GUARDIAN OS**

TRADEMARKS			
Mark	Serial No.	Registration Status	Int'l Classes
Guardian	76367586	Pending (filed 02/06/02)	IC 009; US 021, 023, 026, 036, 038

PATENTS		
Application. Number	Title/Summary	File Date
EP 01301825.4	**(i) Self-Tuning Memory Management For Computer Systems** Disclosing a method and system for memory management in computer systems which accelerates memory allocation/deallocation for buffering data, reduces memory fragmentation, increases available memory for file server file system I/O buffers while optimizing the amount of memory available for other uses, and manages competition for different memory uses, across different network environments and over time within one network.	02/28/01
JP 052475/2001	**(ii) Method For Managing Memory, Memory Manager, And Computer Program Product** Disclosing a method and system for memory management in computer systems which accelerates memory allocation/deallocation for buffering data, reduces memory fragmentation, increases available memory for file server file system I/O buffers while optimizing the amount of memory available for other uses, and manages competition for different memory uses, across different network environments and over time within one network.	02/27/01
US 09/607,581	**(iii) Fault Tolerant Storage Device with Cache** Disclosing a method and system to decrease the high overhead associated with the read/write operations in storage devices utilizing a RAID 5 architecture, while maintaining the fault-tolerance characteristics of the RAID 5 systems. In its primary embodiment, the disclosed invention provides a method and apparatus using a cache system to reduce the overhead of conventional RAID systems.	06/29/00
EP 01305248.5	**(iv) Fault Tolerant Storage Device with Cache** Disclosing a method and system to decrease the high overhead associated with the read/write operations in storage devices utilizing a RAID 5 architecture, while maintaining the fault-tolerance characteristics of the RAID 5 systems. In its primary embodiment, the disclosed invention provides a method and apparatus using a cache system to reduce the overhead of conventional RAID systems.	06/15/01
JP 192955/2001	**(v) Method For Storing Data In Fault-Tolerant Storage Device, And Storage Device And Controller Therefor** Disclosing a method and system to decrease the high overhead associated with the read/write operations in storage devices utilizing a RAID 5 architecture, while maintaining the fault-tolerance characteristics of the RAID 5 systems. In its primary embodiment, the disclosed invention provides a method and apparatus using a cache system to reduce the overhead of conventional RAID systems.	06/26/01

Schedule 1.1(a)(iii)
Purchased Contracts

1. Agreement between Insignia Solutions Inc. and Quantum Corporation, dated September 8, 1999; letter agreements dated September 30, 1999, November 30, 1999, February 22, 2000 and March 28, 2000.

2. OEM International Software License, Distribution and Marketing Rights Agreement between PowerQuest Corporation and Quantum Corporation, dated September 30, 1999, effective October 1, 1999; Addendum to OEM International Software License, Distribution and Marketing Rights Agreement dated May 2, 2001; and Addendum to Software Evaluation OEM Software License Agreement, dated July 13, 2001.

3. OEM Agreement between Syncsort Inc. and Quantum Corporation, dated July 1, 2002.

4. Manufacturing and Purchase Agreement between SCI Technology, Inc. doing business as SCI Systems and Snap Appliances Corporation, dated October 3, 2001.

5. OEM Worldwide Agreement for Development & Supply of Custom Embedded Products between FORCE Computers Inc. and Quantum Snap Division Corporation, dated May 2, 2000; and Addendum to OEM Worldwide Agreement for Development & Supply of Custom Embedded Products, dated July 31, 2000.

6. OTG Joint Marketing Agreement between OTG Software, Inc. and Snap Appliances, Inc., dated July 30, 2001.

7. OEM Agreement between OTG Software, Inc. and Snap Appliances, Inc., dated September 28, 2001; and Amendment to OTG Partner Agreement, dated November 30, 2001.

8. OEM Agreement between Computer Associates International Inc. and Quantum Corporation, not executed as of the date of execution of the Agreement but the parties are substantially performing under the terms thereof as of the date of execution of this Agreement.

9. Software License and Distribution Agreement between Microtest, Inc. and Connex, Inc., dated September 29, 2000; amended August 8, 2001.

10. Original Design Manufacturer Agreement and Quality Plan Addendum between Quanta Computer, Inc. and Quantum Corporation, not executed as of the date of execution of the Agreement but the parties are substantially performing under the terms thereof as of the date of execution of this Agreement.

11. Service Agreement between Broad Daylight, Inc. and Snap Appliances, Inc., dated March 27, 2001.

Schedule 1.1(a)(v)
Authorizations

None.

Schedule 1.1(a)(vii)
Balance Sheet Inventory

Summary of Locations:	
San Jose (SNX)	$ 2,296,748.67
San Jose Service (SSG)	138,463.89
SCI-Sanmina facility (SCI)	571,719.27
Quanta facility (STP)	497,592.84
Total Inventory Value	**$ 3,504,524.67**

Detailed reports are not included in this agreement but were provided to the Buyer.

These inventories are more fully described in that certain balance inventory report distributed by Pam Crone to Buyer and Seller on Sunday October 27, 2002 at 1:07 p.m.

Schedule 1.1(a)(viii)
Furniture and Equipment

Summary of Assets Purchased:

All PC equipment for Designated employees*

All PC equipment for Quantum terminated employees*

Four (4) Dell laptops from above will remain with Seller

Network printers

Individual printers

Fax machines

Blackberry units not owned by employees

All lab equipment*

All furniture & fixtures in the labs

Exercise room equipment

Pool table

Television

Electronic white boards (Seller will retain one board)

Polycom phones

PC projectors

All data center equipment

Training room PC equipment

Storage file cabinets (not the ones part of cubicle furniture)

Ergonomic desk chairs (Seller retains five (5) chairs)

Fork Lift

*Detailed listings were prepared for these assets but are not included in the agreement.

Schedule 1.1(a)(ix)
Other Items of Property

Trade Show Booth;

Signage for exterior of the building; and

Unused portion of the prepayment to OTG/Legato for software licenses.

Schedule 1.1(b)
Excluded Assets and Certain Excluded Known Liabilities

1. Rework costs for 143 units of 4400-480GB recalled from the channel due to BIOS error (costs should be paid for by the Contract Manufacturer)

2. Identified excess and obsolete inventory at the Contract Manufacturers as of the Closing Date, including the 1,133 IBM hard drives at SCI-Sanmina, as determined by the Buyer.

3. Seller shall pay the difference between (a) the minimum amount owed by Seller under the terms of that certain OEM Agreement between Syncsort, Inc. and Quantum Corporation, dated July 1, 2002 (the "**Syncsort Agreement**") and (b) the amount that Buyer actually pays pursuant to the Syncsort Agreement. Any claims made by Buyer for Losses against Seller pursuant to Article VII of the Asset Purchase Agreement between Buyer and Seller with respect to this item #3 shall be paid solely by means of an offset against the Note, to the extent that the Note remains outstanding.

Schedule 1.1(c)
Assumed Liabilities

1. Warranty obligations for the installed base of the Relevant Product Lines as of the Closing Date, up to a maximum exposure of $1,600,000.

2. Except as otherwise expressly provided for in the Agreement, all liabilities for all goods and services with respect to the Purchased Assets incurred after the Closing Date.

Schedule 1.5
Allocation of Purchase Price and Adjustments

To be mutually agreed upon by both parties within 45 days after the Closing Date.

Schedule 2.12(a)
Intellectual Property Rights

1. Manufacturing and Purchase Agreement between SCI Technology, Inc. doing business as SCI Systems and Seller, dated October 3, 2001.

2. Original Design Manufacturer Agreement and Quality Plan Addendum between Quanta Computer, Inc. and Seller, not executed as of the date of execution of the Agreement but the parties are substantially performing under the terms thereof as of the date of execution of this Agreement.

3. License Agreement between International Business Machines Corporation and Seller, dated April 1, 2001.

Schedule 2.12(g)
Intellectual Property Rights

1. S.I.M. Consulting Agreement between Seller and S.I.M. Corporation, dated May, 2000.

Schedule 4.6(c)
Employee Severance Package

This represents a summary of Seller's severance package. For a complete description of the benefits summarized in this Schedule 4.6(c), see the attached Severance Benefit Plan and Summary Plan Description.

Employees will receive the following:
- 60 days of salary continuation;
- 8 weeks severance pay, plus;
- 1 week of pay for each completed year of service;
- All severance pay and vacation will be paid out after the employee's salary continuation period.

All Directors will receive the following:
- 60 days of salary continuation;
- 16 weeks severance pay, plus;
- 2 weeks of pay for each completed year of service;
- All severance pay and vacation will be paid out after the employee's salary continuation period.

Benefits that will continue through the salary continuation period:
- Medical;
- Dental;
- Vision;
- Basic Life Insurance;
- Voluntary/Dependent Life Insurance;
- Basic AD&D Insurance;
- Voluntary AD&D Insurance;
- EAP; and
- Healthand Dependent Care Reimbursement Accounts.

Benefits eligible for continuation during severance (1month < 6 years of service; 2 months > 6 years of service):
- Medical;
- Dental;
- Vision;
- EAP;
- Basic Life Insurance;
- All employees will need to enroll in the 2003 benefits, as their salary continuation will end in January;
- COBRA information letters will be mailed to their home within 14 days after end of coverage;

Schedule 5.1(h)
Key Employees

Dan Burrows

Tom Crosby

Pam Crone

Schedule 7.1

Indemnification by Seller

None

TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (the "Agreement") is made this 28th day of October 2002 (the "Effective Date"), by and between QUANTUM CORPORATION ("Seller"), a Delaware corporation and SNAP APPLIANCE, INC., formerly known as BROADBAND STORAGE, INC. ("Buyer"), a Delaware corporation.

WHEREAS, Buyer and Seller are parties to an Asset Purchase Agreement dated October 7, 2002 (the "Purchase Agreement"); and

WHEREAS, Buyer has requested, and Seller has agreed to provide, certain services for the periods and on the terms and conditions set forth herein in order to promote the efficient operation of their respective businesses during the period in which the functional separation contemplated by the Purchase Agreement will occur;

NOW, THEREFORE, in consideration of the mutual agreements and covenants set forth herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. **DEFINITIONS**

Capitalized terms defined herein shall have the meanings set forth herein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.

2. **SERVICES**

2.1 General. Except as provided in the Sublease (defined below), during the Transition Period (as defined in Section 8.1 of this Agreement), Seller shall provide the following services to Buyer (each, a "Transition Service" and collectively, the "Transition Services").

(a) Point of Sale Data. Seller shall provide point of sale (POS) data for North America and for the rest of the world (as available) only relating to NAS products in a spreadsheet format, which is summarized as set forth at Exhibit A (the "Sample POS Report"), on a weekly basis for three (3) months following the Closing Date. The cost for such service shall be eight thousand dollars ($8000) per month, which includes twelve hundred dollars ($1200) per month for electronic data interchange (EDI) fees and one (1) full-time equivalent at eighty-five dollars ($85) per hour, twenty (20) hours per week. The parties acknowledge and agree that POS data is compiled based on information provided by NAS distributors and therefore may contain inaccuracies. For example, POS data may not be adjusted for cut-off such as shipments in transit. Sales of NAS products by distributors after the Closing Date will first be assumed to come from Quantum-shipped inventory. Until the Quantum inventory of NAS products in channel is reduced to zero, then the sales of distributors will be for products shipped by SNAP Appliance.

(b) Sublease. Seller shall grant Buyer certain occupancy rights for its facilities located at 2001 Logic Drive, San Jose, California (the "San Jose Facility") pursuant to the terms of the sublease agreement attached hereto as Exhibit B (the "Sublease").

(c) Voice and Data Lines. Buyer shall promptly transfer voice and data lines to Buyer accounts, and in any event shall effect such transfer no later than January 31, 2003. Until such accounts are transferred and only to the extent they are made available by Sprint, Seller shall provide Buyer with shared usage of the voice and data lines in the San Jose Facility. Buyer shall reimburse Seller, for a pro-rata usage fee for such connectivity plus a service fee of five percent (5%) of such usage fee for handling and billing.

(d) Operations Services. Seller shall provide two (2) full-time equivalents at seventy dollars ($70) per hour, forty (40) hours per week at the Sanmina-SCI facility in Colorado for a maximum of four (4) weeks beginning on the Effective Date, which equals five thousand six hundred dollars ($5600) per week.

(e) Other Services. Seller shall provide the services of those persons identified on Exhibit C at the rates specified therein. In the event that an identified person is unable to perform such services for any period of time, Seller's shall promptly provide substitute representatives with similar experience.

(f) On-Site Customer Service. For the period beginning on the Closing Date and ending ninety (90) days thereafter (the "On-Site Service Period"), Seller shall provide on-site customer service for Guardian 14000 units sold by Buyer during the On-Site Service Period (each, a "Box").

(g) Marketing Services. The parties acknowledge and agree that Seller has already scheduled and incurred expenses in connection with certain advertising and channel programs as identified in Exhibit D (the "Marketing Services"). To the extent that such Marketing Services are provided by third parties to Seller through December 31, 2002, Buyer shall pay to Seller the amounts identified in the "Snap Portion" column of Exhibit D (the "Marketing Fees"). Seller shall use its good faith reasonable efforts to ensure that such third parties perform their obligations. Notwithstanding anything in this Agreement to the contrary, Buyer's sole remedy in the event that scheduled Marketing Services are not provided shall be a reversal of the immediate credit set forth in Section 3.2.

(h) Technical and Warranty Customer Services. For the period beginning on the Closing Date and ending ninety (90) days thereafter, Seller shall provide technical and warranty customer services for new Snap Appliance products sold in Europe.

2.2 Cooperation. Each party shall cause its employees to reasonably cooperate with employees of the other to the extent required for effective delivery of the Transition Services. The following individuals shall be responsible for the day-to-day implementation of this Agreement, including attempted resolution of any issues that may arise during the performance of either party's obligations hereunder: for Seller, Hugues Meyrath and for Buyer, Steve Daneman.

2.3 Third Party Services . Seller shall have the right to engage the services of independent contractors to deliver or assist Seller in the delivery of Transition Services contemplated under this Agreement to the extent reasonably necessary. Seller will impose on any such third parties the confidentiality obligations specified in this Agreement in an agreement designating Buyer as a third party beneficiary, and will supervise the performance of such third parties to ensure that the Transition Services meet, in all material respects, the requirements of this Agreement.

2.4 Withholding Taxes. Seller shall pay all employee withholding taxes incurred in connection with the provision of any Transition Services by Seller to Buyer.

3. **FEES; PAYMENTS**

3.1 Invoicing. Sublease fees shall be invoiced as set forth in the Sublease. Beginning November 30th, Seller shall invoice Buyer for all other Transition Services (those set forth in Sections 2.1(a), (c), (d) and (e)) performed during the preceding month, with a report of such charges to be in form and substance reasonably satisfactory to Buyer, and Buyer shall pay, for such Transition Services on net thirty (30) terms. For past due payments, Buyer shall pay to Seller interest at a rate of nine percent (9%) per annum. Notwithstanding the foregoing, Seller shall provide to Buyer all Transition Services other than the voice and data lines provided pursuant to Section 2.1(c) free of charge for the first $650,000 (the "Credit Amount") owed by Buyer hereunder. Once that Credit Amount has been exhausted, Seller's continued provision of Transition Services shall be subject to Buyer's payment therefore on the terms set forth herein. The parties agree that Buyer shall not be entitled to any refund in the event the aggregate amount owed by Buyer hereunder for the Transition Services is less than the Credit Amount.

3.2 Immediate Credits. The parties acknowledge and agree that Seller has prepaid service fees in connection with the Broad Daylight, Inc. Service Agreement dated March 28, 2001 (a Purchased Contract) in the amount of $22,500 (the "Broad Daylight Fees"). Notwithstanding anything in this Agreement to the contrary, the Marketing Fees (as defined in Section 2.1(g) above) and Broad Daylight Fees shall be credited against the Credit Amount set forth in Section 3.1 upon execution of this Agreement.

4. **CONFIDENTIALITY**

4.1 Information Exchanges. Subject to applicable law and good faith claims of privilege, each party hereto shall provide the other party with all information regarding itself and the transactions under this Agreement that the other party reasonably believes are required to comply with all applicable laws, ordinances, regulations and codes in connection with the provision of Transition Services pursuant to this Agreement.

4.2 Confidential Information. Seller and Buyer shall hold in trust and maintain confidential all Confidential Information relating to the other party. "Confidential Information" shall mean all information disclosed by either party to the other in connection with this Agreement, whether orally, visually, in writing or in any other tangible form, and includes, but is not limited to, economic, scientific, technical, product and business data, business plans, and the like, but shall not include (i) information which becomes generally available other than by disclosure in violation of the provisions of this Section 4.2, (ii) information which becomes available on a non-confidential basis to a party from a source other than the other party to this Agreement provided the party in question reasonably believes that such source is not or was not bound to hold such information confidential, and (iii) information acquired or developed independently by a party without violating this Section 4.2 or any other confidentiality agreement with the other party, as demonstrated by contemporaneous written records of the receiving party. Confidential Information that any party hereto reasonably believes must be disclosed by law may be disclosed to the appropriate persons provided that the receiving party first notifies the other party hereto of such requirement and allows such party a reasonable opportunity to seek a protective order or other appropriate remedy to prevent such disclosure. Without prejudice to the rights and remedies of either party to this Agreement, a party disclosing any Confidential Information to the other party in accordance with the provisions of this Agreement shall be entitled to equitable relief by way of an injunction if the other party hereto breaches or threatens to breach any provision of this Section 4.2.

5. **DISCLAIMER**

5.1 Except as specifically set forth herein, Seller shall not be deemed to have made any representation or warranty to Buyer with respect to the Transition Services, or with respect to any data, advertising or marketing services provided by or on behalf of Seller. Except as otherwise set forth in this Agreement or the Purchase Agreement, SELLER PROVIDES ALL TRANSITION SERVICES, DATA, EQUIPMENT, MATERIALS AND SUPPLIES "AS IS" WITHOUT WARRANTY OF ANY KIND. SELLER EXPLICITLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE TRANSITION SERVICES, EQUIPMENT (INCLUDING WITHOUT LIMITATION VOICE AND DATA LINES PROVIDED PURSUANT TO SECTION 2.1(C)) OR ANY SERVICES AND INFORMATION FURNISHED IN CONNECTION THEREWITH.

6. **LIMITATION OF LIABILITY**

IN NO EVENT SHALL SELLER BE LIABLE FOR LOST PROFITS OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. **INDEMNIFICATION**

7.1 Indemnification by Seller.

(a) Indemnification. Seller shall indemnify and hold Buyer harmless against any losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising from:

(i) the gross negligence or intentional misconduct of Seller in connection with: (A) the provision of any Transition Services, or (B) any other actions or inactions of Seller in connection therewith; or

(ii) the (a) breach by Seller of any of its obligations under Sections 2.1(c) or 4 hereof or (b) material breach by Seller of any of its other obligations hereunder.

(b) Defense. With respect to third party claims, if notified promptly in writing of any action brought against Buyer based on a claim described in Section 7.1(a) above, Seller shall defend such action at its expense and pay all costs, damages and settlements finally awarded in such action or settlement which are attributable to such claim. Seller shall have sole control of the defense of any such action and all negotiations for its settlement or compromise, provided such settlement or compromise includes an unconditional release of Buyer and any of its affiliates from all liability with respect to such claim in form and substance reasonably satisfactory to Buyer. Buyer shall reasonably cooperate with Seller in the defense of such claim, and may be represented, at Buyer' expense, by counsel of Buyer' selection.

7.2 Indemnification by Buyer.

(a) Buyer shall indemnify and hold Seller harmless against any losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) arising from:

(i) the gross negligence or intentional misconduct of Buyer in connection with: (A) the receipt or use of any Transition Services, or (B) any other actions or inactions of Buyer in connection therewith; or

(ii) the (a) breach by Buyer of any of its obligations under Section 4 hereof or (b) material breach by Buyer of any of its other obligations hereunder.

(b) With respect to third party claims, if notified promptly in writing of any action brought against Seller based on a claim described in Section 7.2(a) above, Buyer shall defend such action at its expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. Buyer shall have sole control of the defense of any such action and all negotiations for its settlement or compromise, provided such settlement or compromise includes an unconditional release of Seller and any of its affiliates from all liability with respect to such claim in form and substance reasonably satisfactory to Seller. Seller shall reasonably cooperate with Buyer in the defense of such claim, and may be represented, at Seller's expense, by counsel of Seller's selection.

8. **TERM AND TERMINATION**

8.1 Term. Unless earlier terminated in accordance with Section 8.2 below, this Agreement shall be in effect for the period beginning on the Effective Date and ending six (6) months thereafter (the "Transition Period"). Unless the parties agree otherwise, upon termination of this Agreement, Buyer will no longer be entitled to, and the Seller will no longer be obligated to provide, any Transition Services.

8.2 Termination.

(a) This Agreement may be terminated by either party if the other party (the "Defaulting Party") has materially breached its obligations under this Agreement and if the Defaulting Party has not cured such default within ten (10) days following the date on which the other party (the "Notifying Party") has given written notice specifying the facts constituting the default. Notwithstanding the foregoing sentence, this Agreement shall not be terminated due to a default by the Defaulting Party if such default is directly caused by a breach of this Agreement by the Notifying Party.

(b) Buyer may terminate this Agreement with respect to any Transition Services other than the Sublease at any time upon fifteen (15) days prior written notice to Seller

(c) Upon termination or expiration of this Agreement, all rights and obligations of the parties under this Agreement shall cease and be of no further force or effect, except that the provisions of Sections 4, 5, 6, 7 and 9 of this Agreement, and Buyer's obligation to pay any additional amounts accrued pursuant to Section 3, shall survive any such termination or expiration.

9. **GENERAL**

9.1 General Terms. The General Provisions set forth in Sections 10.3, 10.4, 10.5, 10.6, 10.7, 10.8, 10.9, 10.10, 10.11, 10.12, 10.13 and 10.14 of the Purchase Agreement are incorporated herein by reference.

9.2 Entire Agreement; Amendment. This Agreement contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and supersedes all prior arrangements, understandings, proposals, prospectuses, projections and related materials with respect thereto, including without limitation, the Memorandum of Understanding between the parties hereto dated October 7, 2002.

IN WITNESS WHEREOF, Seller and Buyer have duly executed this Agreement as of the day and year first above written.

SNAP APPLIANCE, INC. f/k/a
BROADBAND STORAGE, INC.

By: /s/ ERIC L. KELLY

Print Name: Eric L. Kelly

Title: CEO

Date: _____

QUANTUM CORPORATION

By: /s/ LARRY ORECKLIN

Print Name: Larry Orecklin

Title: President, SSG

Date: _____

EXHIBIT A

SAMPLE PAGE REFERENCING DETAILED POS REPORT

Summary by Disti as of Sunday, Oct. 20 (week 3)

UNITS	LAST WEEK'S POS	PRIOR WEEK'S POS	QTD POS TOTAL	PRIOR WEEK'S ENDING INV	REPORTING WEEK'S ENDING INV	3 WEEK POS ROLLING AVERAGE	LAST QTR'S POS 13 WEEK AVG	WKS-ROLLING 3 WK AVG	WKS- FQ2 AVG
Arrow	-	1	4	5	8	1	1	8.0	13.3
Bell	145	71	390	1,693	1,546	130	170	11.9	9.1
Ingram	103	106	337	590	498	111	100	4.5	5.0
Tech Data	67	78	225	323	252	74	72	3.4	3.5
TOTAL	**315**	**256**	**956**	**2,611**	**2,304**	**316**	**343**	**7.3**	**6.7**

DOLLARS	LAST WEEK'S POS	PRIOR WEEK'S POS	QTD POS TOTAL	PRIOR WEEK'S ENDING INV	REPORTING WEEK'S ENDING INV	3 WEEK POS ROLLING AVERAGE	LAST QTR'S POS 13 WEEK AVG	WKS-ROLLING 3 WK AVG	WKS- FQ2 AVG
Arrow	-	3,400	30,804	74,920	87,820	10,268	2,713	8.6	32.4
Bell	258,988	123,167	725,132	2,886,844	2,622,948	241,712	322,354	10.9	8.1
Ingram	182,680	170,139	547,974	1,357,950	1,181,440	182,657	238,304	6.5	5.0
Tech Data	118,847	134,621	395,287	458,639	324,015	131,763	105,906	2.5	3.1
TOTAL	**560,515**	**431,327**	**1,699,197**	**4,778,353**	**4,216,223**	**566,400**	**669,277**	**7.4**	**6.3**

EXHIBIT B

SUBLEASE

Available upon request.

EXHIBIT C

Additional Transition Services

Representative	Date Transition Services to be Provided (M-F; excluding holidays)	Transition Service	Rate; Fee
Bill Dwyer	October 28 – December 27	Customer service and support	$70/hour, 8 hours/day M-F for 9 weeks = $25,200
Anthony Cisneros	October 28 – November 27	IT support	$70/hour, 8 hours/day M-F = $12,320
Dennis Kiyabu	October 28 – November 19 and December 4 – 20	IT support	$70/hour, 8 hours/day M-F = $16,800

EXHIBIT D

MARKETING SERVICES

Distribution and Direct Marketers' Expenses

From Disti Page	$ 28,056
From Direct Marketer Page	$ 75,956
GRAND TOTAL	**$ 104,012**

Marketing Services					**CQ4**	**Snap Portion**	
Account	Activity	Ad Size	Date	Feature/ Description	Cost	Notes/Comments	
PC Connection	PC1002 (part of 1/2 page)	0.25	October	Guardian 4400 & 14000	$5,000		
PC Connection	PC1002 (part of 1/2 page)	0.25	October	SuperLoader & M1500	$5,000		
PC Connection	PC1102	0.25	November	Guardian 4400 & 14000	$5,000	Bill back to Snap	$ 5,000

PC Connection	PC1102	0.25	November	SuperLoader & M1500	$5,000		
PC Connection	PC1202	0.25	December	Guardian 4400 & 14000	$5,000	Bill back to Snap	$ 5,000
PC Connection	PC1202	0.25	December	SuperLoader & M1500	$5,000		
PC Connection	Vendor Cubes (VCq402)		TBD	Table top trainings at all 4 locations 1 per month	$4,500	Split with Snap	$ 2,250
Pc Connection	Discretionary funds for Push/pull MRKT				$5,500		
PC Connection Total	**CQ4 40K 1/2 page AD**			4400 & SuperLoader	**$40,000**		
MicroWarehouse	Trainings and Floor Days		TBD	Vendor rows at all locations	Free		
MicroWarehouse	Miscellaneous		TBD	New projects	$5,000		
MicroWarehouse	Micro 112	1 page	09/30/02	M1500, SuperLoader, All Snap Servers & Guardian	$13,548		
MicroWarehouse	Micro 113	1/2 page	10/28/02	M2500, SuperLoader, All Snap Servers & Guardian	$7,475	Split with Snap	$ 3,737
MicroWarehouse	Micro 114	1/2 page	11/25/02	M1500, SuperLoader, All Snap Servers & Guardian	$7,475	Split with Snap	$ 3,737
MicroWarehouse	Datacomm 98	1	10/07/02	M2500, SuperLoader, All Snap Servers & Guardian	$13,432		
MicroWarehouse	Datacomm 99	1	11/04/02	M2500, SuperLoader, All Snap Servers & Guardian	$13,432	Split with Snap	$ 6,716
MicroWarehouse	Datacomm 100	1	12/02/02	M2500, SuperLoader, All Snap Servers & Guardian	$13,432	Split with Snap	$ 6,716
MicroWarehouse Total	**CQ4 1/2 page ads 65K**				**$73,794**		
Global	Co-op Accrual				$3,000		
Global	Trainings & Table top TBD		TBD		free		
Global Total					**$3,000**		
CompuCom	Promotions & Incentives		Oct. - Dec	Customize a Quantum Program to fit into a CompuCom promotion for the Field Reps. Announce to Reps, post on CompuCom Intravision Site	$1,500		
CompuCom	Wednesday Wire Comm. Qty: 5		Oct. - Dec	E-Mail Blast to the Field- Qty: 1 Product announcement and Quantum Contact information	$3,500		
CompuCom	POS Reporting		Oct. - Dec		$3,000		
CompuCom	Training		Oct. - Dec	Floor Days- Dallas, Mason & Field Webcast	$6,000		
CompuCom	CompuCom Storage Microsite		Oct. - Dec		$2,000		
CompuCom					**$16,000**		
EAST Total					**$132,794**		
CDW	Solutions Catalog - Holiday I	1 page	10/16/2002	SuperLoader, M1500, Guardian 4400 & 14000, all snap servers	$20,000		
CDW	Solutions Catalog - Holiday II	1 page	11/20/2002	SuperLoader, M1500, Guardian 4400 & 14000, all snap servers	$20,000	Split with Snap	$ 10,000
CDW	NetComm fall II	1.5 pages	9/25/2002	SuperLoader, M1500, Guardian 4400 & 14000, all snap servers	$24,000		
CDW	NetComm Holiday I	1.5 pages	10/30/2002	SuperLoader, M1500, Guardian 4400 & 14000, all snap servers	$24,000	Split with Snap	$ 12,000
CDW	CDW-G Solutions - Fall II	1 page	10/9/2002	SuperLoader, M1500, Guardian 4400 & 14000, all snap servers	$15,000		
CDW	CDW-G Solutions -Holiday I	1 page	11/13/2002	SuperLoader, M1500, Guardian 4400 & 14000, all snap servers	$15,000	Split with Snap	$ 7,500
CDW	Discretionary Funds				$5,000		
CDW Total					**$123,000**		
Comark	Floor Days		TBD		$3,000		
Comark	Vendor Expo		11/13/2002	*In Chicago*	$3,000		
Comark Total					**$0**		
CENTRAL Total					**$123,000**		
Insight	Base Line B			Presence on the web, Manufacturer's showcase, training 20 minute pres.in Tempe 11/7/02 and Montreal 11/5/02	$10,000	Split with Snap	$ 5,000
Insight	Vendor Forum		11/5/2002	mandatory attendance	$10,000	Split with Snap	$ 5,000
Insight	Take 5		nov.		$3,000		
Insight	Vendor Expo						
Insight	Government				$5,000		
Insight Total				one contract for Insight & Comark	**$29,000**		
PC Mall	Catalog 109 October	qtr page		SuperLoader & Guardian 4400	$10,000		
PC Mall	Catalog 110 November	qtr page		SuperLoader & Guardian 4400		Split with Snap	$ 1,650
PC Mall	Catalog 111 December	qtr page		SuperLoader & Guardian 4400		Split with Snap	$ 1,650
PC Mall	NSSL Forum		TBD		$2,000		
PC Mall	Internet spotlight				included		
PC Mall	Email				included		
PC Mall Total					**$12,000**		
Dell	POS Reporting				$3,000	*Split with Snap*	$ -
Dell	Presales Technical Support Team Lunch And Learn				$2,500		
					$500		
Dell Total					**$5,500**		
WEST Total					**$46,500**		
All Direct MRKTRS	Giveaways / Miscellaneous				$10,000		
	TBD Push/pull/ Direct Mail			Miscellaneous Spiffs/Push Pull Programs	$25,000		
Total Miscellaneous					**$35,000**		
ALL U.S. TOTAL					**$337,294**		**$ 75,956**

FMA Disty (6531-1000)			**Snap Portion**	
Ingram Micro				
HES Platinum Vendor Program (Yr long prog)	33,750		$	11,306
Sales Champion SE in Buffalo (yr long Prog)	21,250	Up for discussion	$	7,119
Miscellaeous Push Pull TBD	5,500			
Spiffs/ focus days	4,500			
Ingram Micro Total	**65,000**			
Tech Data				
Storage Program (Yr long prog) Q2 Pmt	17,500		$	5,863
Tech Data Deals of the Day $1000	3,000			
Shared SE Kim Snyder (Yr long prog)	11,250	Up for discussion	$	3,769
Quantum - re-Attach challenge Spiff Program	1,500	Ends Oct 28		
Purchase list for Direct Mail	6,600			
Broadcast email	2,500			
TD Latin America - Latin America Foundation Program	2,625			
SuperLoader Seed				
Miscellansuos TD Activities	3,000			
Tech Data Total	**47,975**			
Arrow		Snap not going to use them		

Included in Storage Program
Focus Page In Nov.
Education Fan Fare Nov. 19th Sales Traianing
CRN Ad sept. 9th SuperLoader Business Solution Nov. 4th ATL SuperLoader & S
sales incentive for snap
SuperLoader Amazon.com gift certificate giveaway

Enterprise Storage Solution Program (Yr long prog)	9,125		
E-mail Blast to Resellers	2,450		
Product Roadmap	1,500		
VAR Direct Mail - List purchase Cost	3,500		
Sales Promotion - Spiff (Guardian & SuperLoader)	5,000	Ends Oct 28	
Training in MN, SC, OEM 3 regions (Chicago, Irvine)	2,500		
Miscellaneous TBD	3,500		
Arrow Total	**27,575**		
Bell Micro			
Message on Hold (SuperLoader Msg)	3,000		
Presidents Club	6,667		Not interested per EK
Web Advertising and Product Listing on Showcase	2,500	100% Tape focused	
Spiff for President's Club	6,000		Not interested per EK
Bell Canada Marketing Program	5,000		
Dedicated PMA	9,000	Up for discussion	Not interested per EK
Shirt and Sweatshirts/Giveaways	2,500		
email blast/ edeal	3,000		
VAR Business Ad	1,500	100% Tape focused	
VAR Direct Mail - List purchase Cost	4,400		
Focus Day Training	5,000		
Training/Focus Day- Alabama/MN/San Jose/Philly	1,500		
Bell Micro Total	**50,067**		
SkyData		Snap not going to use them	
GTEC	10,000		
Miscellaneous	1,500		
SkyData Total	**11,500**		
All Distributors			
Giveaways - shirts/ promo items	12,000		
Miscellaneous	35,000		
All Distributors Total	**47,000**		
Grand Total Distribution	**249,117**		
$250 K AOP Budget		**$ 28,056**	

SENIOR SECURED PROMISSORY NOTE

$2,354,788

October 28, 2002
Irvine, California

FOR VALUE RECEIVED, SNAP APPLIANCE, INC. f/k/a BROADBAND STORAGE, INC., a Delaware corporation ("Company"), promises to pay to Quantum Corporation, a Delaware corporation ("Holder"), or its registered assigns, the principal sum of Two Million Three Hundred Fifty Four Thousand Seven Hundred Eighty Eight Dollars ($2,354,788), or such lesser amount as shall equal the outstanding principal amount hereof, together with simple interest from the date of this Note on the unpaid principal balance at a rate equal to six percent (6.0%) per annum, computed on the basis of the actual number of days elapsed and a year of 360 days. All unpaid principal, together with any then unpaid and accrued interest and other amounts payable hereunder, shall be due and payable on the earlier of (i) the dates and in the amounts set forth in Section 2 below, or (ii) when, upon or after the occurrence of an Event of Default (as defined below), such amounts are declared due and payable by Holder or made automatically due and payable in accordance with the terms hereof.

THE OBLIGATIONS DUE UNDER THIS NOTE ARE SECURED BY A SECURITY AGREEMENT DATED AS OF THE DATE HEREOF AND EXECUTED BY COMPANY IN FAVOR OF HOLDER. ADDITIONAL RIGHTS OF HOLDER ARE SET FORTH IN THE SECURITY AGREEMENT.

The following is a statement of the rights of Holder and the conditions to which this Note is subject, and to which Holder, by the acceptance of this Note, agrees:

(1) Definitions. As used in this Note, the following capitalized terms have the following meanings:

(a) "Account" means any "account," as such term is defined in the UCC, now owned or hereafter acquired by Company or in which Company now holds or hereafter acquires any interest.

(b) "Account Control Agreement" means an agreement acceptable to Holder which perfects via control Holder's security interest in Company's Deposit Accounts and/or accounts holding securities.

(c) "Accounts Receivables" means Accounts arising from the sale or lease of goods or the performance of services or otherwise, for which the owner of the Accounts has a right to the payment of money.

(d) "Accounts Receivables Line of Credit" means a credit arrangement with a financial institution who is not an Affiliate of the Company under which the amount of money available to be borrowed is determined in accordance with a borrowing base formula that includes no more than 80% of Company's outstanding Accounts Receivables.

(e) "Affiliate" with respect to any Person, means (i) any director, officer or employee of such Person, (ii) any Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person, and (iii) any Person beneficially owning or holding 5% or more of any class of voting securities of such Person or any corporation of which such Person beneficially owns or holds, in the aggregate, 5% or more of any class of voting securities. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The term "Affiliate," when used herein without reference to any Person, shall mean an Affiliate of Company.

(f) "Asset Purchase Agreement" shall mean the Asset Purchase Agreement, between Company and Holder, dated October 7, 2002, as amended, supplemented or otherwise modified from time to time.

(g) "Bank of America Payroll Account" means Company's Payroll Account with Bank of America that exists as of the date hereof.

(h) "Cap Amount" shall have the meaning provided in the Asset Purchase Agreement.

(i) "Collateral" shall have the meaning provided in the Security Agreement.

(j) "Company" includes the corporation initially executing this Note and any Person which shall succeed to or assume the obligations of Company under this Note.

(k) "Default Rate" means the per annum rate of interest equal to five percent (5%) over the rate of interest designated in the introductory paragraph of this Note and applicable when fees or other amounts required to be paid by Company under the Transaction Documents remain unpaid after such amounts are due.

(l) "Deposit Accounts" means any "deposit accounts," as such term is defined in the UCC, now owned or hereafter acquired by Company or in which Company now holds or hereafter acquires any interest.

(m) "Equity Securities" of any Person shall mean (a) all common stock, preferred stock, participation, shares, partnership interests or other equity interests in and of such Person (regardless of how designated and whether or not voting or non-voting) and (b) all warrants, options, convertible debt and other rights to acquire any of the foregoing.

(n) "Event of Default" has the meaning given in Section 6 hereof.

(o) "Exercise of Company's Offset Right" has the meaning given in Section 6 hereof.

(p) "Final Series B Preferred Closing" shall mean the earlier to occur of (i) the 180th calendar day following the First Series B Preferred Closing, or (ii) (A) with respect to Section 4(f) hereof, the date on which Company closes the sale of its Series B Preferred that is subsequent to the First Series B Preferred Closing and that generates proceeds, when added to the aggregate proceeds of all prior sales of Company's Series B Preferred made after the date of this Note, equal to or in excess of ten million dollars ($10,000,000), and (B) with respect to Sections 3 and 6(h) hereof, the date on which Company closes the final sale of its Series B Preferred. For the avoidance of doubt, "Final Series B Preferred Closing" shall in no event mean a date that is later than the 180th calendar day following the First Series B Preferred Closing.

(q) "First Payment" has the meaning given in Section 2 hereof.

(r) "First Series B Preferred Closing" shall mean the date on which Company closes the first sale of its Series B Preferred.

(s) "GAAP" shall mean generally accepted accounting principles as in effect in the United States of America from time to time.

(t) "Holder" shall mean the Person specified in the introductory paragraph of this Note or any Person who shall at the time be the registered holder of this Note.

(u) "Indebtedness" shall mean and include the aggregate amount of, without duplication (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business), (iv) all obligations with respect to capital leases, (v) all obligations created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person, (vi) all reimbursement and other payment obligations, contingent or otherwise, in respect of letters of credit and similar surety instruments, and (vii) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (vi) above.

(v) "Lien" shall mean, with respect to any property, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on such property or the income therefrom, including, without limitation, the interest of a vendor or lessor under a conditional sale agreement, capital lease or other title retention agreement, or any agreement to provide any of the foregoing, and the filing of any financing statement or similar instrument under the Uniform Commercial Code or comparable law of any jurisdiction.

(w) "Losses" shall have the meaning provided in the Asset Purchase Agreement.

(x) "Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by Company to Holder of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of this Note and the other Transaction Documents, including, all interest, fees, charges, expenses, reasonable attorneys' fees and costs and accountants' fees and costs chargeable to and payable by Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U. S. C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

(y) "Payroll Account" means any Deposit Account of Company that is established to execute transactions exclusively related to Company's payroll obligations to its employees.

(z) "Permitted Indebtedness" means (i) Indebtedness of Company to Holder; (ii) Indebtedness arising from the endorsement of instruments in the ordinary course of business; (iii) Indebtedness existing on the date hereof; (iv) Subordinated Indebtedness; and (v) Indebtedness of Company incurred in connection with an Accounts Receivables Line of Credit, provided that such Accounts Receivables Line of Credit will allow for all payments pursuant to Sections 2 and 3 under this Note, provided further, the lender in the Accounts Receivables Line of Credit enters into an intercreditor agreement reasonably satisfactory to Holder. In addition, Company will use its best efforts to obtain terms under such Accounts Receivables Line of Credit that provide for the priority of the right of payment thereunder to be pari passu in priority with the right of payment under this Note.

(aa) "Permitted Liens" means (i) Liens for taxes not yet delinquent or Liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established; (ii) Liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, such as carriers', warehousemen's, materialmen's and mechanics' Liens and other similar Liens arising in the ordinary course of business which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings; (iii) Liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, and mechanic's Liens, carrier's Liens and other Liens to secure the performance of tenders, statutory obligations, contract bids, government contracts, performance and return of money bonds and other similar obligations, incurred in the ordinary course of business, whether pursuant to statutory requirements, common law or consensual arrangements; and (iv) Liens granted in connection with the Permitted Indebtedness permitted under clause (v) of the definition of Permitted Indebtedness, provided that Company uses best efforts to obtain terms under such Accounts Receivables Line of Credit that provide for the priority of any security interest granted in connection therewith to be pari passu in priority with the Lien granted by Company to Holder under the Security Agreement.

(bb) "Person" shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.

(cc) "Second Payment" has the meaning given in Section 2 hereof.

(dd) "Security Agreement" shall mean that certain Security Agreement, between Company and Holder, dated of even date herewith, as amended, supplemented or otherwise modified from time to time.

(ee) "Series B Preferred" shall have the meaning provided in the Asset Purchase Agreement.

(ff) "Subordinated Indebtedness"means Indebtedness subordinated to the Obligations on terms and conditions reasonably acceptable to Holder, including without limiting the generality of the foregoing, subordination of such Indebtedness in right of payment to the prior payment in full of the Obligations, the subordination of the priority of any Lien at any time securing such Indebtedness to the Lien of Holder in the collateral covered thereby, and the subordination of the rights of the holder of such Indebtedness to enforce its junior Lien following an Event of Default hereunder pursuant to a written subordination agreement approved by Lender in its sole and good faith discretion.

(gg) "Subsidiary" is for any Person, or any other business entity of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by the Person or one or more Affiliates of the Person.

(hh) "Third Payment" has the meaning given in Section 2 hereof.

(ii) "Transaction Documents" shall mean this Note and the Security Agreement.

(jj) "UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California; *provided*, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Holder's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions. Unless otherwise defined herein, terms that are defined in the UCC and used herein shall have the meanings given to them in the UCC.

(2) Principal and Interest. The principal amount of this Note shall be payable in three (3) payments as follows: (i) the first payment shall be due and payable on the final business day of the month which is the seventh monthly anniversary of the First Series B Preferred Closing and shall be in the amount of Seven Hundred Eight Four Thousand Nine Hundred Twenty Nine Dollars ($784,929) plus all accrued and unpaid interest thereon (the "First Payment"), (ii) the second payment shall be due and payable on the final business day of the month which is the twelfth monthly anniversary of the First Series B Preferred Closing and shall be in the amount of Seven Hundred Eight Four Thousand Nine Hundred Twenty Nine Dollars ($784,929) plus all accrued and unpaid interest thereon (the "Second Payment"), and (iii) the third payment shall be due and payable on the final business day of the month which is the eighteenth monthly anniversary of the First Series B Preferred Closing and shall be in the amount of Seven Hundred Eight Four Thousand Nine Hundred Twenty Nine Dollars ($784,929) plus all accrued and unpaid interest thereon (the "Third Payment"), at which time all outstanding principal and accrued and unpaid interest shall be due and payable in full (unless such amounts shall have become due and payable at an earlier date upon or after the occurrence of an Event of Default). Company shall pay interest at a per annum rate equal to the Default Rate on any fees or other amounts required to be paid by Company under the Transaction Documents which remain unpaid after such amounts are due. If an Event of Default has occurred and the Obligations have been accelerated (whether automatically or by Holder's election), Company shall pay interest on the aggregate, outstanding accelerated balance hereunder from the date of the Event of Default until all Events of Default are cured, at a per annum rate equal to the Default Rate.

(3) Prepayment. Company may not prepay this Note except in accordance with the terms of this Section 3:

(a) *Optional Discounted Prepayment*. Prior to the 30th calendar day following the Final Series B Preferred Closing, so long as no Event of Default has occurred, Company, at its option, may prepay the entire loan, in whole but not in part, by repaying to Lender the sum of Two Million Two Hundred Thousand Dollars ($2,200,000), plus all amounts owed for any expenses due under this Note, subject to any payments made pursuant to Section 5(a) hereof.

(b) *Other Optional Prepayment*. On or after the 30th calendar day following the Final Series B Preferred Closing, Company, upon five (5) calendar days prior written notice to Holder, may prepay this Note, in whole or in part, by paying (i) all outstanding principal payments, subject to any payments made pursuant to Section 5(a) hereof,due prior to the date of prepayment, and (ii) all accrued and unpaid interest to the date of prepayment; provided that any such prepayment will be applied first to the payment of expenses due under this Note, second to interest accrued on this Note and third, if the amount of prepayment exceeds the amount of all such expenses and accrued interest, to the payment of principal of this Note.

(4) Affirmative Covenants. While any amount is outstanding under this Note, Company will do all of the following:

(a) *Government Compliance* . Company will maintain its and all Subsidiaries' legal existence and good standing in its jurisdiction of formation and maintain qualification in each jurisdiction in which it conducts business or where it keeps Collateral, except where the failure to so maintain could not be reasonably be expected to have a material adverse effect. Company will comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.

(b) *Financial Statements, Reports, Certificates* . Company will deliver to Holder: (i) as soon as available, but no later than 14 calendar days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Company's consolidated operations during the period, in a form certified by the Chief Financial Officer of Company, copies of which may be delivered to Holder by electronic mail to: Mary.Springer@Quantum.com; provided, to the extent that Company's obligations to deliver monthly financial statements under an Accounts Receivables Line of Credit are less than 14 calendar days after the last day of each month, Company shall deliver to Holder the financial statements required under this subsection (i) no later than the required delivery times for monthly financials thereunder (but in any event as soon as available); (ii) as soon as available, but no later than 150 calendar days after the last day of Company's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm; provided, to the extent that Company's obligations to deliver audited annual financial statements under an Accounts Receivables Line of Credit within less than 150 calendar days after the last day of Company's fiscal year, Company shall deliver to Holder the financial statements required under this subsection (ii) no later than the required delivery times for annual financials thereunder (but in any event as soon as available); (iii) as soon as available, but no later than 30 calendar days after the last day of Company's fiscal year, a copy of Company's annual financial projections, in form and substance acceptable to Holder; and (iv) a prompt report of any legal actions pending or threatened against Company or any Subsidiary that could result in damages or costs to Company or any Subsidiary of $250,000 or more.

(c) *Company's Books and Inspection Rights*. Company shall keep or will cause to be kept in a safe and secure manner, at its chief executive office, all necessary, proper, and accurate books, records, correspondence and other documents or instruments, related to, concerning, or evidencing the Collateral. Holder and its representatives shall have the right, at any time during normal business hours, upon reasonable prior notice, to visit and inspect the Collateral and the books and records related thereto, and make abstracts therefrom, and to discuss the same with Company's officers and independent public accountants.

(d) *Taxes* . Company will make, and cause each Subsidiary to make, timely payment of all material federal, state, and local taxes or assessments and will deliver to Holder, on demand, appropriate certificates attesting to the payment.

(e) *Notice of Defaults*. Company shall, promptly upon the occurrence thereof, give Holder written notice of the occurrence of any Event of Default hereunder or any event of default with respect to any other Indebtedness.

(f) *Minimum Unrestricted Cash Balance Financial Covenant* . At any time following the Final Series B Preferred Closing, Company will maintain as of the last day of each month in its Deposit Accounts or accounts holding securities for which Holder has received a fully executed Account Control Agreement a minimum unrestricted cash balance in the following amounts: (i) prior to receipt by Holder of the First Payment Three Million Dollars ($3,000,000) in the aggregate, (ii) following receipt by Holder of the First Payment and prior to receipt by Holder of the Second Payment Two Million Five Hundred Thousand Dollars ($2,500,000) in the aggregate, and (iii) following receipt by Holder of the Second Payment and prior to receipt by Holder of the Third Payment Two Million Dollars ($2,000,000) in the aggregate.

(g) *Account Control Agreements.* As soon as practicable, but not later than within 5 calendar days from the date of this Note, Company will execute and deliver to Holder Account Control Agreements for all Deposit Accounts and accounts holding securities owned by Company other than the Bank of America Payroll Account, and will take all actions requested by Holder that Holder deems necessary to perfect its security interest in such accounts via control.

(5) Negative Covenants. While any amount is outstanding under this Note, without the prior written consent of Holder, Company shall not do any of the following:

(a) *Dispositions* . Convey, sell, lease, transfer or otherwise dispose of (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property outside the ordinary course of business without paying to Holder, in immediately available funds, at least 50% of the value of the aggregate proceeds (including all cash, securities, payment in-kind or other property) received by Company as consideration for the Transfer thereof net of any transaction expenses directly incurred in respect of such Transfer within 3 calendar days following such Transfer, which payment shall be applied to satisfy the Obligations in accordance with Section 3 hereof. Notwithstanding the foregoing, Company will not make any Transfer for less than fair market value or on terms less favorable to Company than would be obtained in an arm's length transaction.

(b) *Changes in Business, Ownership or Business Locations* . Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Company or reasonably related thereto. Company will not, without at least 15 calendar days prior written notice, relocate its chief executive office or add any new offices or business locations.

(c) *Mergers or Acquisitions* . Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person.

(d) *Indebtedness* . Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, except for Permitted Indebtedness.

(e) *Encumbrance* . Create, incur, or allow any Lien on any of its property, or permit any of its Subsidiaries to do so or permit any Collateral not to be subject to the first priority security interest granted here, except for Permitted Liens.

(f) *Transactions with Affiliates* . Directly or indirectly enter into or permit any material transaction with any Affiliate except transactions that are in the ordinary course of Company's business, on terms no less favorable to Company than would be obtained in an arm's length transaction with a non-affiliated Person.

(g) *Compliance* . Become an "investment company" or a company controlled by an "investment company," under the Investment Company Act of 1940 or undertake as one of its important activities extending credit to purchase or carry margin stock, or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if such action could reasonable be expected to have a material adverse effect on Company's business or operations or would reasonably be expected to cause a Material Adverse Change (as defined in Section 6(j) below), or permit any of its Subsidiaries to do so.

(h) *Dividends, Redemption's, Etc.* (i) Pay any dividends or make any distributions on its equity securities; (ii) purchase, redeem, retire, defease or otherwise acquire for value any of its equity securities (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements or similar arrangements in an aggregate amount not to exceed $50,000 in any calendar year); (iii) return any capital to any holder of its equity securities; (iv) make any distribution of assets, Equity Securities, obligations or securities to any holder of its Equity Securities; or (v) set apart any sum for any such purpose.

(i) *Maintenance of Accounts.* (i) Maintain any Deposit Account or account holding securities owned by Company except (A) accounts with respect to which Holder is able to take such actions as it deems necessary to obtain a perfected security interest in such accounts through one or more Account Control Agreements, or (B) the Bank of America Payroll Account, provided (1) Company makes no deposits to the Bank of America Payroll Account outside the ordinary course of business, and (2) Company will terminate the Bank of America Payroll Account no later than November 18, 2002; or (ii) grant or allow any other Person (other than Holder) to perfect a security interest in, or enter into any agreements with any Persons (other than Holder) accomplishing perfection via control as to, any of its deposit accounts or accounts holding securities, except in connection with an Accounts Receivables Line of Credit.

(6) Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under the Transaction Documents:

(a) *Failure to Pay*. Company shall fail to pay when due any principal or interest payment on the due date hereunder. Notwithstanding the foregoing, it shall not be an Event of Default under Section 6(a) of this Note to the extent that Company's failure to pay any principal or interest payment due and payable under Section 2 of this Note, in whole or in part, is a result of the exercise by Company of its right to offset Losses owed by Holder to Company under the Asset Purchase Agreement against the amounts owed under this Note in accordance with Section 7.5(c) of the Asset Purchase Agreement (after providing notice to Holder and working with Holder in good faith towards a resolution of any claim associated with such Losses in accordance with the terms thereunder, the "Exercise of Company's Offset Right") (which right, to the extent limited to the Cap Amount, shall in no event permit Company to offset amounts owed under this Note in excess of the Cap Amount), provided, however, to the extent that the amount offset pursuant to the Exercise of Company's Offset Right is less than the amount then due hereunder, failure by Company to pay any such difference on the date due and payable under Section 2 of this Note shall be an Event of Default under this Section 6(a). Notwithstanding the preceding sentence, if, following the Exercise of Company's Offset Right, a mediator or arbitrator, as the case may be, pursuant to the dispute resolution provisions of Section 10.14 of the Asset Purchase Agreement, makes a determination that the amount of offset that Company actually claimed pursuant to the Exercise of Company's Offset Right is greater than the amount of offset which Company was properly entitled to claim pursuant thereto, the failure by Company to pay the amount of such deficiency then due hereunder, including accrued interest, by the end of the next business day following such determination shall be an Event of Default under this Section 6(a), *provided*, *however*, any determination by such mediator or arbitrator, as the case may be, that the amount of offset that Company actually claimed pursuant to the Exercise of Company's Offset Right is greater by 15% or more than the amount of offset which Company was properly entitled to claim pursuant thereto (excluding all amounts relating to claims that Company and Holder agreed to settle) will be an Event of Default under this Section 6(a); or

(b) *Breaches of Certain Covenants.* Company shall fail to observe or perform any covenant, obligation, condition or agreement set forth in Sections 4(b), 4(f), 4(g), 5(a) and 5(i) of this Note; or

(c) *Breaches of Other Covenants.* Company shall fail to observe or perform any other covenant, obligation, condition or agreement contained in the Transaction Documents (other than those specified in Sections 6(a), 6(b), 6(f), 6(g) and 6(j) of this Note) and such failure shall continue for five (5) calendar days; or

(d) *Representations and Warranties.* Any representation, warranty, certificate, or other statement (financial or otherwise) made or furnished by or on behalf of Company to Holder in writing in connection with this Note or any of the other Transaction Documents, or as an inducement to Holder to enter into this Note and the other Transaction Documents, shall be false, incorrect, incomplete or misleading in any material respect when made or furnished; or

(e) *Other Payment Obligations.* Company shall (i) fail to make any payment when due under the terms of any bond, debenture, note or other evidence of Indebtedness to be paid by Company (excluding this Note but including any other evidence of Indebtedness of Company to Holder) and such failure shall continue beyond any period of grace provided with respect thereto, or (ii) default in the observance or performance of any other agreement, term or condition contained in any such bond, debenture, note or other evidence of Indebtedness, and the effect of such failure or default is to cause, or permit the holder or holders thereof to cause, Indebtedness in an aggregate amount of Two Hundred Fifty Thousand Dollars ($250,000) or more to become due prior to its stated date of maturity; or

(f) *Voluntary Bankruptcy or Insolvency Proceedings.* Company shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator or custodian of itself or of all or a substantial part of its property, (ii) be unable, or admit in writing its inability, to pay its debts generally as they mature, (iii) make a general assignment for the benefit of its or any of its creditors, (iv) be dissolved or liquidated, (v) become insolvent (as such term may be defined or interpreted under any applicable statute), (vi) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any Bankruptcy, insolvency or other similar law now or hereafter in effect or consent to any such relief or to the appointment of or taking possession of its property by any official in an involuntary case or other proceeding commenced against it, or (vii) take any action for the purpose of effecting any of the foregoing; or

(g) *Involuntary Bankruptcy or Insolvency Proceedings.* Proceedings for the appointment of a receiver, trustee, liquidator or custodian of Company or of all or a substantial part of the property thereof, or an involuntary case or other proceedings seeking liquidation, reorganization or other relief with respect to Company or the debts thereof under any Bankruptcy, insolvency or other similar law now or hereafter in effect shall be commenced and an order for relief entered or such proceeding shall not be dismissed or discharged within thirty (30) calendar days of commencement; or

(h) *Change of Control.* At any time following the Final Series B Preferred Closing, any person or group of persons (with in the meaning of Section 13 or 14 of Securities Exchange Act of 1934, as amended) shall acquired beneficial ownership (within the meaning of Rule 13d-3 promulgated by the Securities and Exchange Commission under said Act) of 40% or more of the outstanding shares of common stock of Company as held as of the Final Series B Preferred Closing; or during any period of twelve consecutive calendar months, individuals who were directors of Company on the first day of such period or who were successors to such directors in ordinary course shall cease to constitute a majority of the board of directors of Company; or

(i) *Judgments.* A final judgment or order for the payment of money in excess of Two Hundred Fifty Thousand Dollars ($250,000) shall be rendered against Company and the same shall remain undischarged for a period of thirty (30) calendar days during which execution shall not be effectively stayed, or any judgment, writ, assessment, warrant of attachment, or execution or similar process shall be issued or levied against a substantial part of the property of Company and such judgment, writ, or similar process shall not be released, stayed, vacated or otherwise dismissed within thirty (30) calendar days after issue or levy; or

(j) *Material Adverse Change*. If there (i) occurs a material adverse change in the business, operations, or condition (financial or otherwise) of the Company, or (ii) is a material impairment of the prospect of repayment of any portion of the Obligations; or (iii) is a material impairment of the value or priority of Holder's security interests in the Collateral (the foregoing being defined as a "Material Adverse Change").

(k) *Transaction Documents.* Any Transaction Document or any material term thereof shall cease to be, or be asserted by Company, not to be, a legal, valid and binding obligation of Company enforceable in accordance with its terms or if the Liens of Holder in any of the assets of Company shall cease to be or shall not be valid, first priority perfected Liens, subject to Permitted Liens, or Company shall assert that such Liens are not valid, first priority and perfected Liens, subject to Permitted Liens.

(7) Rights of Holder upon Default. Upon the occurrence or existence of any Event of Default (other than an Event of Default, referred to in Sections 6(a), 6(b), 6(f), 6(g) and 6(j) of this Note) and at any time thereafter during the continuance of such Event of Default, Holder may, by written notice to Company, declare all outstanding Obligations payable by Company hereunder to be immediately due and payable without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. Upon the occurrence or existence of any Event of Default described in Sections 6(a), 6(b), 6(f), 6(g) and 6(j) of this Note, immediately and without notice, all outstanding Obligations payable by Company hereunder shall automatically become immediately due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in the other Transaction Documents to the contrary notwithstanding. In addition to the foregoing remedies, upon the occurrence or existence of any Event of Default, Holder may exercise any other right power or remedy granted to it by the Transaction Documents or otherwise permitted to it by law, either by suit in equity or by action at law, or both.

(8) Obligations Absolute. Subject to the provisions of Section 6(a) of this Note, the payment obligations of Company under this Agreement shall be absolute, unconditional and irrevocable under all circumstances whatsoever, including, without limitation, the following circumstances:

(a) any lack of validity or enforceability of all or any of the Transaction Documents;

(b) any amendment or waiver of or any consent to departure from all or any of the Transaction Documents;

(c) the existence of any claim, set-off, defenseor other rights which the Company may have at any time against Holder in connection with the Transaction Documents or any related or unrelated transaction;

(d) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(9) Successors and Assigns. Subject to the restrictions on transfer described in Sections 11 and 12 below, the rights and obligations of Company and Holder of this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

(10) Waiver and Amendment. Any provision of this Note may be amended, waived or modified upon the written consent of Holder.

(11) Transfer of this Note. Upon notice to Company thereof, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of Company. Prior to presentation of this Note for registration of transfer, Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and Company shall not be affected by notice to the contrary.

(12) Assignment. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by Company without the prior written consent of Holder, or by Holder to any Person who competes with Company in Company's line of business without the prior written consent of Company.

(13) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Company or Holder under this Note shall be by facsimile or in writing and sent by facsimile, mailed or delivered to each party at its facsimile number or its address set forth below (or to such other facsimile number or address as the recipient of any notice shall have notified the other in writing). All such notices and communications shall be effective (a) when sent by Federal Express or other overnight service of recognized standing, on the business day following the deposit with such service; (b) when mailed, by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (c) when delivered by hand, upon delivery; and (d) when sent by facsimile, upon confirmation of receipt.

Holder: Quantum Corporation
501 Sycamore Drive
Milpitas, California 95035
Attention: Mary Springer
Telephone: (408) 944-4000
Facsimile: (408) 944-4040

Company: Snap Appliance, Inc.
5141 California, Suite 200
Irvine, CA 92612
Attention: President
Telephone: (949) 737-6200
Facsimile: (949) 737-6201

(14) Payment. Payment shall be made in lawful tender of the United States.

(15) Usury. In the event any interest is paid on this Note which is deemed to be in excess of the then legal maximum rate, then that portion of the interest payment representing an amount in excess of the then legal maximum rate shall be deemed a payment of principal and applied against the principal of this Note.

(16) Expenses; Waivers. Company promises to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred in connection with any actions taken to collect under this Note whether or not suit is filed. Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

(17) Governing Law. This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California, or of any other state.

(18) Jury Trial. EACH OF COMPANY AND HOLDER, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS NOTE.

(19) Venue and Jurisdiction. Each of Companyand Holdersubmit to the exclusive jurisdiction of the State and Federal courts inSanta Clara County, California, which submission shall include, without limitation, consent to personal jurisdiction in any state or federal courts located in Santa Clara County, California, waiver of any objection to jurisdiction or venue in the aforesaid courts, and agreement not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Company has caused this Note to be issued as of the date first written above.

SNAP APPLIANCE, INC. f/k/a
BROADBAND STORAGE, INC.
a Delaware corporation
By: /s/ ERIC L. KELLY
Title: CEO

[Signature page to Senior Secured Promissory Note]

SECURITY AGREEMENT

This **SECURITY AGREEMENT**, dated as of October 28, 2002, is executed by SNAP APPLIANCE, INC. f/k/a BROADBAND STORAGE, INC., a Delaware corporation ("Grantor"), in favor of Quantum Corporation, a Delaware corporation ("Secured Party").

RECITALS

A. Grantor has executed a Senior Secured Promissory Note (the "Note") in favor of Secured Party pursuant to that certain Asset Purchase Agreement, dated as of the date hereof, by and between Grantor and Secured Party.

B. In order to induce Secured Party to extend the credit evidenced by the Note, Grantor has agreed to enter into this Security Agreement and to grant Secured Party the security interest in the Collateral described below.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor hereby agrees with Secured Party as follows:

1. Definitions and Interpretation. When used in this Security Agreement, the following terms shall have the following respective meanings:

"Account Control Agreement" shall have the meaning provided in the Note.

"Account Debtor" shall mean any person who is or who may become obligated to Grantor under, with respect to or on account of an Account.

"Accounts" shall have the meaning provided in the Note.

"Accounts Receivables" shall have the meaning provided in the Note.

"Accounts Receivables Line of Credit" shall have the meaning provided in the Note.

"Collateral" shall have the meaning given to that term in Section 2 hereof.

"Deposit Accounts" means any "deposit accounts," as such term is defined in the UCC, now owned or hereafter acquired by Grantor or in which Grantor now holds or hereafter acquires any interest.

"Documents" shall mean all instruments, files, records, ledger sheets, documents and communications, in each case whether in paper or electronic form, covering or relating to any of the Collateral.

"Event of Default" shall have the meaning given to that term in Section 8 hereof.

"GAAP" shall have the meaning provided in the Note.

"Indebtedness" shall have the meaning provided in the Note.

"Intellectual Property" means all of Grantor's right, title and interest in and to patents, patent rights (and applications and registrations therefor), trademarks and service marks (and applications and registrations therefor), inventions, copyrights, mask works (and applications and registrations therefor), trade names, trade styles, software and computer programs, source code, object code, trade secrets, methods, processes, know how, drawings, specifications, descriptions, and all memoranda, notes, and records with respect to any research and development, all whether now owned or subsequently acquired or developed by Grantor and whether in tangible or intangible form or contained on magnetic media readable by machine together with all such magnetic media (but not including embedded computer programs and supporting information included within the definition of "goods" under the UCC).

"Lien" shall have the meaning provided in the Note.

"Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by Grantor to Secured Party of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of the Transaction Documents, including, all interest, fees, charges, expenses, reasonable attorneys' fees and costs and accountants' fees and costs chargeable to and payable by Grantor hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

"Permitted Indebtedness" shall have the meaning provided in the Note.

"Permitted Liens" shall have the meaning provided in the Note.

"Proceeds" shall mean any consideration received from the sale, exchange, license, lease or other disposition of any asset or property that constitutes Collateral, any value received as a consequence of the possession of any Collateral and any payment received from any insurer or other person or entity as a result of the destruction, loss, theft, damage or other involuntary conversion of whatever nature of any asset or property which constitutes Collateral, and shall include (a) all cash and negotiable instruments received by or held on behalf of Secured Party in the Payment Account and (b) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Security Interest" shall mean the interest granted in Section 2.

"Transaction Documents" shall have the meaning provided in the Note.

"UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, Secured Party's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term "UCC" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

All other capitalized terms used and not otherwise defined in this Security Agreement shall have the respective meanings given to those terms in the Note. Unless otherwise defined herein, all terms defined in the UCC shall have the respective meanings given to those terms in the UCC.

2. Creation of Security Interest
   (a) As security for the Obligations, Grantor hereby grants to Secured Party a valid, continuing security interest of first priority, subject to Permitted Liens, in all right, title and interests of Grantor in and to the property described in Attachment 1 hereto, whether now existing or hereafter from time to time acquired (collectively, the "Collateral").

   (b) Notwithstanding anything herein to the contrary: (i) Grantor shall remain liable under any contracts, agreements and other documents included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed; (ii) except to the extent any duties or obligations are assumed by the transferee, the exercise by Secured Party of any of the rights hereunder shall not release Grantor from any of its duties or obligations under such contracts, agreements and other documents included in the Collateral; and (iii) Secured Party shall not have any obligation or liability under any contracts, agreements and other documents included in the Collateral by reason of this Security Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any such contract, agreement or other document included in the Collateral hereunder.

   (c) This Security Agreement shall create a continuing and first priority security interest in the Collateral, subject to Permitted Liens.

3. Financing Statements. Grantor shall execute and deliver to Secured Party concurrently with the execution of this Security Agreement, and Grantor hereby authorizes Secured Party to file (with or without Grantor's signature), at any time and from time to time thereafter, all financing statements, assignments, continuation financing statements, termination statements, account control agreements, and other documents and instruments, in form satisfactory to the Secured Party, and take all other action, as Secured Party may reasonably request, to perfect and continue perfected, maintain the priority of or provide notice of the security interest of Secured Party in the Collateral and to reasonably accomplish the purposes of this Security Agreement. Within 5 days from the date of this Agreement, Grantor will execute and deliver to Secured Party Account Control Agreements for all Deposit Accounts and accounts holding securities owned by Grantor, and will take all actions requested by Secured Party that Secured Party deems necessary to perfect its security interest in such accounts via control.

4. Representations and Warranties. Grantor represents and warrants to Secured Party that (a) neither the execution and delivery of the Transaction Documents by Grantor, nor the consummation of the transactions contemplated hereunder, nor the fulfillment by Grantor of any of the terms of the Transaction Documents will conflict with or result in a breach by Grantor, or constitute a default by Grantor under, or create an event that, with the giving of notice or the lapse of time, or both, would be a default under or breach of, any of the terms, conditions or provisions of any material mortgage, lease, deed of trust, pledge, loan or credit agreement, license agreement, or any other material contract, arrangement or agreement to which Grantor is a party or to which any of Grantor's property is subject; (b) Grantor has good and valid title rights in and title to Collateral (or, in the case of after-acquired Collateral, at the time Grantor acquires rights in the Collateral, will be the owner thereof) other than Permitted Liens and that no other Person has (or, in the case of after-acquired Collateral, at the time Grantor acquires rights therein, will have) any right, title, claim or interest (by way of Lien or otherwise) in, against or to the Collateral; (c) Grantor has full power and authority to grant to Secured Party the Security Interest in such Collateral pursuant hereto and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other person other than any consent or approval which has been obtained; (d) Secured Party has (or in the case of after-acquired Collateral, at the time Grantor acquires rights therein, will have) a first priority perfected security interest in the Collateral, subject to Permitted Liens, and (e) no control agreements exist with respect to any Collateral other than control agreements, if any, in favor of Secured Party in respect of the Liens created hereby; and (f) all information set forth in Schedule A and Schedule B hereto is true and correct and includes (i) the Grantor's chief executive office and other places of business of Grantor, (ii) any trade or fictitious names used by Grantor in the past five years, (iii) Grantor's United States and foreign patents, patent applications, copyright registrations, copyright applications, trademark and trade name registrations and trademark and trade name applications, and (iv) a list of all banks accounts and securities accounts maintained by Grantor.

5. Covenants Relating to Collateral. While any Obligations are outstanding, Grantor hereby agrees (a) to perform all acts that may be reasonably necessary to maintain, preserve, protect and perfect the Collateral, the Lien granted to Secured Party therein and the first priority of such Lien, subject to Permitted Liens; (b) not to use or permit any Collateral to be used (i) in violation of any provision of any documents, instruments or agreements executed in connection with the Obligations, except where such violation could not reasonably be expected to have a material adverse effect, (ii) in violation of any applicable law, rule or regulation, except where such violation could not reasonably be expected to have a material adverse effect, or (iii) in violation of any policy of insurance covering the Collateral, except where such violation could not reasonably be expected to have a material adverse effect; (c) to pay promptly when due all taxes, other than those taxes contested in good faith by Borrower as long as adequate reserves are maintained with respect to such Liens in accordance with GAAP, and other governmental charges, all Liens and all other charges now or hereafter imposed upon or affecting any Collateral; (d) without 15 days' prior written notice to Secured Party, (i) not to change Grantor's name or place of business (or, if Grantor has more than one place of business, its chief executive office), (ii) not to keep Collateral consisting of chattel paper at any location other than its chief executive office set forth in Schedule A hereto, (e) to procure, execute and deliver from time to time any endorsements, assignments, financing statements and other writings reasonably deemed necessary or appropriate by Secured Party to perfect, maintain and protect its Lien hereunder and the priority thereof, subject to Permitted Liens, and to deliver promptly to Secured Party all originals of Collateral consisting of instruments; (f) to appear in and defend any action or proceeding which may affect its title to or Secured Party's interest in the Collateral; (g) to keep separate, accurate and complete records of the Collateral and to provide Secured Party with such records and such other reports and information relating to the Collateral as Secured Party may reasonably request from time to time; (h) to type, print or stamp conspicuously on the face of all original copies of all Collateral consisting of chattel paper a legend satisfactory to Secured Party indicating that such chattel paper is subject to the security interest granted hereby; (i) to collect, enforce and receive delivery of each Accounts Receivable in accordance with past practice; (j) to comply with all material requirements of law relating to the production, possession, operation, maintenance and control of the Collateral (including the Fair Labor Standards Act); (k) not to, outside the ordinary course of business, grant any extension of the time of payment of any of the Accounts Receivable, compromise, compound or settle the same for less then the full amount thereof, release, wholly or partly, any person liable for payment thereof or allow any credit or discount whatsoever thereon; (l) carry and maintain in full force and effect, at its own expense and with financially sound and reputable insurance companies, insurance with respect to the Collateral in such amounts, with such deductibles and covering such risks as is customarily covered by companies engaged in the same or similar businesses of a similar size and owning similar properties in the localities in which Grantor operates and to cause Secured Party to be named as a loss payee and additional insured on such policies of insurance and to cause such policies of insurance to provide that they shall not be terminated or cancelled without at least 30 days prior written notice to the Secured Party; (m) at the request of the Secured Party, Grantor shall use best efforts to obtain from each person from whom Grantor leases any premises at which any Collateral is located such collateral access, subordination, waiver, consent and estoppel agreements as Secured Party may reasonably request, in form and substance reasonably satisfactory to the Secured Party; (n) to give Secured Party prompt notice of the acquisition of any instruments or securities; (o) to notify Secured Party if Grantor holds or acquires any commercial tort claims, chattel paper, electronic chattel paper or letter-of-credit rights; (p) to not establish any new deposit accounts or securities accounts unless Secured Party has a perfected security interest in such account pursuant to a control agreement in form and substance reasonably satisfactory to Secured Party and to not enter into any control agreement with respect to its deposit accounts or securities accounts, or any assets credited thereto, except in favor of the Secured Party. Grantor agrees that it will not invest in any financial assets except through a securities account in which Secured Party has a security interest perfected by control. Grantor hereby authorizes Secured Party to contact the securities intermediaries and depository institutions holding any deposit account or securities account of Grantor and to request and receive information from such securities intermediaries and depository institutions regarding the status and condition of such securities accounts and deposit accounts and the assets therein. Grantor agrees to indemnify each Secured Party in respect of any payments, claims, losses, costs, fees or expenses incurred in respect of any payments by such Secured Party pursuant to the indemnity provisions of any control agreement entered by Secured Party with respect to any deposit account or securities account of Grantor, except to the extent arising from the gross negligence or willful misconduct of such Secured Party.

6. Covenants Relating to Intellectual Property.

(a) Grantor will perform all acts and execute all documents, including notices of security interest for each relevant type of intellectual property in forms suitable for filing with the Patent and Trademark Office or the Copyright Office, that may be reasonably necessary or desirable to record, maintain, preserve, protect and perfect the Secured Party's interest in the Collateral, the Lien granted to Secured Party in the Collateral and the first priority of such Lien, subject to Permitted Liens.

(b) Except to the extent that Secured Party gives its prior written consent:

(i) Grantor (either itself or through licensees) will continue to use its material trademarks in connection with each and every trademark class of goods or services applicable to its current line of products or services as reflected in its catalogs, brochures, price lists or similar materials used by Grantor after the date hereof in order to maintain such trademarks in full force and effect free from any claim of abandonment for nonuse, and Grantor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any material trademark may become invalidated;

(ii) Grantor will not do any act or omit to do any act whereby any material patent registrations may become abandoned or dedicated to the public domain or the remedies available against potential infringers weakened and shall notify Secured Party immediately if it knows of any reason or has reason to know that any patent registration may become abandoned or dedicated; and

(iii) Grantor will not do any act or omit to do any act whereby any material copyrights or mask works may become abandoned or dedicated to the public domain or the remedies available against potential infringers weakened and shall notify Secured Party immediately if it knows of any reason or has reason to know that any copyright or mask work may become abandoned or dedicated to the public domain.

(c) Grantor will promptly (and in any event within 5 days) notify Secured Party upon the filing, either by Grantor or through any agent, employee, licensee or designee, of (i) an application for the registration of any patent, trademark, copyright or mask work with the Patent and Trademark Office or the Copyright Office or any similar office or agency in any other country or any political subdivision thereof, (ii) any assignment of any patent or trademark, which Grantor may acquire from a third party, with the Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, or (iii) any assignment of any copyright or mask work, which Grantor may acquire from a third party, with the Copyright Office or any similar office or agency in any other country or any political subdivision thereof. Upon the request of the Secured Party, Grantor shall execute and deliver any and all assignments, agreements, instruments, documents and papers as Secured Party may reasonably request to evidence the Secured Party's security interest in such patent, trademark (and the goodwill and general intangibles of Grantor relating thereto or represented thereby), copyright or mask work, and Grantor authorizes Secured Party to amend an original counterpart of the applicable notice of security interest executed pursuant to Section 6(a) of this Security Agreement without first obtaining Grantor's approval of or signature to such amendment and to record such document with the Patent and Trademark Office or Copyright Office, as applicable.

(d) Grantor will take all steps in its reasonable business judgment in any proceeding before the Patent and Trademark Office, the Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to diligently prosecute or maintain, as applicable, each application and registration of the material patents, trademarks, copyrights and mask works, including filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings (except to the extent that dedication, abandonment or invalidation is permitted hereunder).

(e) Grantor shall (i) protect, defend and maintain the validity and enforceability of its material Intellectual Property and promptly advise Secured Party in writing of material infringements, and (ii) not allow any Intellectual Property material to Grantor's business to be abandoned, forfeited or dedicated to the public without Secured Party's written consent.

7. Authorized Action by Secured Party. Upon the occurrence and during the continuation of an Event of Default, Grantor hereby irrevocably appoints Secured Party as its attorney-in-fact and agrees that Secured Party may perform (but Secured Party shall not be obligated to and shall incur no liability to Grantor or any third party for failure so to do) any act which Grantor is obligated by this Security Agreement to perform, and to exercise such rights and powers as Grantor might exercise with respect to the Collateral, including the right to (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or hereafter payable on or on account of the Collateral; (b) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Collateral; (c) insure, process and preserve the Collateral; (d) make any compromise or settlement, and take any action it deems advisable, with respect to the Collateral; (e) pay any Indebtedness of Grantor relating to the Collateral; and (f) execute UCC financing statements and other documents, instruments and agreements required hereunder. Grantor agrees to reimburse Secured Party upon demand for any reasonable costs and expenses, including attorneys' fees, Secured Party may incur while acting as Grantor's attorney-in-fact hereunder, all of which costs and expenses are included in the Obligations. It is further agreed and understood between the parties hereto that such care as Secured Party gives to the safekeeping of its own property of like kind shall constitute reasonable care of the Collateral when in Secured Party's possession; provided, however, that Secured Party shall not be required to make any presentment, demand or protest, or give any notice and need not take any action to preserve any rights against any prior party or any other person in connection with the Obligations or with respect to the Collateral.

8. Default and Remedies.

(a) Default. Grantor shall be deemed in default under this Security Agreement upon the occurrence of any Event of Default under the Transaction Documents.

(b) Remedies. Upon the occurrence of any such Event of Default, Secured Party shall have the rights of a secured creditor under the UCC, all rights granted by this Security Agreement and by law, including the right to: (a) require Grantor to assemble the Collateral and make it available to Secured Party at a place to be designated by Secured Party; and (b) prior to the disposition of the Collateral, store, process, repair or recondition it or otherwise prepare it for disposition in any manner and to the extent Secured Party deems appropriate and in connection with such preparation and disposition, without charge, use any trademark, trade name, copyright, patent or technical process used by Grantor. Grantor hereby agrees that ten (10) days' notice of any intended sale or disposition of any Collateral is reasonable. In furtherance of Secured Party's rights hereunder, Grantor hereby grants to Secured Party an irrevocable, non-exclusive license (exercisable without royalty or other payment by Secured Party, but only in connection with the exercise of remedies hereunder) to use, license or sublicense any patent, trademark, trade name, copyright or other intellectual property in which Grantor now or hereafter has any right, title or interest together with the right of access to all media in which any of the foregoing may be recorded or stored.

(c) Application of Collateral Proceeds. The proceeds and/or avails of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder (as well as any other amounts of any kind held in an Account at the time of, or received by Secured Party after, the occurrence of an Event of Default) shall be paid to and applied as follows:

(i) First, to the payment of reasonable costs and expenses incurred in connection with any actions taken to enforce Secured Party's rights and remedies under this Agreement, including all amounts expended to preserve the value of the Collateral, of foreclosure or suit, if any, and of such sale and the exercise of any other rights or remedies;

(ii) Second, to the payment to Secured Party of the amount then owing or unpaid on such Secured Party's Note;

(iii) Third, to the payment of other amounts then payable to Secured Party under any of the Transaction Documents; and

(iv) Fourth, to the payment of the surplus, if any, to Grantor, its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

9. Miscellaneous.

(a) Notices. Except as otherwise provided herein, all notices, requests, demands, consents, instructions or other communications to or upon Grantor or Secured Party under this Security Agreement shall be by facsimile or in writing and sent by facsimile, mailed or delivered to each party at its facsimile number or its address set forth below (or to such other facsimile number or address as the recipient of any notice shall have notified the other in writing). All such notices and communications shall be effective (i) when sent by Federal Express or other overnight service of recognized standing, on the business day following the deposit with such service; (ii) when mailed, by registered or certified mail, first class postage prepaid and addressed as aforesaid through the United States Postal Service, upon receipt; (iii) when delivered by hand, upon delivery; and (iv) when sent by facsimile, upon confirmation of receipt.

Secured Party:	QUANTUM CORPORATION 501 Sycamore Drive Milpitas, California 95035 Attention: President Telephone: (408) 944-4000 Facsimile: (408) 944-4040
Grantor:	SNAP APPLIANCE, INC. 5141 California, Suite 200 Irvine, CA 92612 Attention: President Telephone: (949) 737-6200 Facsimile: (949) 737-6201

(b) Nonwaiver. No failure or delay on Secured Party's part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Amendments and Waivers. Any provision of this Security Agreement may be amended, waived or modified upon the written consent of Secured Party.

(d) Assignments. Neither this Security Agreement nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by Grantor without the prior written consent of Secured Party, or by Secured Party to any Person who competes with Grantor in Grantor's line of business without the prior written consent of Grantor.

(e) Cumulative Rights, etc. The rights, powers and remedies of Secured Party under this Security Agreement shall be in addition to all rights, powers and remedies given to Secured Party by virtue of any applicable law, rule or regulation of any governmental authority, any document, instrument or agreement executed in connection with the Obligations, or any other agreement, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing Secured Party's rights hereunder. Grantor waives any right to require Secured Party to proceed against any Person or to exhaust any Collateral or to pursue any remedy in Secured Party's power.

(f) Payments Free of Taxes, Etc. All payments made by Grantor under this Security Agreement shall be made by Grantor free and clear of and without deduction for any and all present and future taxes, levies, charges, deductions and withholdings. In addition, Grantor shall pay upon demand any stamp or other taxes, levies or charges of any jurisdiction with respect to the execution, delivery, registration, performance and enforcement of this Security Agreement. Upon request by Secured Party, Grantor shall furnish evidence satisfactory to Secured Party that all requisite authorizations and approvals by, and notices to and filings with, governmental authorities and regulatory bodies have been obtained and made and that all requisite taxes, levies and charges have been paid.

(g) Partial Invalidity. If at any time any provision of this Security Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Security Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(h) Expenses. Grantor shall pay on demand all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by Secured Party in connection with custody, preservation or sale of, or other realization on, any of the Collateral or the enforcement or attempt to enforce any of the Obligations which is not performed as and when required by this Security Agreement.

(i) Headings. Headings in this Security Agreement are for convenience of reference only and are not part of the substance hereof or thereof.

(j) Plural Terms. All terms defined in this Security Agreement in the singular form shall have comparable meanings when used in the plural form and vice versa.

(k) Construction. This Security Agreement is the result of negotiations among, and has been reviewed by, Grantor, Secured Party and their respective counsel. Accordingly, this Security Agreement shall be deemed to be the product of all parties hereto, and no ambiguity shall be construed in favor of or against Grantor or Secured Party.

(l) Entire Agreement. This Security Agreement and each of the other documents, instruments or agreements executed in connection with the Obligations, taken together, constitute and contain the entire agreement of Grantor and Secured Party and supersede any and all prior agreements, negotiations, correspondence, understandings and communications among the parties, whether written or oral, respecting the subject matter hereof.

(m) Other Interpretive Provisions. References in this Security Agreement to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Security Agreement shall refer to this Security Agreement, as the case may be, as a whole and not to any particular provision of this Security Agreement, as the case may be. The words "include" and "including" and words of similar import when used in this Security Agreement shall not be construed to be limiting or exclusive.

(n) Governing Law. This Security Agreement and all actions arising out of or in connection with this Security Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California, or of any other state.

(o) Jury Trial. EACH OF GRANTOR AND SECURED PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(p) Venue and Jurisdiction. Each of Grantor and Secured Partysubmit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California, which submission shall include, without limitation, consent to personal jurisdiction in any state or federal courts located in Santa Clara County, California, waiver of any objection to jurisdiction or venue in the aforesaid courts, and agreement not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Grantor has caused this Security Agreement to be executed as of the day and year first above written.

SNAP APPLIANCE, INC. f/k/a
BROADBAND STORAGE, INC.,
a Delaware corporation

By: /s/ ERIC L. KELLY
Name: Eric L. Kelly
Title: CEO

AGREED:

QUANTUM CORPORATION
as Secured Party

By: /s/ LARRY ORECKLIN
Name: Larry Orecklin
Title: President, SSG

(Signature Page to Security Agreement)

ATTACHMENT 1

TO SECURITY AGREEMENT

All right, title, interest, claims and demands of Grantor in and to the following property:

(i). All goods (and embedded computer programs and supporting information included within the definition of "goods" under the Code) and equipment now owned or hereafter acquired, including, without limitation, all laboratory equipment, computer equipment, office equipment, machinery, fixtures, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions, and improvements to any of the foregoing, wherever located;

(ii). All inventory now owned or hereafter acquired, including, without limitation, all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products including such inventory as is temporarily out of Grantor's custody or possession or in transit and including any returns upon any accounts or other proceeds, including insurance proceeds, resulting from the sale or disposition of any of the foregoing and any documents of title representing any of the above, and Grantor's books relating to any of the foregoing;

(iii). All contract rights and general intangibles (including Intellectual Property) now owned or hereafter acquired, including, without limitation, goodwill, license agreements, franchise agreements, blueprints, drawings, purchase orders, customer lists, route lists, infringements, claims, software, computer programs, computer disks, computer tapes, literature, reports, catalogs, design rights, income tax refunds, payment intangibles, commercial tort claims, payments of insurance and rights to payment of any kind;

(iv). All now existing and hereafter arising accounts, contract rights, royalties, license rights, license fees and all other forms of obligations owing to Grantor arising out of the sale or lease of goods, the licensing of technology or the rendering of services by Grantor (subject, in each case, to the contractual rights of third parties to require funds received by Grantor to be expended in a particular manner), whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Grantor and Grantor's books relating to any of the foregoing;

(v). All documents, cash, deposit accounts, letters of credit (whether or not the letter of credit is evidenced by a writing), certificates of deposit, instruments, promissory notes, chattel paper (whether tangible or electronic) and investment property, including, without limitation, all securities, whether certificated or uncertificated, security entitlements, securities accounts, commodity contracts and commodity accounts, and all financial assets held in any securities account or otherwise, wherever located, now owned or hereafter acquired and Grantor's books relating to the foregoing; and

(vi). Any and all claims, rights and interests in any of the above and all substitutions for, additions and accessions to and proceeds thereof, including, without limitation, insurance, condemnation, requisition or similar payments and proceeds of the sale or licensing of Intellectual Property.

SCHEDULE A

TO SECURITY AGREEMENT

COPYRIGHTS

Description	**Registration Date**	**Registration No.**

None.

SCHEDULE A

TO SECURITY AGREEMENT

ISSUED PATENTS

Patent No.	Issue Date	Assignee	Title	Country
6,442,661	08/27/02	Snap Appliance, Inc.	Self Tuning Memory Management for Computer Systems	United States

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SCHEDULE A

TO SECURITY AGREEMENT

Pending Patent Applications

Application No.	Filing Date	Assignee	Title	Country
60/264671	1/29/01	Snap Appliance, Inc.	Dynamically Distributed File System	United States

60/264694	1/29/01	Snap Appliance, Inc.	A Data Path Accelerator ASIC For High Performance Storage Systems	United States
60/264672	1/29/01	Snap Appliance, Inc.	Integrated file system/parity data protection	United States
60/264673	1/29/01	Snap Appliance, Inc.	Distributed parity data protection	United States
60/264670	1/29/01	Snap Appliance, Inc.	Automatic identification and utilization of resources in a distributed file server	United States
60/264669	1/29/01	Snap Appliance, Inc.	Data flow controller architecture for high performance storage systems	United States
60/264668	1/29/01	Snap Appliance, Inc.	Adaptive load balancing for a distributed file server	United States
10/060930	1/29/02	Snap Appliance, Inc.	Dynamically distributed file system	United States
PCTUS02/02702	1/29/02	Snap Appliance, Inc.	Dynamically distributed file system	World Organization
10/060879	1/29/02	Snap Appliance, Inc.	Redundant dynamically distributed system	United States
10/060908	1/29/02	Snap Appliance, Inc.	Replacing file system processors by hot swapping	United States
10/060947	1/29/02	Snap Appliance, Inc.	Hot adding file system processors	United States
10/060920	1/29/02	Snap Appliance, Inc.	File system metadata	United States
10/060918	1/29/02	Snap Appliance, Inc.	Enhancing file system performance	United States
10/060977	1/29/02	Snap Appliance, Inc.	Data path accelerator for storage systems	United States
10/060956	1/29/02	Snap Appliance, Inc.	Data path controller architecture	United States
10/060878	1/29/02	Snap Appliance, Inc.	Programmable data path accelerator	United States
10/060903	1/29/02	Snap Appliance, Inc.	Interface architecture	United States
10/060911	1/29/02	Snap Appliance, Inc.	Data path accelerator with variable parity, variable length, and variable extent parity groups	United States
10/060921	1/29/02	Snap Appliance, Inc.	Data blocking mapping	United States
10/060874	1/29/02	Snap Appliance, Inc.	Dynamic redistribution of parity groups	United States
10/060686	1/29/02	Snap Appliance, Inc.	Dynamic data recovery	United States
10/060919	1/29/02	Snap Appliance, Inc.	Enhanced file system failure tolerance	United States
10/060863	1/29/02	Snap Appliance, Inc.	Enhanced disk array	United States
10/060957	1/29/02	Snap Appliance, Inc.	Dynamically scalable disk array	United States
10/060939	1/29/02	Snap Appliance, Inc.	Disk replacement via hot swapping with variable parity	United States
10/060916	1/29/02	Snap Appliance, Inc.	Enhancing disk array performance via variable parity based load balancing	United States
10/060858	1/29/02	Snap Appliance, Inc.	Integrated distributed filed system with variable parity groups	United States
60/302424	6/29/01	Snap Appliance, Inc.	Dynamically distributed file system	United States
Unfiled	N/A	Snap Appliance, Inc.	Enhanced file system with indirect allocators	United States
Unfiled	N/A	Snap Appliance, Inc.	System and method for managing virtual volumes with sparese allocation	United States
Unfiled	N/A	Snap Appliance, Inc.	System and method for dso gathering	United States
Unfiled	N/A	Snap Appliance, Inc.	System and method for free space allocation	United States
Unfiled	N/A	Snap Appliance, Inc.	System and method for managing dynamic volumes	United States

Unfiled	N/A	Snap Appliance, Inc.	System and method for regeneration of lost data	United States
01301825.4	02/28/01	Snap Appliance, Inc.	Self-Tuning Memory Management For Computer Systems	European Union
052475/2001	02/27/01	Snap Appliance, Inc.	Method For Managing Memory, Memory Manager, And Computer Program Product	Japan
09/607,581	06/29/00	Snap Appliance, Inc.	Fault Tolerant Storage Device with Cache	United States
01305248.5	06/15/01	Snap Appliance, Inc.	Fault Tolerant Storage Device with Cache	European Union
192955/2001	06/26/01	Snap Appliance, Inc.	Method For Storing Data In Fault-Tolerant Storage Device, And Storage Device And Controller Therefor	Japan

SCHEDULE A

TO SECURITY AGREEMENT

Trademarks Registrations

Registration No.	Registration Date	Filing Date	Registered Owner	Mark	Country
703049	6/20/01	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	Mexico
2421713	01/16/01		Snap Appliance, Inc.	Snap! Server	United States
2428674	02/13/01		Snap Appliance, Inc.	Network Storage Made Simple	United States

SCHEDULE A

TO SECURITY AGREEMENT

Pending Trademark Applications

Application No.	Filing Date	Applicant	Mark	Country
78/028661	10/2/00	Snap Appliance, Inc.	BROADBAND STORAGE	United States
1098225	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	Canada
2159382	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	European Union
2001/05313	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	Hong Kong
30019/2001*	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	Japan
T01/04647B	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	Singapore
90012169	4/2/01	Snap Appliance, Inc.	BROADBAND STORAGE	Taiwan
78/028662	10/2/00	Snap Appliance, Inc.	BROADBAND FILER	United States
78/028663**	10/2/00	Snap Appliance, Inc.	BROADSTOR	United States
76/337508***	11/13/01	Snap Appliance, Inc.	BDFS	United States
76/353991	12/13/01	Snap Appliance, Inc.	DATA OPTIMIZER	United States
78/147217	7/24/02	Snap Appliance, Inc.	RAPID REBUILD	United States
78/154312	8/14/02	Snap Appliance, Inc.	QUICKSHOTS	United States
78/159108	8/29/02	Snap Appliance, Inc.	SCALABLE UNIFIED STORAGE	United States
Unfiled	N/A	Snap Appliance, Inc.	RAIDB	United States
78/178,397	10/25/02	Snap Appliance, Inc.	Snap Appliance	United States
76367586	02/06/02	Snap Appliance, Inc.	Guardian	United States

*Abandoned

**Allowed

***Published

SCHEDULE A

TO SECURITY AGREEMENT

MASK WORKS

Description	Registration Date	Registration No.
None.		

SCHEDULE B

TO SECURITY AGREEMENT

GRANTOR PROFILE

1. **Name.** The legal name of Grantor is and the address of its chief executive office is:

   Snap Appliance, Inc.
   5141 California, Suite 200
   Irvine, CA 92612

2. **Organizational Identification Number; Federal Employer Identification Number**. Grantor's organizational identification number in its state of incorporation is 335-0880 and Grantor's federal employer identification number is 33-0952611.

3. **State of Incorporation; Prior Names.** Grantor was incorporated in the state of Delaware. Since its incorporation Grantor has had the following legal names (other than its current legal name):

Prior Name	Date Grantor's Name Was Changed From Such Name
Broadband Storage, Inc	October 2002
Delphi FiberGear, LLC	March 2001
Broadband Storage, LLC	March 2001

4. **Place of Business.** Grantor has the following places of business:

   Snap Appliance, Inc.
   5141 California, Suite 200
   Irvine, CA 92612

5. **Tax Assessments.** The following tax assessments are currently outstanding and unpaid:

Assessing Authority	Amount and Description
None	

6. **Subsidiaries.** Grantor has the following subsidiaries (list jurisdiction and date of incorporation, federal employer identification number, type and value of assets):

   None.

7. **Bank Accounts; Securities Accounts**: The following is a complete list of all bank accounts and securities accounts maintained by Grantor:

Institution Name	Type of Account	Account Number
Silicon Valley Bank	Checking account	003300279469
Silicon Valley Bank	Payroll Account	003300376181
Silicon Valley Bank	Investment Account	003300376162
Silicon Valley Bank	Managerial Services Account	
Bank of America	Payroll Account	0987802024

BROADBAND STORAGE, INC.

SERIES B PREFERRED STOCK PURCHASE AND RECAPITALIZATION AGREEMENT DATED AS OF OCTOBER 14, 2002

BROADBAND STORAGE, INC.
SERIES B PREFERRED STOCK PURCHASE AND RECAPITALIZATION AGREEMENT

This Series B Preferred Stock Purchase and Recapitalization Agreement is dated as of October 14, 2002 (the "Agreement"), by and among Broadband Storage, Inc., a Delaware corporation (the "Company"), and the persons and entities listed on the Schedule of Purchasers attached hereto as Exhibit A (the "Schedule of Purchasers") as it appears today and as subsequently amended to include persons and entities who purchase Series B Preferred at a Subsequent Closing (as defined below) and under this Agreement (each such person or entity a "Purchaser," and together the "Purchasers").

BACKGROUND:

A. The Company desires to sell to the Purchasers 43,709,770 shares of its newly-created Series B Convertible Preferred Stock (the "Series B Preferred") at a price of $0.661179408 per share and, in connection therewith, exchange shares of the Company's existing and outstanding Series A Convertible Preferred Stock (the "Series A Preferred") held by certain of the Purchasers into shares of its newly-created Series A-1 Convertible Preferred Stock (the "Series A-1 Preferred"), all as provided for in this Agreement. After issuing the shares of Series A-1 Preferred as contemplated herein, the Company intends to automatically convert its then remaining outstanding shares of Series A Preferred into shares of its Common Stock (the "Common Stock"). All such transactions are collectively referred to as the "Recapitalization". The Recapitalization will take place in several steps as provided for below

B. The first step of the Recapitalization consists of the sale at the "Initial Closing" (as defined below) of shares of Series B Preferred to certain venture capital funds in exchange for cash. Following the Initial Closing, the Company intends to sell shares of Series B Preferred to Quantum Corporation, a Delaware corporation ("Quantum"), in exchange for certain assets being purchased by the Company pursuant to that certain Asset Purchase Agreement dated as of October 7, 2002 (the "Asset Purchase Agreement"), between the Company and Quantum.

C. In the event any holder of Series A Preferred does not purchase at least his, her or its pro rata share (as set forth on Exhibit B attached hereto, the "Pro Rata Share") of the shares of Series B Preferred issued and sold by the Company pursuant to the terms of this Agreement (a "Non-Participating Holder") on or prior to October 22, 2002, then each share of Series A Preferred owned by such Non-Participating Holder shall automatically and without further action on the part of such Non-Participating Holder be converted into one (1) share of Common Stock effective as of 11:59 P.M. Pacific time on October 22, 2002. In the event any holder of Series A Preferred does purchase at least his, her or its Pro Rata Share of the shares of Series B Preferred issued and sold by the Company pursuant to the terms of this Agreement (a "Participating Holder"), then each share of Series A Preferred owned by such Participating Holder shall automatically and without further action on the part of such Participating Holder be converted into one (1) share of Series A-1 Preferred effective upon, subject to, and concurrently with, the consummation of the Participating Holder's purchase of its Pro Rata Share of the shares of Series B Preferred issued and sold by the Company pursuant to the terms of this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and conditions contained in this Agreement, the parties hereby agree as follows:

SECTION 1

Authorization and Sale of Preferred Stock

1.1 Authorization. On or before the Initial Closing, the Company will authorize the sale and issuance of up to 43,709,770 shares of its Series B Preferred and up to 10,639 shares of its Series A-1 Preferred (collectively, the "Shares"), having the rights, privileges and preferences as set forth in the Third Amended and Restated Certificate of Incorporation (the "Restated Certificate") in substantially the form attached to this Agreement as Exhibit C.

1.2 Sale of Series B Preferred. Subject to the terms and conditions hereof, the Company will severally issue and sell to each of the Purchasers, and the Purchasers will severally buy from the Company, at a purchase price of $0.661179408 per share, that number of shares of Series B Preferred for an aggregate purchase price, each as specified opposite such Purchaser's name on Exhibit A attached hereto.

1.3 Conversion of Series A Preferred. Effective as of 11:59 P.M. Pacific time on October 22, 2002, each share of Series A Preferred owned by each Non-Participating Holder shall automatically and without further action on the part of such Non-Participating Holder be converted into one (1) share of Common Stock. Effective upon, subject to, and concurrently with, the consummation of each Participating Holder's purchase of its Pro Rata Share of the shares of Series B Preferred issued and sold by the Company pursuant to the terms of this Agreement, each share of Series A Preferred owned by such Participating Holder shall automatically and without further action on the part of such Participating Holder be converted into one (1) share of Series A-1 Preferred.

1.4 Separate Agreements. The Company's agreements with each of the Purchasers are separate agreements, and the issuances of the Series B Preferred and/or Series A-1 Preferred to each of the Purchasers are separate transactions.

SECTION 2

Closing Dates; Delivery

2.1 Closing Dates

(a) Initial Closing. The initial closing of the purchase and sale of the Series B Preferred and the exchange of the Series A Preferred for shares of Series A-1 Preferred hereunder (together, the "Initial Closing") shall be held at the offices of Paul, Hastings, Janofsky & Walker LLP ("Paul Hastings"), 695 Town Center Drive, 17th Floor, Costa Mesa, California 92626 at 10:00 a.m., local time, on October 15, 2002 or at such other time and place upon which the Company and the Purchasers participating in such Initial Closing shall agree (the "Initial Closing Date").

(b) Subsequent Closings. If any of the authorized shares of Series B Preferred are not sold at the Initial Closing, the Company shall have the right, at one or more subsequent closings (each a "Subsequent Closing," and together, the "Subsequent Closings") to be held within one hundred eighty (180) days of the Initial Closing Date, to sell the remaining authorized but unissued shares of Series B Preferred to one or more additional purchasers as determined by the Company but who shall not be Advanced Digital Information Corporation, Overland Storage, Inc. or Storage Tech, Inc., or to a Purchaser hereunder who wishes to acquire additional shares of Series B Preferred. All such sales shall be made on the terms and conditions set forth in this Agreement, and all of the ancillary agreements contemplated hereby, including, without limitation, the Amended and Restated Investor Rights Agreement in substantially the form attached hereto as Exhibit D (the "Investor Rights Agreement") and the Amended and Restated Voting Agreement (the "Voting Agreement") in substantially the form attached hereto as Exhibit E, and the representations and warranties by the Company as set forth in Section 3 hereof and by the Purchasers as set forth in Section 4 hereof, such that any and all provisions of this Agreement that relate to the Initial Closing will also apply to such sales. Each investor who purchases Series B Preferred at a Subsequent Closing shall sign a signature page to this Agreement and will thereby be deemed to be a "Purchaser" for all purposes under this Agreement and shall sign the Investor Rights Agreement, Voting Agreement and such other documents as reasonably requested by the Company. The terms "Closing" and "Closing Date" shall refer to the closing of the purchase and sale of Series B Preferred and/or issuance of Series A-1 Preferred with respect to a particular Purchaser, irrespective of whether such purchase and sale takes place at the Initial Closing or a Subsequent Closing.

2.2 Delivery. At each Closing, the Company will deliver to each Purchaser a certificate or certificates, registered in such Purchaser's name as set forth on Exhibit A hereto, representing the number of Shares designated on Exhibit A hereto to be purchased by such Purchaser at such Closing, against full payment of the purchase price therefore as set forth on Exhibit A hereto, by: (a) check payable to the Company; (b) wire transfer pursuant to the Company's instructions; or (c) any combination of the foregoing; provided, however, that the purchase price for shares of Series A-1 Preferred shall be paid by exchanging an equal number of shares of Series A Preferred and, provided, further, that the shares of Series B Preferred purchased by Quantum shall be issued in exchange for certain assets being purchased by the Company pursuant to the Asset Purchase Agreement.

SECTION 3

Representations and Warranties of the Company

Except as set forth on the Company's Schedule of Exceptions attached hereto as Exhibit F, the Company hereby represents and warrants to each Purchaser as follows:

3.1 Organization and Standing; Restated Certificate and Bylaws. The Company is a corporation duly organized and validly existing under, and by virtue of, the laws of the State of Delaware and is in good standing under such laws. The Company has the requisite corporate power and authority to own and operate its properties and assets and to carry on its business as presently conducted and proposed to be conducted. The Company is qualified to do business and is in good standing in each state in which the failure to be so qualified or in such standing would have a material adverse effect on the Company's business or properties as now conducted and proposed to be conducted. The Company has made available to the Purchasers, or their counsel, copies of the Restated Certificate and the Company's Bylaws. Said copies are true, correct and complete and contain all amendments through the Closing Date.

3.2 Corporate Power. The Company will have at the Closing Date all requisite legal and corporate power and authority to execute and deliver this Agreement, the Investor Rights Agreement and the Voting Agreement; to sell and issue the Shares hereunder; to issue the Common Stock of the Company issuable upon conversion of the Shares and upon automatic conversion of shares of Series A Preferred held by any Non-Participating Holder; and to carry out and perform its obligations under the terms of this Agreement, the Investor Rights Agreement, and the Voting Agreement.

3.3 Subsidiaries. The Company has no subsidiaries or affiliated companies and does not otherwise own or control, directly or indirectly, any equity interest in any corporation, association or business entity. The Company is not a participant in any joint venture or similar arrangement.

3.4 Capitalization.

(a) Authorized Capital Stock. The authorized capital stock of the Company consists or will consist, upon the filing of the Restated Certificate, of 70,000,000 shares of Common Stock of the Company of which 906 shares will be issued and outstanding immediately prior to the Closing, and 44,021,280 shares of Preferred Stock, of which 44,000,000 have been designated Series B Preferred none of which will be issued and outstanding immediately prior to the Initial Closing, 10,640 have been designated Series A-1 Preferred none of which will be issued and outstanding immediately prior to the Initial Closing, and 10,640 have been designated Series A Preferred of which 10,637 will be issued and outstanding immediately prior to the Initial Closing, but none of which will be issued and outstanding following the consummation of the transactions contemplated hereunder. The outstanding shares of Common Stock and Series A Preferred have been duly authorized and validly issued, are fully paid and nonassessable, and were issued in compliance with the registration or qualification requirements of all applicable federal and state securities laws, or in compliance with exemptions therefrom, and no stockholder has a right of rescission with respect thereto.

(b) Reserved Capital Stock. The Company has reserved 10,637 shares of Series A-1 Preferred for issuance hereunder, 43,709,770 shares of Series B Preferred for issuance hereunder, 10,637 shares of Common Stock for issuance upon conversion of the Series A Preferred, 9,949,647 shares of Common Stock for issuance upon conversion of the Series A-1 Preferred, and 43,709,770 shares of Common Stock for issuance upon conversion of the Series B Preferred. In addition, the Company has reserved 15,135,127 shares of its Common Stock for issuance to employees, consultants or directors under its 2001 Stock Option and Restricted Stock Purchase Plan, of which 598 shares are outstanding immediately prior to the Initial Closing and were issued pursuant to stock purchase agreements in connection with the exercise of previously granted options, and of which 1,971 shares are subject to outstanding options.

(c) Obligations With Respect to Capital Stock. Except for the conversion privileges of the Series A Preferred, Series A-1 Preferred and Series B Preferred, the rights granted to the Purchasers and other security holders pursuant to Section 4 of the Investor Rights Agreement and the outstanding options described in this Section 3.4 or the Schedule of Exceptions, no options, warrants, subscriptions or purchase rights of any nature to acquire from the Company shares of capital stock or other securities are authorized, issued or outstanding, nor is the Company obligated under its charter documents or under any agreement by which the Company is bound to issue shares of its capital stock or other securities, except as contemplated by this Agreement. All options listed on the Schedule of Exceptions were granted pursuant to the Company's 2001 Stock Option and Restricted Stock Purchase Plan and such grant was under a Nonstatutory Option Agreement in substantially the form attached hereto as Exhibit G. There are no restrictions on the transfer of shares of capital stock of the Company other than those imposed by relevant federal and state securities laws and as otherwise contemplated by this Agreement (including the agreements attached as exhibits hereto). To the best of the Company's knowledge and except as provided for in the Restated Certificate and the Voting Agreement, there are no agreements, understandings, trusts or other collaborative arrangements or understandings concerning the voting of the capital stock of the Company.

3.5 **Authorization**. All corporate action on the part of the Company, its officers, its directors and its stockholders necessary for the authorization, execution, delivery and performance by the Company of this Agreement, the Investor Rights Agreement and the Voting Agreement and the authorization, sale, issuance and delivery of the Shares (and the Common Stock issuable upon conversion of the Shares) and the conversion of any Non-Participating Holder's Series A Preferred shares into Common Stock has been taken or will be taken prior to the Closing. This Agreement and the Investor Rights Agreement, when executed and delivered by the Company, shall constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms (and the Voting Agreement, when executed and delivered by the Company, shall constitute a valid and binding obligation of the Company to the extent of its obligations thereunder) except the indemnification provisions of the Investor Rights Agreement may be limited by principles of public policy or by federal or state securities laws, and except as such obligations are subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. The Shares, when issued in compliance with the provisions of this Agreement and the Restated Certificate, will be validly issued, fully paid and nonassessable, and will have the rights, preferences and privileges described in the Restated Certificate, the Investor Rights Agreement and the Voting Agreement; the Common Stock issuable upon conversion of the Shares and the Series A Preferred has been duly and validly reserved and, when issued in compliance with the provisions of this Agreement and the Restated Certificate, will be validly issued, fully paid and nonassessable; and the Shares and such Common Stock will be free of any liens or encumbrances created by the Company; provided, however, that the Shares (and the Common Stock issuable upon conversion thereof) may be subject to restrictions on transfer under applicable state and/or federal securities laws. The Shares and the Common Stock issuable upon conversion of the Shares are not subject to any preemptive rights or rights of first refusal.

3.6 **Financial Statements**. Attached hereto as Exhibit H are the Company's unaudited Balance Sheet as of August 31, 2002, audited Statement of Operations for the 12-month period ended December 31, 2001, and unaudited Statement of Operations for the eight month period ended August 31, 2002 (collectively, the "Financial Statements"). The Financial Statements are complete and accurate in all material respects and have been prepared in accordance with generally accepted accounting principles ("GAAP") applied on a consistent basis, except that: (a) the Financial Statements do not contain all footnotes required by GAAP; and (b) the Financial Statements have not been closed and are subject to adjustment not to exceed $100,000 in the aggregate. The Balance Sheet fairly presents and describes the financial condition and the Statements of Operations fairly present and describe the operating results of the Company as of the dates, and during the periods, indicated therein. Except as set forth in the Schedule of Exceptions, since August 31, 2002 (the "Balance Sheet Date"): (x) there has been no change in the assets or financial condition of the Company from that reflected in the Financial Statements except for changes in the ordinary course of business which in the aggregate have not been materially adverse; (y) there has been no materially adverse change or materially adverse amendment to a material contract or material arrangement by which the Company or any of its assets or properties is bound or subject; and (z) none of the business, financial condition, operations, property or, to the best knowledge of the Company, prospects of the Company has been materially adversely affected by any occurrence or development, individually or in the aggregate, whether or not insured against. The Company makes no representation as to whether its issuance of stock options will require a compensation expense in its historical or future financial statements.

3.7 **Material Liabilities**. The Company has no material liabilities or obligations, absolute or contingent (individually or in the aggregate), except: (a) the liabilities and obligations set forth in the Financial Statements or the Schedule of Exceptions; (b) liabilities and obligations which have been incurred subsequent to the Balance Sheet Date in the ordinary course of business and which do not exceed $100,000 in the aggregate (including payroll and rent); (c) liabilities and obligations under leases for its offices in Irvine, California; and (d) leases for equipment and liabilities and obligations under sales, procurement, and other contracts and arrangements entered into in the normal course of business, provided that none of such leases, contracts, or arrangements involve the payment of more than $25,000 individually or $50,000 in the aggregate.

3.8 **Title to Properties and Assets; Liens, Etc**. The Company has good and marketable title to its properties and assets and has good title to all its leasehold interests, in each case subject to no mortgage, pledge, lien, lease, encumbrance or charge, other than: (a) the lien of current taxes not yet due and payable; (b) possible minor liens and encumbrances, which do not in any case materially detract from the value of the property subject thereto or materially impair the operations of the Company; and (c) encumbrances and liens which arise in the ordinary course of business and do not materially impair the Company's ownership or use of such property or assets. All facilities, machinery, equipment, fixtures, vehicles and other properties owned, leased or used by the Company are in good operating condition and repair and are reasonably fit and usable for the purposes for which they are being used, except where a failure to be in such condition would not have a material adverse effect on the Company's business or operations. No event has occurred and is continuing which, with due notice or lapse of time or both, would constitute a default or event of default by the Company under any such lease or agreement or, to the best of the Company's knowledge, by any other party thereto. The Company's possession of such property has not been disturbed and, to the best of the Company's knowledge after due inquiry, no claim has been asserted against the Company adverse to its rights in such leasehold interests.

3.9 Compliance With Other Instruments, None Burdensome, Etc. The Company is not in violation of or default under: (a) any term of its currently effective Certificate of Incorporation or Bylaws; (b) any judgment or decree known to the Company to be applicable to it; (c) in any material respect, of any term or provision of any material mortgage, indebtedness, indenture, contract, agreement, instrument, judgment or decree to which it is a party or by which it or its assets are bound; or (d) to the best of its knowledge, any order, statute, rule or regulation applicable to the Company. The execution, delivery and performance of this Agreement, the Investor Rights Agreement and the Voting Agreement, the consummation of the transactions contemplated hereby and thereby and the issuance of the Shares and the Common Stock issuable upon conversion of the Shares have not resulted and will not result in: (x) any violation of, or conflict with, or constitute a default under, the Restated Certificate or Bylaws, any of the Company's material agreements, or any applicable statute, rule, regulation, order or restriction of any federal or state governmental entity or agency thereof; (y) the creation of any mortgage, pledge, lien, encumbrance, or charge upon any of the properties or assets of the Company that would reasonably be expected to have a material adverse effect on the Company's business or operations; or (z) the suspension, revocation, impairment, forfeiture, or nonrenewal of any material permit, license or approval applicable to the Company, its business or operations or any of its assets or properties.

3.10 Litigation, Etc. Except as set forth on the Schedule of Exceptions, there is no: (a) action, suit, claim, proceeding or investigation pending or, to the best of the Company's knowledge, threatened against or affecting the Company, at law or in equity, or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign or any Affiliate thereof (as such term is defined under Rule 144(a) of the Securities Act of 1933, as amended (the "Securities Act")); (b) arbitration proceeding relating to the Company pending under collective bargaining agreements or otherwise; or (c) governmental inquiry pending or, to the best of the Company's knowledge, threatened against or affecting the Company (including, without limitation, any inquiry as to the qualification of the Company to hold or receive any license or permit), and, to the best of Company's knowledge, there is no basis for any of the foregoing. Except as set forth on the Schedule of Exceptions, there is no action, suit, proceeding or investigation pending or threatened against the Company that questions the validity of this Agreement, the Investor Rights Agreement or the Voting Agreement or the right of the Company to enter into such agreements or to consummate the transactions contemplated hereby or thereby. The Company has not received any opinion or memorandum or legal advice from legal counsel to the effect that it is exposed, from a legal standpoint, to any liability or disadvantage which may be material to its business, prospects, financial condition, operations, property or affairs. The Company is not in default with respect to any order, writ, injunction or decree known to or served upon the Company of any court or of any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. There is no action or suit by the Company pending, threatened or contemplated against others. The Company has complied, in all material respects, with all laws, rules, regulations and orders applicable to its business, operations, properties, assets, products and services. The Company has all necessary permits, licenses and other authorizations required to conduct its business as conducted and as proposed to be conducted and the Company has been operating its business pursuant to and in compliance with the terms of all such permits, licenses and other authorizations, except, in either case, where such failure would not, individually or in the aggregate, have a material adverse effect on the Company. There is no existing law, rule, regulation or order, and the Company after due inquiry is not aware of any proposed law, rule, regulation or order, whether Federal, state, county or local, which would prohibit or restrict the Company from, or otherwise materially adversely affect the Company in, conducting its business in any jurisdiction in which it is now conducting business or in which it proposes to conduct business. None of the Company's officers has been charged or convicted of a felony or become subject to any sanctions or restrictions of the Securities and Exchange Commission.

3.11 Employees. To the best of the Company's knowledge, no employee of the Company is in violation of any term of any employment contract, nondisclosure agreement or any other contract or agreement relating to the relationship of such employee with the Company or any other party because of the nature of the business conducted or proposed to be conducted by the Company. Each former and current employee, officer and consultant of the Company, all of whom are listed on the Schedule of Exceptions, has executed a Proprietary Information and Inventions Agreement in substantially the form attached hereto as Exhibit I, and the Company is not aware that any of its current or former employees, officers or consultants is in violation thereof. The Purchasers have been provided with copies of forms of all material invention assignment and confidentiality agreements or employment or consulting agreements which contain similar terms used by the Company. No current or former employee, officer or consultant of the Company has excluded works or inventions made prior to his or her employment with the Company from his or her assignment of inventions pursuant to such employee's execution of the Proprietary Information and Inventions Agreement. The Company is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as proposed to be conducted. Neither the execution or delivery of this Agreement, nor the carrying-on of the Company's business by the employees and directors of the Company, nor the conduct of the Company's business as proposed, will, to the best of the Company's knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company. The Company is not aware that any officer or key employee, or that any group of employees, intends to terminate their employment with the Company, nor does the Company have a present intention to terminate the employment of any of the foregoing. The employment of each officer and employee of the Company is terminable at the will of the Company. The Company has complied in all material respects with all applicable laws relating to the employment of labor, including provisions relating to wages, hours, equal opportunity, collective bargaining and the payment of Social Security and other taxes. Except as set forth on the Schedule of Exceptions, no employee of the Company has been granted the right to any material compensation following termination of employment with the Company. The Company's employees have not been subject to or involved in or, to the best of the Company's knowledge, threatened with union elections, petitions therefor or other organizational activities.

3.12 ERISA Plans. With respect to each employee benefit plan (as such term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) (an "Employee Benefit Plan") maintained by the Company or an "ERISA Affiliate" (as defined below): (a) such plan has been administered and operated in material compliance with its terms and the applicable requirements of ERISA and the Internal Revenue Code of 1986, as amended (the "Code"); (b) no event has occurred, and to the best of the Company's knowledge, there exists no current circumstance, under which the Company could incur material liability under ERISA, the Code, or otherwise (other than for contributions or benefits paid or payable in the ordinary course of operation of such plan); (c) there are no actions, suits or claims pending or threatened with respect to any Employee Benefit Plan or against the assets or a fiduciary of any Employee Benefit Plan; (d) no "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) which is not covered by an applicable exemption has occurred which will cause material harm to the Company; (e) no "reportable event" (as defined in Section 4043 of ERISA) has occurred; (f) to the best of the Company's knowledge, all contributions and premiums due have been paid if due prior to the date of this Agreement; and (g) to the Company's knowledge, all contributions made under any Employee Benefit Plan are intended to be tax deductible under the Code. As used herein, the term "ERISA Affiliate" refers to any organization that is (x) a member of a "controlled group" of which the Company is a member or (y) under "common control" with the Company within the meaning of Section 414(b) and (c) of the Code. Each Employee Benefit Plan maintained by the Company or an ERISA Affiliate that is intended to qualify under Section 401(a) of the Code has received a favorable letter of determination or similar letter from the Internal Revenue Service that it so qualifies and that its related trust is exempt from taxation under Section 501(a) of the Code or has applied or plans to apply to the Internal Revenue Service for such a letter prior to the expiration of the requisite period under applicable Treasury Regulations or Internal Revenue Service pronouncements. To the best of the Company's knowledge, no event has occurred that will give rise to disqualification or loss of tax-exempt status of any such Employee Benefit Plan or trust under Section 401(a) or 501(a) of the Code. No Company or ERISA Affiliate benefit plan is a "defined benefit plan" within the meaning of Section 3(35) of ERISA, a "multiemployer plan" within the meaning of Section 3(37) of ERISA, or a "multiple employer plan" within the meaning of Section 413 of the Code. Except as set forth in the Schedule of Exceptions, neither the approval or execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will: (i) entitle any individual to severance pay; or (ii) accelerate the time of payment or vesting of, or increase the amount of, compensation due to any individual.

3.13 Registration Rights. Except as set forth in the Investor Rights Agreement, the Company has not granted or agreed to grant any registration rights, including piggyback rights, to any person or entity.

3.14 Governmental Consent, Etc. No consent, approval, order or authorization of or registration, qualification, designation, declaration or filing with any governmental authority on the part of the Company is required in connection with the valid execution and delivery of this Agreement, the Investor Rights Agreement, the Voting Agreement or the offer, sale or issuance of the Shares (and the Common Stock issuable upon conversion of the Shares), the automatic conversion into Common Stock of any shares of Series A Preferred held by a Non-Participating Holder, or the consummation of any other transaction contemplated hereby, except: (a) filing of the Restated Certificate in the office of the Delaware Secretary of State; and (b) qualification (or taking such action as may be necessary to secure an exemption from qualification, if available) of the offer and sale of the Shares (and the Common Stock issuable upon conversion of the Shares) under federal securities laws, the California Corporate Securities Law of 1968, as amended, and other applicable Blue Sky laws, which filings and qualifications, if required, will be accomplished in a timely manner.

3.15 Offering. Subject to the accuracy of the Purchasers' representations in Section 4 hereof, the offer, sale and issuance of the Shares to be issued in conformity with the terms of this Agreement and the issuance of the Common Stock to be issued upon conversion of the Shares and the Series A Preferred held by Non-Participating Holders constitute transactions exempt from the registration requirements of Section 5 of the Securities Act and the registration or qualification requirements of all applicable securities laws of the United States and each of the states whose laws govern the issuance of any Shares, and neither the Company nor any authorized agent of the Company will take any action hereafter that would cause the loss of such exemption.

3.16 Brokers or Finders. The Company has not incurred, and will not incur, directly or indirectly, as a result of any action taken by the Company, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

3.17 Disclosure. The Company has provided each Purchaser or its counsel with such information as is necessary to respond in all material respects to the Purchaser's requests for information about the Company. Neither this Agreement with the exhibits hereto, nor any other agreement, document, certificate or information furnished to the Purchasers or their counsel by or on behalf of the Company in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein not misleading in light of the circumstances under which they were made. There is no fact which the Company has not disclosed to the Purchasers and their counsel in writing and of which the Company is aware which, in the good faith belief of the Company, materially and adversely affects or, in the good faith belief of the Company, will likely materially and adversely affect the business, prospects, financial condition, operations, property or affairs of the Company; provided, however, that this representation shall not include: (a) matters affecting the industry in which the Company operates, including, without limitation, competition and economic conditions; or (b) matters affecting early-stage technology companies in general.

3.18 Intellectual Property. The Company has all right, title and interest in, or otherwise has the valid and enforceable right to use, all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, inventions, processes, formulae, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, processes, designs, methodologies, computer programs (including all source codes) and related documentation, technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, trademarks, service marks and copyrights (together, "Intellectual Property") necessary for its business as now conducted or as proposed to be conducted, without any conflict with or infringement of the rights of others. To the extent the Company licenses Intellectual Property, the Company represents and warrants that it has licensed all rights in such Intellectual Property necessary for the Company to conduct its business as currently operated, or as proposed to be operated, including the right to use, modify, improve, reproduce, sell or otherwise distribute such Intellectual Property as may be required in the operation of the Company's business. The Schedule of Exceptions sets forth a list of the Company's licenses of Intellectual Property (other than off-the-shelf software licenses pursuant to shrink-wrap licenses). Also set forth on the Schedule of Exceptions is a list of all U.S. and foreign patents, trademarks, service marks, trade names and registered copyrights (or copyrights for which an application for registration has been filed) owned or licensed by the Company. All registrations on behalf of the Company with, and applications to, governmental or regulatory authorities in respect of all Intellectual Property of the Company are valid and in full force and effect and are not subject to any other action by the Company to maintain their effectiveness. The Company has taken reasonable security measures to protect the secrecy, confidentiality and value of its trade secrets. Except as set forth in the Schedule of Exceptions, there are no outstanding options, licenses, or agreements of any kind relating to the Intellectual Property of the Company, nor is the Company bound by or a party to any options, licenses or agreements of any kind with respect to the Intellectual Property of any other person or entity. The Company has not, nor has it received any communications alleging that the Company has violated or, by conducting its business as now conducted or as proposed to be conducted, would violate any of the Intellectual Property of any other person or entity. The Company is not aware that any of its Intellectual Property is being infringed by any other person or entity. The Company is not aware, after due and proper investigation, that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of the Company or that would conflict with the Company's business as now conducted or as proposed to be conducted. The Company does not believe it is or will be necessary to utilize any inventions of any of its employees (or people it currently intends to hire) made prior to their employment by the Company.

3.19 Agreements; Action.

(a) Except for: (i) agreements explicitly contemplated hereby; and (ii) agreements set forth on the Schedule of Exceptions, there are no agreements, understandings or proposed transactions between the Company and any of its officers, directors, or holders of the Company's outstanding capital stock or any Affiliate thereof, including, without limitation, spouses, or family members of any such officer, director or holders of such stock.

(b) Except as otherwise disclosed herein or on the Schedule of Exceptions, there are no agreements, understandings, instruments, contracts, proposed transactions, judgments, orders, writs or decrees to which the Company is a party or by which it is bound which involve: (i) obligations (contingent or otherwise) of or payments to the Company in excess of $100,000 on an individual basis; (ii) the license of any patent, copyright, trade secret or other proprietary right to or from the Company; (iii) provisions restricting or affecting the development, manufacture or distribution of the Company's products or services, (iv) indemnification by the Company with respect to infringements of proprietary rights; or (v) provisions that otherwise materially or adversely affect the business, prospects, financial condition, operations, property or affairs of the Company.

(c) Except as otherwise disclosed herein or on the Schedule of Exceptions, the Company has not: (i) declared or paid any dividends or authorized or made any distribution upon or with respect to any class or series of its capital stock; (ii) except as set forth on the Balance Sheet, incurred any indebtedness for money borrowed or any other liabilities in excess of $25,000; (iii) made any loans or advances to any person, other than ordinary advances for travel expenses; or (iv) sold, exchanged or otherwise disposed of any of its assets or rights.

(d) Except as otherwise disclosed herein or on the Schedule of Exceptions, the Company has not engaged in the past three months in any discussion: (i) with any representative of any corporation or corporations regarding the consolidation or merger of the Company with or into any such corporation or corporations; (ii) with any corporation, partnership, association or other business entity or any individual regarding the sale, conveyance or disposition of all or substantially all of the assets of the Company or a transaction or series of related transactions in which more than 50% of the voting power of the Company is disposed of; or (iii) regarding any other form of acquisition, liquidation, dissolution or winding up of the Company.

(e) Except as set forth on the Schedule of Exceptions, the Company is not a party to or otherwise bound by any written or oral agreement, instrument, commitment, plan or arrangement, a copy of which would be required to be filed with the Securities and Exchange Commission as an exhibit to a registration statement on Form S-1 if the Company were registering securities under the Securities Act.

The Company and, to the best of the Company's knowledge, each other party thereto, have in all material respects performed all the obligations required to be performed by them to date (or each non-performing party has received a valid, enforceable and irrevocable written waiver with respect to its non-performance), have received no notice of default and are not in default (with due notice or lapse of time or both) under any agreement, instrument, commitment, plan or arrangement to which the Company is a party or by which it or its property may be bound. The Company has no present expectation or intention of not fully performing all of its obligations under each such agreement, instrument, commitment, plan or arrangement, and the Company has no knowledge of any breach or anticipated breach by the other party to any agreement, instrument, commitment, plan or arrangement to which the Company is a party. The Company is in full compliance with all of the terms and provisions of its Restated Certificate and Bylaws.

3.20 Changes. Except as otherwise disclosed herein or on the Schedule of Exceptions, and except for agreements expressly contemplated hereby, since the Balance Sheet Date there has not been:

(a) any damage, destruction or loss, whether or not covered by insurance, that materially and adversely affects the assets, properties, financial condition, operating results, prospects or business of the Company (as such business is presently or proposed to be conducted);

(b) any waiver by the Company of a valuable right or of a material debt owed to it;

(c) any satisfaction or discharge of any lien, claim or encumbrance or payment of any obligation by the Company, except in the ordinary course of business and which is not material to the assets, properties, financial condition, operating results or business of the Company (as such business is presently or proposed to be conducted);

(d) any change or amendment to a material contract or arrangement by which the Company or any of its assets or properties is bound or subject;

(e) any material change in any compensation arrangement or agreement with any executive officer or key employee;

(f) any issuance of any stock, bond or other corporate security;

(g) any declaration or payment or distribution to stockholders or any purchase or redemption of any share of the Company's capital stock or other security;

(h) any sale, assignment, transfer or grant of any exclusive license with respect to any patent, trademark, trade name, service mark, copyright, trade secret or other intangible asset;

(i) any other event or condition of any character which might materially and adversely directly affect the assets, properties, financial condition, operating results or business of the Company (as such business is presently conducted and proposed to be conducted); or

(j) any commitment, contingent or otherwise, to do any of the foregoing.

3.21 Minute Books. The copies of the minute books of the Company provided to the Purchasers or their counsel contain a complete summary of all meetings of directors and stockholders since the time of incorporation and reflect all transactions referred to in such minutes accurately in all material respects, and include all written consents of directors and stockholders in lieu of a meeting.

3.22 Section 83(b) Elections. To the best of the Company's knowledge, all elections and notices required by Section 83(b) of the Code, and any analogous provisions of applicable state tax laws have been timely filed by all individuals who have purchased shares of the Common Stock.

3.23 U.S. Real Property Holding Corporation. The Company is not now and has never been a "United States real property holding corporation," as defined in Section 897(c)(2) of the Code and Section 1.897-2(b) of the Regulations promulgated by the Internal Revenue Service, and the Company has filed with the Internal Revenue Service all statements, if any, with its United States income tax returns which are required under Section 1.897-2(h) of such Regulations.

3.24 Permits. The Company has all franchises, permits, licenses and any similar authority necessary for the conduct of its business as now being conducted by it, the lack of which could materially and adversely affect the business, properties, prospects or financial condition of the Company, and the Company believes it can obtain, without undue burden or expense, any similar authority as may be necessary or required for the conduct of its business as planned to be conducted. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

3.25 Tax Returns, Payments and Elections. The Company has filed all tax returns and reports as required by law. These returns and reports are true and correct in all material respects. The Company has paid all taxes and other assessments due. The provision for taxes of the Company as shown in the Financial Statements is adequate for taxes due or accrued as of the date thereof. The Company has no knowledge of any liability or any tax as of the date hereof that is not adequately provided for. The Company has not been advised that any of its returns have been or are being audited or of any deficiency in assessment or proposed judgment to its taxes. The Company has not made any elections pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation or amortization) that would have a material adverse effect on the Company, its financial condition, its business as presently conducted or proposed to be conducted or any of its properties or material assets.

3.26 Insurance. The Company has fire and casualty insurance policies with coverage customary for companies that are similarly situated to the Company.

3.27 3.27 Assumptions, Guaranties, Etc. of Indebtedness of Other Persons. Except as set forth on the Schedule of Exceptions, the Company has not assumed, guaranteed, endorsed or otherwise become directly or contingently liable on any indebtedness of any other person (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor, or otherwise to assure the creditor against loss), except for guaranties by endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

3.28 Significant Customers and Suppliers. Except as set forth on the Schedule of Exceptions, no customer or supplier which was significant to the Company during the period covered by the Financial Statements referred to in Section 3.6 or which has been significant to the Company thereafter, has terminated, materially reduced or threatened to terminate or materially reduce its purchases from or provision of products or services to the Company, as the case may be, since the Balance Sheet Date. To the best of the Company's knowledge, all parties having material contracts and commitments with the Company are in compliance therewith in all respects.

3.29 Related-Party Transactions. Except as set forth on the Schedule of Exceptions, no current or former employee, officer, director or stockholder of the Company or any Affiliate thereof or member of his or her immediate family is indebted to the Company, nor is the Company indebted (or committed to make loans or extend or guarantee credit) to any of them. None of the Company's officers, and to the Company's knowledge, none of the Company's current employees or directors has any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the Company has a business relationship, or any firm or corporation that competes with the Company, representing more than 1% of all issued and outstanding shares of such stock (other than members of their immediate families who may own stock in publicly traded companies that may compete with the Company). The Company is not aware that any such persons hold such stock other than as a passive investment or that they, directly or indirectly, manage or exercise control of any such public company or otherwise take part in its business. No member of the immediate family of any officer, director or stockholder of the Company or any Affiliate thereof is directly or indirectly interested in any contract with the Company.

SECTION 4

Representations and Warranties of the Purchasers

Each Purchaser hereby severally represents and warrants to the Company with respect to the purchase of the Shares as follows:

4.1 Accredited Investor. It is an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act.

4.2 Experience. It has substantial experience in evaluating and investing in private placement transactions of securities in companies similar to the Company so that it is capable of evaluating the merits and risks of its investment in the Company and has the capacity to protect its own interests.

4.3 Investment. It is acquiring the Shares and the underlying Common Stock issuable upon conversion of the Shares for investment for its own account, not as a nominee or agent, and not with the view to, or for resale in connection with, any distribution thereof. It understands that the Shares and the underlying Common Stock issuable upon conversion of the Shares have not been and will not be registered under the Securities Act by reason of a specific exemption from the registration provisions of the Securities Act, the availability of which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of such Purchaser's representations as expressed herein and in response to the Company's inquiries, if any.

4.4 Rule 144. It acknowledges that the Shares (and the underlying Common Stock) must be held indefinitely unless subsequently registered under the Securities Act or unless an exemption from such registration is available. It is aware of the provisions of Rule 144 promulgated under the Securities Act, which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the existence of a public market for the shares, the availability of certain current public information about the Company, the resale occurring not less than a specified period after a party has purchased and paid for the security to be sold, the sale being effected through a "broker's transaction" or in transactions directly with a "market maker" and the number of shares being sold during any three-month period not exceeding specified limitations.

4.5 No Public Market. It understands that no public market now exists for any of the securities issued by the Company and that the Company has made no assurances that a public market will ever exist for the Company's securities.

4.6 Access to Data. It has had an opportunity to discuss the Company's business, management, and financial affairs with its management and the opportunity to review the Company's facilities. It has also had an opportunity to ask questions of officers of the Company, which questions were answered to its satisfaction. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 3 of this Agreement or the right of such Purchaser to rely thereon.

4.7 **Authorization**. This Agreement, the Investor Rights Agreement and the Voting Agreement, when executed and delivered by such Purchaser, will constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, except as the indemnification provisions of the Investor Rights Agreement may be limited by principles of public policy or by federal or state securities laws, and subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies.

4.8 **Brokers or Finders**. It has not, and will not, incur, directly or indirectly, as a result of any action taken by such Purchaser, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement.

4.9 **Tax Liability**. It has had the opportunity to review with its own tax advisors the federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. It has relied solely on such advisors and not on any statements or representations of the Company or any of its agents. It understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

SECTION 5

Conditions to Closing of Purchasers

Each Purchaser's obligations to purchase the Shares are, at the option of the Purchaser, subject to the fulfillment of the following conditions as of the Closing Date:

5.1 **Representations and Warranties Correct**. The representations and warranties made by the Company in Section 3 hereof shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (subject in each case to the exceptions set forth in the Schedule of Exceptions).

5.2 **Covenants**. All covenants, agreements, and conditions contained in this Agreement to be performed by the Company on or prior to the Closing Date shall have been performed or complied with.

5.3 **Compliance Certificate**. The Company shall have delivered to the Purchasers a certificate of the Company, executed by the President of the Company dated the Closing Date, and certifying, among other things, to the fulfillment of the conditions specified in Sections 5.1 and 5.2 of this Agreement and to the receipt of all required Board and stockholder approvals of this Agreement and the transactions contemplated hereby.

5.4 **Blue Sky**. The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Common Stock issuable upon conversion of the Shares; provided, however, that the Company shall use its reasonable efforts to register and qualify the Shares under such Blue Sky laws of such jurisdictions as shall be reasonably requested by the Purchasers; and, provided further,that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

5.5 **Restated Certificate**. The Restated Certificate shall have been filed with the Delaware Secretary of State and shall be in full force and effect.

5.6 **Investor Rights Agreement**. The Company and each Purchaser shall have executed and delivered the Investor Rights Agreement, except that it shall not be a condition to closing for any Purchaser that such Purchaser execute and deliver the Investor Rights Agreement.

5.7 **Voting Agreement**. The Company and each Purchaser shall have executed and delivered the Voting Agreement, except that it shall not be a condition to closing for any Purchaser that such Purchaser execute and deliver the Voting Agreement.

5.8 **Proceedings and Documents**. All corporate action and other proceedings in connection with the transactions contemplated at the Closing and all documents incident thereto shall be reasonably satisfactory in form and substance to each Purchaser, and they shall have received all such counterpart original and certified or other copies of such documents as they may reasonably request. This shall include, without limitation, good-standing certificates and certification by the Company's secretary regarding the Company's Restated Certificate and Bylaws and Board and stockholder resolutions relating to this transaction.

5.9 **Reservation of Conversion Shares**. The Common Stock issuable upon conversion of the Shares shall have been duly authorized and reserved for issuance upon such conversion.

5.10 Due Diligence. Each of the Purchasers shall have satisfactorily completed their business, technical, financial, accounting, tax and legal due diligence with respect to the Company.

5.11 Minimum Subscription. The Company shall have received subscriptions from the Purchasers (as evidenced by their execution of this Agreement) for the purchase of a minimum of 18,905,610 shares of the Series B Preferred for a minimum aggregate subscription price of Twelve Million Five Hundred Thousand Dollars ($12,500,000), which shares shall be allocated among the Purchasers as set forth on the Schedule of Purchasers hereto.

5.12 Acquisition. The Company and Quantum shall have executed and delivered the Asset Purchase Agreement.

5.13 Employee Stock Option Pool. The Company shall have increased the number of shares of its Common Stock authorized for issuance under the Company's employee stock option pool to 15,135,127 shares.

5.14 Opinion of Company's Counsel. Each of the Purchasers shall have received from Paul, Hastings, Janofsky & Walker LLP, counsel to the Company, on or prior to the Closing, an opinion addressed to them, dated as of the Closing Date, in substantially the form attached hereto as Exhibit J.

SECTION 6

Conditions to Closing of Company

The Company's obligation to sell and issue the Shares is, at the option of the Company, subject to the fulfillment of the following conditions as of the Closing Date:

6.1 Representations and Warranties Correct. The representations and warranties made by each Purchaser in Section 4 hereof shall be true and correct when made and shall be true and correct as of the Closing Date.

6.2 Covenants. All covenants, agreements and conditions contained in this Agreement to be performed by the Purchasers on or prior to the Closing Date shall have been performed or complied with in all material respects.

6.3 Blue Sky. The Company shall have obtained all necessary Blue Sky law permits and qualifications, or have the availability of exemptions therefrom, required by any state for the offer and sale of the Shares and the Common Stock issuable upon conversion of the Shares.

6.4 Restated Certificate. The Restated Certificate shall have been filed with the Delaware Secretary of State and shall be in full force and effect.

6.5 Investor Rights Agreement. Each of the Purchasers shall have executed and delivered the Investor Rights Agreement.

6.6 Voting Agreement. Each of the Purchasers shall have executed and delivered the Voting Agreement.

6.7 Acquisition. Quantum shall have executed and delivered the Asset Purchase Agreement.

SECTION 7

Miscellaneous

7.1 Governing Law. This Agreement shall be governed in all respects by the internal laws of the State of New York without regard to the principles of conflicts of law of such state.

7.2 **Survival**. The representations and warranties made by the Company in Section 3 of this Agreement shall survive for three years from the date of this Agreement; provided, however, that the representations and warranties contained in Sections 3.1, 3.2, 3.4 and 3.5 thereunder shall survive indefinitely. All covenants and other agreements made by the Company and contained in this Agreement shall survive indefinitely or earlier based on the periods specified therein, if any, or until this Agreement is terminated by the parties. Notwithstanding the foregoing, no survival time limitation shall apply with respect to any matter the facts of which the Company knowingly, intentionally and fraudulently concealed from the Purchasers as of the Closing. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument if not otherwise specified therein.

7.3 **Successors and Assigns**. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto; provided, however, that the rights of a Purchaser to purchase the Shares may be assigned to any of its Affiliates who acquires at least One Hundred Thousand (100,000) Shares (as adjusted for stock splits and combinations), and, provided further, that written notice of the assignment shall be provided to the Company.

7.4 **Entire Agreement; Amendment**. This Agreement, including exhibits, the Investor Rights Agreement, the Voting Agreement and the other documents delivered pursuant hereto at the Closing constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Any provision of this Agreement may be waived, modified or amended upon: (a) the Company's prior written consent; and (b) the written consent of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the then outstanding voting power of the Shares purchased hereunder; provided, further, the foregoing notwithstanding, the rights of any holder shall not be amended or waived without the prior written consent of such holder if such amendment or waiver is materially adverse to such holder in a manner that differs materially from how similarly situated holders of the Shares purchased hereunder are affected. Notwithstanding the above, Sections 2.1(b) and 7.4 hereof shall not be amended without the prior written consent of Quantum.

7.5 **Notices, Etc**. All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand or by messenger, or by facsimile addressed: (a) if to a Purchaser, to such Purchaser's address set forth on the Schedule of Purchasers, or to such other address as such Purchaser shall have furnished to the Company in writing; (b) if to any other holder of any Shares, to such address as such holder shall have furnished the Company in writing, or, until any such holder so furnishes an address to the Company, then to the address of the last holder of such Shares who has so furnished an address to the Company; (c) if to the Company, to its principal executive offices, located at 485 E. 17th Street, Suite 400, Costa Mesa, CA 92627, and addressed to the attention of the Chief Financial Officer, or to such other address as the Company shall have furnished to the Purchasers.

All notices required or permitted hereunder shall be deemed effectively given: (w) upon personal delivery to the party to be notified; (x) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day; (y) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (z) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt.

7.6 **Delays or Omissions**. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to any holder of any Shares, upon any breach or default of the Company under this Agreement, shall impair any such right, power or remedy of such holder nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any holder of any breach or default under this Agreement, or any waiver on the part of any holder of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any holder, shall be cumulative and not alternative.

7.7 **Expenses**. The Company and each Purchaser shall bear its own expenses incurred on its behalf with respect to this Agreement and the transactions contemplated hereby.

7.8 **Severability**. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision; provided that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party.

7.9 **Titles and Subtitles**. The titles and subtitles used in this Agreement are used for convenience only and are not considered in construing or interpreting this Agreement.

7.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the parties hereto, each of which shall be enforceable against the parties actually executing such counterparts, and all of which together shall constitute one instrument.

7.11 Payment of Purchase Price. The Purchasers acknowledge that any purchase price paid for the Shares pursuant to Section 2.2 hereof, shall be: (a) payable to the non-interest bearing bank account designated by Paul Hastings, if paid by wire; or (b) delivered directly to Paul Hastings, if paid by check. Such funds shall be held by Paul Hastings and shall be released to the Company promptly after they equal or exceed $12,500,000 minus the fees of the Purchasers' counsel due the Purchasers' counsel by the Company pursuant to Section 7.7 hereof, which fees shall be withheld from the proceeds hereunder.

7.12 Exculpation Among Purchasers. Each Purchaser acknowledges that it is not relying upon any person, firm or corporation (including, without limitation, any other Purchaser), other than the Company and its officers and directors (acting in their capacity as representatives of the Company), in deciding to invest and in making its investment in the Company. Each Purchaser agrees that no other Purchaser nor the respective controlling persons, officers, directors, partners, agents or employees of any other Purchaser shall be liable to such Purchaser for any losses incurred by such Purchaser in connection with its investment in the Company.

7.13 Like Treatment of Holders. Neither the Company nor any of its Affiliates shall, directly or indirectly, pay or cause to be paid any consideration, whether by way of interest, fee, payment for the redemptions or exchange of Series A-1 Preferred or Series B Preferred, or otherwise, to any holder of Series A-1 Preferred or Series B Preferred for or as an inducement to, or in connection with solicitation of, any consent, waiver or amendment of any terms or provisions of the Series A-1 Preferred or Series B Preferred or the Agreements, unless such consideration is paid to all holders of Series A-1 Preferred or Series B Preferred bound by such consent, waiver or amendment, whether or not such holders so consent, waive or agree to amend and whether or not such holders tender their Series A-1 Preferred or Series B Preferred for redemption or exchange.

IN WITNESS WHEREOF, the foregoing Series B Preferred Stock Purchase and Recapitalization Agreement is hereby executed as of the date first above written.

COMPANY
BROADBAND STORAGE, INC.,
a Delaware corporation

By: /s/ ERIC KELLY
Name: Eric Kelly
Title: Chief Executive Officer, President and Secretary

PURCHASERS

MOORE TECHNOLOGY VENTURE FUND II, L.P.
By: /s/ ANTHONY GALLAGHER
Name: Anthony Gallagher, Director of Operations

MOORE GLOBAL INVESTMENTS LTD.
By: /s/ ANTHONY GALLAGHER
Name: Anthony Gallagher, Director of Operations

MELLON VENTURES II, L.P.
By: MVMA II, L.P. a Delaware Limited Partnership
Its: General Partner

By: MVMA, Inc., a Delaware Corporation
Its: General Partner
By: /s/ JOHN K. ADAMS
Mr. John K. Adams

PURCHASER

QUANTUM CORPORATION

By: /s/ LARRY OREKLIN
Name: Larry Orecklin
Title: President, SSG

EXHIBIT A

SCHEDULE OF PURCHASERS

Name	Number of Series B Shares Purchased (at $0.661179408 per share)	Aggregate Purchase Price Paid (Type of Consideration)
Mellon Ventures II, L.P.	11,343,366	$7,500,000 (cash)
Moore Technology Venture Fund	3,781,122	$2,500,000 (cash)
Moore Global Investments Ltd.	3,781,122	$2,500,000 (cash)
TOTAL	18,905,610	$12,500,000

EXHIBIT B

SERIES A PREFERRED PRO RATA SHARE CALCULATION

Name	Pro Rata Share
Moore Technology Venture Fund II, L.P.	$2,500,000
Moore Global Investments Ltd.	$2,500,000
Mellon Ventures II, L.P.	$3,333,333
Morgan Keegan Early Stage Fund, L.P.	$259,333
Morgan Keegan Employee Investment Fund, L.P.	$74,000
GlobalEuroNet Group, Inc.	$1,000,000
Mark IV Ventures, LLC	$333,333
Paul A. Slavik, Trustee of the Paul A. Slavik Trust established January 26, 1993	$133,333
James D. Slavik, Trustee of the James D Slavik Separate Property Trust established February 27, 1974, as amended	$66,667
Mark K. Edwards	$66,667

EXHIBIT C

THIRD AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

See Attached.

EXHIBIT D

AMENDED AND RESTATED INVESTORS RIGHTS AGREEMENT

See Attached.

EXHIBIT E

AMENDED AND RESTATED VOTING AGREEMENT

See Attached.

EXHIBIT F

SCHEDULE OF EXCEPTIONS

Available upon request.

EXHIBIT G

FORM OF NONSTATUTORY OPTION AGREEMENT

Available upon request.

EXHIBIT H

FINANCIAL STATEMENTS

Available upon request.

EXHIBIT I

PROPRIETARY INFORMATION

AND INVENTIONS AGREEMENT

Available upon request.

EXHIBIT J

LEGAL OPINION

Available upon request.

BROADBAND STORAGE, INC.

AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

This Amended and Restated Investor Rights Agreement (this "Agreement") is entered into as of the15th day of October, 2002, by and among BROADBAND STORAGE, INC., a Delaware corporation (the "Company"), Moore Technology Venture Fund II, L.P., and Moore Global Investment Ltd. (collectively, "Moore"), and the investors listed on *Exhibit A* hereto (Moore and such other investors, the "Investors" and each individually an "Investor") and amends and restates, in its entirety, that certain Investor Rights Agreement dated as of March 12, 2001, among the Company, Moore and certain other stockholders of the Company (the "Prior Rights Agreement").

RECITALS:

Whereas, certain of the Investors are being issued shares of the Company's Series B Convertible Preferred Stock (the "Series B Stock") and Series A-1 Convertible Preferred Stock (the "Series A-1 Stock") pursuant to that certain Series B Preferred Stock Purchase and Recapitalization Agreement (the "Purchase Agreement") dated as of even date herewith (the "Financing");

Whereas, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement;

Whereas, in connection with the consummation of the Financing, the parties desire to enter into this Agreement in order to grant registration, information and other rights to the Investors as set forth below; and

Whereas, certain undersigned Investors who are a party to the Prior Rights Agreement and who hold in excess of 66⅔% of the Series A Preferred Stock desire to amend and restate the Prior Rights Agreement and to accept the rights and obligations created pursuant hereto in lieu of their rights and obligations under the Prior Rights Agreement.

Now, Therefore, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

SECTION 1. GENERAL

1.1 Definitions. As used in this Agreement the following terms shall have the following respective meanings:

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

"Change in Control" means (a) the sale, lease or other disposition of all or substantially all of the assets of the Company or (b) an acquisition of the Company by another corporation or entity by consolidation, merger or other reorganization in which the holders of the Company's outstanding voting stock immediately prior to such transaction own, immediately after such transaction, securities representing less than fifty percent (50%) of the voting power of the corporation or other entity surviving such transaction (except a merger effected exclusively for the purpose of changing the domicile of the Company).

"Common Stock" means Common Stock of the Company.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Form S-3" means such form under the Securities Act as in effect on the date hereof or any successor or similar registration form under the Securities Act subsequently adopted by the SEC which permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

"Holder" means any Investor holding Registrable Securities or any assignee of record of such Registrable Securities in accordance with Section 2.10 hereof.

"Major Investor" means each Investor (with its affiliates) owning at least 10% of the Shares.

"New Investors" means Investors other than the Non-Purchasing Investors.

"Non-Purchasing Investors" means Investors that own shares of Series A Stock that do not purchase their pro rata share of Series B Stock pursuant to the Purchase Agreement.

"Qualified Public Offering" means the Company's firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least $3.50 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) and (ii) the net cash proceeds to the Company (after underwriting discounts, commissions and fees) are at least $25,000,000.

"Register," "registered," and "registration" refer to a registration effected by preparing and filing a registration statement in compliance with the Securities Act and all applicable rules and regulations thereunder, and the declaration or ordering of effectiveness of such registration statement.

"Registrable Securities" means (a) shares of Common Stock issued or issuable upon conversion of the Shares; (b) any Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security which is issued as) a dividend or other distribution with respect to, or in exchange for or in replacement of the Shares, and (c) any Common Stock acquired by Investors upon exercise of the rights of first refusal set forth in Section 4 hereof. Notwithstanding the foregoing, Registrable Securities shall not include any securities sold by a person to the public either pursuant to a registration statement or Rule 144 or sold in a private transaction in which the transferor's rights under Section 2 of this Agreement are not assigned.

"Registrable Securities then outstanding" shall be the number of shares determined by calculating the total number of shares of Common Stock that are Registrable Securities and either (a) are then issued and outstanding or (b) are issuable pursuant to then exercisable or convertible securities.

"Registration Expenses" shall mean all expenses incurred by the Company in complying with Sections 2.2, 2.3 and 2.4 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel for the Company, reasonable fees and disbursements of a single special counsel for the Holders, blue sky fees and expenses and the expense of any special audits incident to or required by any such registration (but excluding the compensation of regular employees of the Company which shall be paid in any event by the Company).

"SEC" or "Commission" means the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Selling Expenses" shall mean all underwriting discounts and selling commissions applicable to the sale.

"Series A Stock" shall have the meaning set forth in the first recital of this Agreement.

"Series A-1 Stock" shall have the meaning set forth in the first recital of this Agreement.

"Series B Stock" shall have the meaning set forth in the first recital of this Agreement.

"Shares" shall mean the shares of Series B Stock and Series A-1 Stock of the Company held by the Investors listed on *Exhibit A* hereto and their permitted assigns.

"Special Registration Statement" shall mean a registration statement relating to any employee benefit plan or with respect to any corporate reorganization or other transaction under Rule 145 of the Securities Act.

SECTION 2. RESTRICTION ON TRANSFER; REGISTRATION

2.1 Restrictions on Transfer

(a) Each Holder agrees not to make any disposition of all or any portion of the Shares or Registrable Securities unless and until:

(i) there is then in effect a registration statement under the Securities Act covering such proposed disposition and such disposition is made in accordance with such registration statement; or

(ii) (A) the transferee has agreed in writing to be bound by the terms of this Agreement, (B) such Holder shall have notified the Company of the proposed disposition and shall have furnished the Company with a detailed statement of the circumstances surrounding the proposed disposition, and (C) if reasonably requested by the Company, such Holder shall have furnished the Company with an opinion of counsel, reasonably satisfactory to the Company, that such disposition will not require registration of such shares under the Securities Act. It is agreed that the Company will not require opinions of counsel for transactions made pursuant to Rule 144, except in unusual circumstances.

(iii) notwithstanding the provisions of paragraphs (i) and (ii) above, no such registration statement or opinion of counsel shall be necessary for a transfer by a Holder which is (A) a partnership to its partners or former partners in accordance with partnership interests, (B) a limited liability company to its members or former members in accordance with their interest in the limited liability company, (C) to the Holder's family member or trust for the benefit of an individual Holder, or (D) a corporation to its stockholders in accordance with their interests in the corporation; *provided* that in each case the transferee will be subject to the terms of this Agreement to the same extent as if it were an original Holder hereunder.

(b) Each certificate representing Shares or Registrable Securities shall (unless otherwise permitted by the provisions of this Agreement) be stamped or otherwise imprinted with a legend substantially similar to the following (in addition to any legend required under applicable state securities laws):

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR AS OTHERWISE PERMITTED UNDER AN AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT BETWEEN THE HOLDER, THE COMPANY AND CERTAIN HOLDERS OF THE STOCK OF THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY.

(c) The Company shall be obligated to reissue promptly unlegended certificates at the request of any Holder thereof if the Holder shall have obtained an opinion of counsel (which counsel may be counsel to the Company) reasonably acceptable to the Company to the effect that the securities proposed to be disposed of may lawfully be so disposed of without registration, qualification or legend. No such opinion of counsel shall be required if the removal of the legend is effected pursuant to Rule 144(k) and the Company shall promptly remove the legend at the request of any Holder if such Holder's Shares are eligible for resale under Rule 144(k).

(d) Any legend endorsed on an instrument pursuant to applicable state securities laws and the stop-transfer instructions with respect to such securities shall be removed upon receipt by the Company of an order of the appropriate blue sky authority authorizing such removal.

2.2 Demand Registration.

(a) Subject to the conditions of this Section 2.2, if the Company shall receive a written request (a "Registration Request") from the Holders of at least fifty percent (50%) of the Registrable Securities (the "Initiating Holders") that the Company file a registration statement under the Securities Act covering the registration of at least a majority of the Registrable Securities then outstanding (or a lesser percent in the event of a Qualified Public Offering), then the Company shall, within fifteen (15) days of the receipt thereof, give written notice of such request to all Holders, and subject to the limitations of this Section 2.2, effect, as expeditiously as reasonably possible, the registration (including, without limitation, filing post-effective amendments, appropriate qualifications under applicable blue sky or other state securities laws, and appropriate compliance with the Securities Act) under the Securities Act of all Registrable Securities that the Holders request to be registered.

(b) If the Initiating Holders intend to distribute the Registrable Securities covered by their Registration Request by means of an underwriting, they shall so advise the Company as a part of their request made pursuant to this Section 2.2 or any request pursuant to Section 2.4 and the Company shall include such information in the written notice referred to in Section 2.2(a) or Section 2.4(a), as applicable. In such event, the right of any Holder to include its Registrable Securities in such registration by means of an underwriting shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. A Holder may elect to include in such underwriting all or part of the Registrable Securities it holds. All Holders proposing to distribute their securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by a majority in interest of the Initiating Holders (which underwriter or underwriters shall be reasonably acceptable to the Company). Notwithstanding any other provision of this Section 2.2 or Section 2.4, if the underwriter advises the Company that marketing factors require a limitation of the number of securities to be underwritten (including Registrable Securities) then the Company shall so advise all Holders of Registrable Securities which would otherwise be underwritten pursuant hereto, and the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a *pro rata* basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders); provided, however, that the number of shares of Registrable Securities to be included in such underwriting and registration shall not be reduced unless all other securities of the Company proposed to be registered by the Company or its officers, directors or employees are first entirely excluded from the underwriting and registration. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration. For any Holder which is a partnership, limited liability company corporation, the partners, retired partners, members and stockholders of such Holder, or the estates and family members of any such partners, retired partners and members and any trusts for the benefit of any of the foregoing person shall be deemed to be a single "Holder," and any *pro rata* reduction with respect to such "Holder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "Holder," as defined in this sentence and such amounts shall be allocated by the Holder in its discretion.

(c) The Company shall not be required to effect a registration pursuant to this Section 2.2:

(i) prior to the earlier of (A) the third anniversary of the date of this Agreement or (B) one hundred eighty (180) days following the effective date of the first registration statement pertaining to the Qualified Public Offering;

(ii) after the Company has effected two (2) registrations pursuant to this Section 2.2, and such registrations have been declared or ordered effective;

(iii) during the period starting with the date of filing of, and ending on the date one hundred eighty (180) days following the effective date of the registration statement pertaining to the Qualified Public Offering; *provided* that the Company makes reasonable good faith efforts to cause such registration statement to become effective;

(iv) if within thirty (30) days of receipt of a written request from Initiating Holders pursuant to Section 2.2(a), the Company gives notice to the Holders of the Company's intention to make its Qualified Public Offering within ninety (90) days;

(v) if the Company shall furnish to Holders requesting a registration statement pursuant to this Section 2.2, a certificate signed by the Chairman of the Board of Directors stating that in the good faith judgment of the Board of Directors, it would be seriously detrimental to the Company and its stockholders for such registration statement to be effected at such time, in which event the Company shall have the right to defer such filing for a period of not more than ninety (90) days after receipt of the request of the Initiating Holders; *provided* that such right to delay a request shall be exercised by the Company, under this Section 2.2 and Section 2.4, not more than once in any twelve (12) month period; or

(vi) if the Initiating Holders propose to dispose of shares of Registrable Securities that may be immediately registered on Form S-3 pursuant to a request made pursuant to Section 2.4 below.

2.3 Piggyback Registrations. The Company shall notify all Holders of Registrable Securities in writing at least thirty (30) days prior to the filing of any registration statement under the Securities Act for purposes of a public offering of securities of the Company (including, but not limited to, registration statements relating to secondary offerings of securities of the Company, but excluding Special Registration Statements) and will afford each such Holder an opportunity to include in such registration statement all or part of the Registrable Securities held by such Holder. Each Holder desiring to include in any such registration statement all or any part of the Registrable Securities held by it shall, within twenty (20) days after the above-described notice from the Company, so notify the Company in writing. Such notice shall state the intended method of disposition of the Registrable Securities by such Holder. If a Holder decides not to include all of its Registrable Securities in any registration statement thereafter filed by the Company, such Holder shall nevertheless continue to have the right to include any Registrable Securities in any subsequent registration statement or registration statements as may be filed by the Company with respect to offerings of its securities, all upon the terms and conditions set forth herein.

(a) Underwriting. If the registration statement of which the Company gives notice under this Section 2.3 is for an underwritten offering, the Company shall so advise the Holders of Registrable Securities as part of the written notice given pursuant to Section 2.3 above. In such event, the right of any such Holder to be included in a registration pursuant to this Section 2.3 shall be conditioned upon such Holder's participation in such underwriting and the inclusion of such Holder's Registrable Securities in the underwriting to the extent provided herein. All Holders (together with the Company and the other holders of securities of the Company with registration rights to participate therein distributing their securities through such underwriting) proposing to distribute their Registrable Securities through such underwriting shall enter into an underwriting agreement in customary form with the underwriter or underwriters selected for such underwriting by the Company. Notwithstanding any other provision of this Section 2.3, if the underwriter determines in good faith that marketing factors require a limitation of the number of shares to be underwritten, the number of shares that may be included in the underwriting shall be allocated to the Holders of such Registrable Securities on a *pro rata* basis based on the number of Registrable Securities held by all such Holders (including the Initiating Holders); provided, however, that the number of shares of Registrable Securities to be included in such underwriting and registration shall not be reduced unless all other securities of the Company proposed to be registered by the Company or its officers, directors or employees are first entirely excluded from the underwriting and registration. If any Holder disapproves of the terms of any such underwriting, such Holder may elect to withdraw therefrom by written notice to the Company and the underwriter, delivered at least ten (10) business days prior to the effective date of the registration statement and upon receipt of such notice shall be withdrawn. If shares are so withdrawn from the registration and if the number of shares of Registrable Securities to be included in such registration was previously reduced as a result of marketing factors, the Company shall then offer to all persons who have retained the right to include securities in the registration the right to include additional securities in the registration in an aggregate amount equal to the number of shares so withdrawn, with such shares to be allocated among the persons requesting additional inclusion in accordance with this Section hereof. Any Registrable Securities excluded or withdrawn from such underwriting shall be excluded and withdrawn from the registration. For any Holder which is a partnership, limited liability company corporation, the partners, retired partners, members and stockholders of such Holder, or the estates and family members of any such partners, retired partners and members and any trusts for the benefit of any of the foregoing person shall be deemed to be a single "Holder," and any *pro rata* reduction with respect to such "Holder" shall be based upon the aggregate amount of shares carrying registration rights owned by all entities and individuals included in such "Holder," as defined in this sentence and such amounts shall be allocated by the Holder in its discretion.

(b) Right to Terminate Registration. The Company shall have the right to terminate or withdraw any registration initiated by it under this Section 2.3 prior to the effectiveness of such registration whether or not any Holder has elected to include securities in such registration. The Registration Expenses of such withdrawn registration shall be borne by the Company in accordance with Section 2.5 hereof.

2.4 Form S-3 Registration. In case the Company shall receive from any Holder or Holders of Registrable Securities a written request or requests that the Company effect a registration on Form S-3 or any similar short-form registration statement and any related qualification or compliance with respect to all or a part of the Registrable Securities owned by such Holder or Holders, the Company will:

(a) promptly give written notice of the proposed registration, and any related qualification or compliance, to all other Holders of Registrable Securities; and

(b) as soon as practicable, effect such registration and all such qualifications and compliances as may be so requested and as would permit or facilitate the sale and distribution of all or such portion of such Holder's or Holders' Registrable Securities as are specified in such request, together with all or such portion of the Registrable Securities of any other Holder or Holders joining in such request as are specified in a written request given within fifteen (15) days after receipt of such written notice from the Company pursuant to Section 2.4(a) above; provided, however, that the Company shall not be obligated to effect any such registration, qualification or compliance pursuant to this Section 2.4:

(i) if, after the Company has used commercially reasonable efforts to qualify for registration on Form S-3, Form S-3 is not available for such offering by the Holders; or

(ii) if the Holders, together with the holders of any other securities of the Company entitled to inclusion in such registration, propose to sell Registrable Securities and such other securities (if any) at an aggregate price to the public of less than one million dollars ($1,000,000), or

(iii) if within thirty (30) days of receipt of a written request from any Holder or Holders pursuant to this Section 2.4, the Company gives notice to such Holder or Holders of the Company's intention to make a public offering within ninety (90) days, other than pursuant to a Special Registration Statement.

(iv) if the Company shall furnish to the Holders a certificate signed by the Chairman of the Board of Directors stating that in the good faith judgment of the Board of Directors, it would be seriously detrimental to the Company and its stockholders for such Form S-3 registration to be effected at such time, in which event the Company shall have the right to defer the filing of the Form S-3 registration statement for a period of not more than ninety (90) days after receipt of the request of the Holder or Holders under this Section 2.4; provided, that such right to delay a request shall be exercised by the Company, under this Section 2.4 and Section 2.2, not more than once in any twelve (12) month period; or

(v) in any particular jurisdiction in which the Company would be required to qualify to do business or to execute a general consent to service of process in effecting such registration, qualification or compliance.

(c) Subject to the foregoing, the Company shall file a Form S-3 registration statement covering the Registrable Securities and other securities so requested to be registered as soon as practicable after receipt of the request or requests of the Holders. Registrations effected pursuant to this Section 2.4 shall not be counted as demands for registration or registrations effected pursuant to Sections 2.2 or 2.3, respectively.

2.5 Expenses of Registration. Except as specifically provided herein, all Registration Expenses incurred in connection with any registration, qualification or compliance pursuant to Section 2.2 or any registration under Section 2.3 or Section 2.4 herein shall be borne by the Company. All Selling Expenses incurred in connection with any registrations hereunder shall be borne by the holders of the securities so registered *pro rata* on the basis of the number of shares so registered on each Holder's behalf. The Company shall not, however, be required to pay for expenses of any registration proceeding begun pursuant to Section 2.2 or Section 2.4, the request of which has been subsequently withdrawn by the Initiating Holders or Holder (pursuant to Section 2.4) unless (a) the withdrawal is based upon material adverse information of which the Initiating Holders or Holder (pursuant to Section 2.4) were not aware at the time of such request or (b) in the case of a demand registration pursuant to Section 2.2, the Holders of a majority of Registrable Securities agree to forfeit their right to one demand registration pursuant to Section 2.2, as applicable, in which event such right shall be forfeited by all Holders. If the Initiating Holders or Holders are required to pay the Registration Expenses, such expenses shall be borne by the holders of securities (including Registrable Securities) requesting such registration in proportion to the number of shares for which registration was requested. If the Company is required to pay the Registration Expenses of a withdrawn offering pursuant to clause (a) above, then the Holders shall not forfeit their rights pursuant to Section 2.2 to a demand registration and such registration shall not be counted as a demand registration under Section 2.2.

2.6 Obligations of the Company. Whenever required to effect the registration of any Registrable Securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the SEC a registration statement with respect to such Registrable Securities and use all reasonable efforts to cause such registration statement to become effective, and, upon the request of the Holders of a majority of the Registrable Securities registered thereunder, keep such registration statement effective for up to ninety (90) days (such period to be extended by the number of days from the notice pursuant to Section 2.6(f) hereof until the Company amends or supplements the prospectus pursuant to such Section 2.6(f)), or, if earlier, until the Holder or Holders have completed the distribution related thereto. The Company shall not be required to file, cause to become effective or maintain the effectiveness of any registration statement that contemplates a distribution of securities on a delayed or continuous basis pursuant to Rule 415 under the Securities Act.

(b) Prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement for the period set forth in paragraph (a) above.

(c) Furnish to the Holders such number of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents, including any amendment of or supplement to the prospectus as they may reasonably request.

(d) Use its reasonable best efforts to register and qualify the securities covered by such registration statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders; *provided* that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such states or jurisdictions.

(e) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter(s) of such offering.

(f) Notify each Holder of Registrable Securities covered by such registration statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening 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 in the light of the circumstances then existing. The Company will use reasonable best efforts to promptly amend or supplement such prospectus in order to cause such prospectus not to include any 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 in the light of the circumstances then existing.

(g) Use its reasonable best efforts to furnish, on the date that such Registrable Securities are delivered to the underwriters for sale, if such securities are being sold through underwriters, (i) an opinion, dated as of such date, of the 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, and (ii) a letter dated as of such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering addressed to the underwriters.

2.7 Termination of Registration Rights. A Holder's registration rights shall expire if (a) the Company has completed its Qualified Public Offering and is subject to the provisions of the Exchange Act, (b) such Holder (together with its affiliates, partners and former partners) holds less than 1% of the Company's outstanding Common Stock (treating all shares of convertible Preferred Stock on an as converted basis) and (c) all Registrable Securities held by and issuable to such Holder (and its affiliates, partners, former partners, members and former members) may be sold under Rule 144(k).

2.8 Delay of Registration; Furnishing Information.

(a) No Holder shall have any right to obtain or seek an injunction restraining or otherwise delaying any such registration as the result of any controversy that might arise with respect to the interpretation or implementation of this Section 2.

(b) The selling Holders shall furnish to the Company such information regarding themselves, the Registrable Securities held by them and the intended method of disposition of such securities as shall be required to effect the registration of their Registrable Securities.

(c) The Company shall have no obligation with respect to any registration requested pursuant to Section 2.4 if, due to the operation of subsection 2.2(b), the anticipated aggregate offering price of the Registrable Securities to be included in the registration does not equal or exceed the anticipated aggregate offering price required to originally trigger the Company's obligation to initiate such registration as specified in Section 2.4.

2.9 Indemnification. In the event any Registrable Securities are included in a registration statement under Sections 2.2, 2.3 or 2.4:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers, directors and legal counsel of each Holder, any underwriter (as defined in the Securities Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, expenses, claims, damages, or liabilities (joint or several) to which they may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions, proceedings or settlements in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation") by the Company: (i) any untrue statement or alleged untrue statement of a material fact contained in such registration statement offering circular, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or other document (including any related registration statement, notification, or the like) incident to any such registration, qualification, or compliance, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein not misleading, or (iii) any violation or alleged violation by the Company of the Securities Act, the Exchange Act, or any rules or regulation promulgated thereunder, the Exchange Act or any state securities law in connection with the offering covered by such registration statement; and the Company will pay as incurred to each such Holder, partner, officer, director, legal counsel, underwriter or controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; *provided however*, that the indemnity agreement contained in this Section 2.9(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation which occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by such Holder, partner, officer, director, underwriter or controlling person of such Holder.

(b) To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such registration qualifications or compliance is being effected, indemnify and hold harmless the Company, each of its directors, its officers, legal counsel and each person, if any, who controls the Company within the meaning of the Securities Act, any underwriter and any other Holder selling securities under such registration statement or any of such other Holder's partners, directors or officers or any person who controls such Holder, against any losses, claims, damages or liabilities (joint or several) to which the Company or any such director, officer, controlling person, underwriter or other such Holder, or partner, director, officer or controlling person of such other Holder may become subject under the Securities Act, the Exchange Act or other federal or state law, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder under an instrument duly executed by such Holder and stated to be specifically for use in connection with such registration; and each such Holder will pay any legal or other expenses reasonably incurred by the Company or any such director, officer, controlling person, underwriter or other Holder, or partner, officer, director or controlling person of such other Holder in connection with investigating or defending any such loss, claim, damage, liability or action if it is judicially determined that there was such a Violation; *provided, however*, that the indemnity agreement contained in this Section 2.9(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder, which consent shall not be unreasonably withheld; *provided further*, that in no event shall any indemnity under this Section 2.9 exceed the net proceeds from the offering received by such Holder.

(c) Promptly after receipt by a person entitled to indemnification under this Section 2.9 (an "Indemnified Party") under this Section 2.9 of notice of the commencement of any action (including any governmental action), such Indemnified Party will, if a claim in respect thereof is to be made against any party required to provide indemnification (an "Indemnifying Party") under this Section 2.9, deliver to the Indemnifying Party a written notice of the commencement thereof and the Indemnifying Party shall have the right to participate in, and, to the extent the Indemnifying Party so desires, jointly with any other Indemnifying Party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; *provided, however*, that an Indemnified Party shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnifying Party, if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between such Indemnified Party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the Indemnifying Party within a reasonable time of the commencement of any such action, if materially prejudicial to its ability to defend such action, shall relieve such Indemnifying Party of any liability to the Indemnified Party under this Section 2.9, but the omission so to deliver written notice to the Indemnifying Party will not relieve it of any liability that it may have to any Indemnified Party otherwise than under this Section 2.9.

(d) If the indemnification provided for in this Section 2.9 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any losses, expenses, claims, damages or liabilities referred to herein, the Indemnifying Party, in lieu of indemnifying such Indemnified Party thereunder, shall to the extent permitted by applicable law contribute to the amount paid or payable by such Indemnified Party as a result of such loss, claim, damage or liability in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and of the Indemnified Party on the other in connection with the Violation(s) that resulted in such loss, claim, damage or liability, as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined by a court of law by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the Indemnifying Party or by the Indemnified Party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission; *provided*, that in no event shall any contribution by a Holder hereunder exceed the net proceeds from the offering received by such Holder.

(e) The obligations of the Company and Holders under this Section 2.9 shall survive completion of any offering of Registrable Securities in a registration statement and the termination of this agreement. No Indemnifying Party, in the defense of any such claim or litigation, shall, except with the consent of each Indemnified Party, 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.

2.10 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 2 may be assigned by a Holder to a transferee or assignee of Registrable Securities which (a) is a subsidiary, parent, general partner, limited partner, retired partner, member or retired member of a Holder, (b) is a Holder's family member or trust for the benefit of an individual Holder, or (c) acquires at least one hundred thousand (100,000) shares of Registrable Securities (as adjusted for stock splits and combinations); *provided, however*, (i) the transferor shall, within ten (10) days after such transfer, furnish to the Company written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (ii) such transferee shall agree to be subject to all restrictions set forth in this Agreement.

2.11 Amendment of Registration Rights. Any provision of this Section 2 may be amended and the observance thereof may be waived (either generally or in a particular instance and either retroactively or prospectively), only with the written consent of the Company and the Holders of at least sixty-six and two-thirds percent (66-2/3%) of the Registrable Securities then outstanding. Any amendment or waiver effected in accordance with this Section 2.11 shall be binding upon each Holder and the Company. By acceptance of any benefits under this Section 2, Holders of Registrable Securities hereby agree to be bound by the provisions hereunder.

2.12 Limitation on Subsequent Registration Rights. Other than as provided in Section 5.12, after the date of this Agreement, the Company shall not, without the prior written consent of the Holders of at least sixty-six and two-thirds percent (66-2/3%) of the Registrable Securities then outstanding, enter into any agreement with any holder or prospective holder of any securities of the Company that would grant such holder registration rights pari passu or senior to those granted to the Holders hereunder.

2.13 "Market Stand-Off" Agreement; Agreement to Furnish Information. If requested by the Company and an underwriter of the Company's Common Stock each Holder hereby agrees that such Holder shall not sell, transfer, make any short sale of, grant any option for the purchase of, or enter into any hedging or similar transaction with the same economic effect as a sale, any Registrable Securities held by such Holder (other than those included in the registration) for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Company not to exceed one hundred eighty (180) days following the effective date of a registration statement of the Company filed under the Securities Act; *provided* that:

(i) such agreement shall apply only to the Qualified Public Offering; and

(ii) all officers and directors of the Company and holders of at least one percent (1%) of the Company's voting securities enter into similar agreements.

Each Holder agrees to execute and deliver such other agreements as may be reasonably requested by the Company or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. In addition, if requested by the Company or the representative of the underwriters of Common Stock (or other securities) of the Company, each Holder shall provide, within ten (10) days of such request, such information as may be required by the Company or such representative in connection with the completion of any public offering of the Company's securities pursuant to a registration statement filed under the Securities Act. The obligations described in this Section 2.13 shall not apply to a registration relating solely to employee benefit plans on Form S-1 or Form S-8 or similar forms that may be promulgated in the future, or a registration relating solely to a Commission Rule 145 transaction on Form S-4 or similar forms that may be promulgated in the future. The Company may impose stop-transfer instructions with respect to the shares of Registrable Securities subject to the foregoing restriction until the end of said one hundred eighty (180) day period. Each Holder agrees that any transferee of any shares of Registrable Securities shall be bound by this Section 2.13.

2.14 Rule 144 Reporting. With a view to making available to the Holders the benefits of certain rules and regulations of the SEC which may permit the sale of the Registrable Securities to the public without registration, the Company agrees to use its best efforts to:

(a) Make and keep public information available, as those terms are understood and defined in SEC Rule 144 or any similar or analogous rule promulgated under the Securities Act, at all times after the effective date of the first registration filed by the Company for an offering of its securities to the general public;

(b) File with the SEC, in a timely manner, all reports and other documents required of the Company under the Exchange Act; and

(c) So long as a Holder owns any Registrable Securities, furnish to such Holder forthwith upon request: a written statement by the Company as to its compliance with the reporting requirements of said Rule 144 of the Securities Act, and of the Exchange Act (at any time after it has become subject to such reporting requirements); a copy of the most recent annual or quarterly report of the Company; and such other reports and documents as a Holder may reasonably request in availing itself of any rule or regulation of the SEC allowing it to sell any such securities without registration.

SECTION 3. COVENANTS OF THE COMPANY.

3.1 Basic Financial Information and Reporting.

(a) The Company will maintain true books and records of account in which full and correct entries will be made of all its business transactions pursuant to a system of accounting established and administered in accordance with generally accepted accounting principles consistently applied, and will set aside on its books all such proper accruals and reserves as shall be required under generally accepted accounting principles consistently applied.

(b) The Company shall deliver to each Major Investor each of the financial statements and other reports described below:

(i) as soon as practicable after the end of each fiscal year of the Company, and in any event within ninety (90) days thereafter, an audited balance sheet of the Company, as at the end of such fiscal year, and an audited statement of income and an audited statement of cash flows of the Company, for such fiscal year, all prepared in accordance with generally accepted accounting principles consistently applied and setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail. Such financial statements shall be accompanied by a report and opinion thereon by independent public accountants of national standing selected by the Board of Directors.

(ii) as soon as practicable after the end of the first, second and third quarterly accounting periods in each fiscal year of the Company, and in any event within thirty (30) days thereafter, a balance sheet of the Company as of the end of each such quarterly period, and a statement of income and a statement of cash flows of the Company for such period and for the current fiscal year to date, prepared in accordance with generally accepted accounting principles consistently applied, with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made.

(c) The Company will furnish each such Major Investor (i) no earlier than sixty (60) days prior nor later than thirty (30) days prior to the end of each fiscal year an annual budget and operating plans for the next succeeding fiscal year, on a month to month basis and for the following two (2) fiscal years on a quarter to quarter basis, including a balance sheet as at the end of each relevant period and income statements and statements of cash flows for each relevant period and for the period commencing at the beginning of the fiscal year and ending on the last day of such relevant period (and as soon as available, any subsequent revisions thereto); and (ii) as soon as practicable after the end of each month, and in any event within fifteen (15) days thereafter, a balance sheet of the Company as of the end of each such month, and a statement of income and a statement of cash flows of the Company for such month and for the current fiscal year to date, including a comparison to plan figures for such period and to the prior year's performance, prepared in accordance with generally accepted accounting principles consistently applied, with the exception that no notes need be attached to such statements and year-end audit adjustments may not have been made.

(d) Accountants' Reports. Promptly upon receipt thereof, the Company shall deliver to each Major Investor copies of all significant reports submitted by the Company's firm of certified public accountants in connection with each annual, interim or special audit or review of any type of the financial statements or related internal control systems of the Company and its subsidiaries (if any) made by such accountants, including any comment letter submitted by such accountants to management in connection with their services.

3.2 Inspection Rights. Each Major Investor shall have the right, upon reasonable notice to the Company, to visit and inspect any of the properties, including the books and records, of the Company or any of its subsidiaries, and to discuss the affairs, finances and accounts of the Company or any of its subsidiaries with its officers, and to review such information as is reasonably requested all at such reasonable times and as often as may be reasonably requested. Each Major Investor shall have such other access to management and information as is necessary for it to comply with applicable laws and regulations and reporting obligations.

3.3 Confidentiality of Records. Each Investor agrees to use the Company's confidential proprietary information only for monitoring its investment in the Company and not to disclose any such confidential information to any third party (other than Investor's accountants, attorneys, other advisors, partners, members and stockholders, which persons agree to maintain the confidentiality of such information), except with the consent of the Company. The foregoing requirements of confidentiality shall not apply to information: (a) that is or in the future becomes freely available to the public through no fault of or action by the using or disclosing party; (b) that is in the possession of the using or disclosing party prior to the time such information was obtained from the Company or that is independently acquired by the using or disclosing party without aid, application or use of such other information; (c) that is obtained by the using or disclosing party in good faith without knowledge of any breach or a secrecy arrangement from a third party; (d) that is required to be disclosed by applicable law or order of government agency or self-regulatory body; or (e) that is disclosed in connection with a bona-fide offer to purchase any shares in the Company, provided that the proposed transferor obtains an undertaking from the proposed transferee to keep such information confidential in accordance with the provision of this Section 3.3 prior to such disclosure.

3.4 Reservation of Common Stock. The Company shall at all times reserve and keep available, solely for issuance and delivery upon the conversion of the Shares, all Common Stock issuable from time to time upon such conversion and/or exercise, as the case may be.

3.5 Proprietary Information and Inventions Agreement. The Company shall require all employees and consultants to execute and deliver a Proprietary Information and Inventions Agreement in the form attached to the Purchase Agreement.

3.6 Directors' Expenses. The Company shall not pay any compensation to any member of the Board of Directors in connection with the performance of their duties as a Director, but the Company shall reimburse any Directors and board observers designated by the Holders of the Shares for their reasonable travel expenses related to their attendance at meetings of the Board of Directors and of any committee of the Board of Directors.

3.7 Directors' Liability and Indemnification. The Company's Certificate of Incorporation and Bylaws shall provide (a) for elimination of the liability of director to the maximum extent permitted by law and (b) for indemnification of directors for acts on behalf of the Company to the maximum extent permitted by law.

3.8 Board of Directors Meetings and Committees. The Company shall cause its Board of Directors to (a) meet at least monthly, either in person or telephonically, (b) meet at least quarterly in person, and (c) have at all times at least two committees made up solely of non-management directors: a Compensation Committee and an Audit Committee. Moore, as long as it holds at least fifteen percent (15%) of the aggregate Shares originally purchased by it pursuant to the Purchase Agreement (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like), shall have the right to have its director representative on the Compensation Committee.

3.9 Qualified Small Business. The Company will use reasonable efforts to comply with the reporting and recordkeeping requirements of Section 1202 of the Internal Revenue Code of 1986, as amended (the "Code"), any regulations promulgated thereunder and any similar state laws and regulations, and agrees not to repurchase any stock of the Company if such repurchase would cause the Shares not to so qualify as "Qualified Small Business Stock," so long as the Board of Directors determines that it is in the best interests of and not unduly burdensome to the Company to comply with the provisions of Section 1202 of the Code. The Company further covenants to submit to its stockholders and to state and federal taxation authorities such form and filings as may be required to document such compliance, including the California Franchise Tax Board Form 3565, Small Business Stock Questionnaire, with its franchise or income tax return for the current income year.

3.10 Insurance. The Company and its subsidiaries (if any) will maintain or cause to be maintained with financially sound and reputable insurers, (a) directors and officers insurance, and (b) public liability and property damage insurance with respect to their respective businesses and properties against loss or damage of the kinds, in each case in the coverage amounts customarily carried or maintained by companies of established reputation engaged in similar businesses and will deliver evidence thereof to the Major Investors.

3.11 Use of Proceeds. Without limiting any other covenants and provisions hereof, the Company covenants and agrees that the proceeds of the sale of Series B Stock and Series A-1 Stock pursuant to the Purchase Agreement (the "Proceeds") will be used for general working capital purposes and no such proceeds will be used to pay any funded debt of the Company or to repurchase or cancel any of the Company's securities; provided, however, that the Company may in its discretion use a portion of the Proceeds to repay principle and interest on that certain promissory note of Company to Quantum Corporation ("Quantum") issued pursuant to the terms of that certain Asset Purchase Agreement dated as of October 7, 2002 between the Company and Quantum.

3.12 Corporate Existence. The Company shall maintain and cause each of its subsidiaries (if any) to maintain, their respective corporate existence, rights and franchises in full force and effect.

3.13 Restrictive Agreements Prohibited. Neither the Company nor any of its subsidiaries (if any) shall become a party to any agreement which by its terms materially restricts the Company's performance under the Company's Certificate of Incorporation, or restricts the Company's performance under the Amended and Restated Voting Agreement dated on or about the date hereof among the Company and certain stockholders of the Company, as such may be amended, restated, supplemented or otherwise modified from time to time (the "Voting Agreement").

3.14 Transactions with Affiliates. Except for transactions contemplated by this Agreement or the Voting Agreement or as otherwise approved by the Board of Directors, including the approval of the directors elected or approved by holders of the Series B Stock and Series A-1 Stock, neither the Company nor any of its subsidiaries (if any) shall enter into any transaction with any director, officer, employee or holder of more than five percent (5%) of the outstanding capital stock of any class or series of capital stock of the Company or any of its subsidiaries (if any), member of the family of any such person, or any corporation, partnership, trust or other entity in which any such person, or member of the family of any such person, is a director, officer, trustee, partner or holder of more than five percent (5%) of the outstanding capital stock thereof, except for (a) transactions on customary terms related to such person's employment, (b) reasonable compensation to employees in the ordinary course of business, consistent with past practice and (c) any sales of securities on an arms-length commercially reasonable basis with the consent of the Holders of at least fifty percent (50%) of the outstanding Shares.

3.15 Performance of Contracts. The Company shall not materially amend, modify, terminate, waive or otherwise alter, in whole or in part, any of the Proprietary Information and Inventions Agreements without the unanimous written consent of those members of the Company's Board of Directors elected or approved by the holders of Series B Stock and Series A-1 Stock.

3.16 Compliance with Laws. The Company shall use its best efforts to comply, and cause each subsidiary (if any) to comply, with all applicable laws, rules, regulations and orders, noncompliance with which could materially adversely affect its business or condition, financial or otherwise.

3.17 U.S. Real Property Interest Statement. The Company shall provide prompt written notice to each Investor following any "determination date" (as defined in Treasury Regulation Section 1.897-2(c)(i)) on which the Company becomes a United States real property holding corporation. In addition, upon a written request by any Investor, the Company shall provide such Investor with a written statement informing the Investor whether such Investor's interest in the Company constitutes a U.S. real property interest. The Company's determination shall comply with the requirements of Treasury Regulation Section 1.897-2(h)(1) or any successor regulation, and the Company shall provide timely notice to the Internal Revenue Service, in accordance with and to the extent required by Treasury Regulation Section 1.897-2(h)(2) or any successor regulation, that such statement has been made. The Company's written statement to any Investor shall be delivered to such Investor within ten (10) days of such Investor's written request therefor. The Company's obligation to furnish a written statement pursuant to this Section 3.17 shall continue notwithstanding the fact that a class of the Company's stock may be regularly traded on an established securities market.

3.18 Termination of Covenants. All covenants of the Company contained in Section 3 of this Agreement shall expire and terminate as to each Investor upon the earlier of (a) the effective date of the registration statement pertaining to the Qualified Public Offering, which results in the Preferred Stock being converted into Common Stock or (b) a Change in Control.

SECTION 4. RIGHTS OF FIRST REFUSAL.

4.1 Subsequent Offerings. Each New Investor shall have a right of first refusal to purchase its *pro rata* share of all Equity Securities, as defined below, that the Company may, from time to time, propose to sell and issue after the date of this Agreement, other than the Equity Securities excluded by Section 4.6 hereof. Each New Investor's *pro rata* share is equal to the ratio of (a) the number of shares of the Company's Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares) which such New Investor is deemed to hold immediately prior to the issuance of such Equity Securities to (b) the total number of shares of the Company's outstanding Common Stock (including all shares of Common Stock issued or issuable upon conversion of the Shares or upon the exercise of any outstanding warrants or options) immediately prior to the issuance of the Equity Securities. The term "Equity Securities" shall mean (i) any Common Stock, Preferred Stock or other security of the Company, (ii) any security convertible, with or without consideration, into any Common Stock, Preferred Stock or other security of the Company (including any option to purchase such a convertible security), (iii) any security of the Company carrying any warrant or right to subscribe to or purchase any Common Stock, Preferred Stock or other security or (iv) any such warrant or right.

4.2 Exercise of Rights. If the Company proposes to issue any Equity Securities, it shall give each New Investor written notice of its intention, describing the Equity Securities, the price and the terms and conditions upon which the Company proposes to issue the same (the "Notice"). Each New Investor shall have fifteen (15) days from the giving of the Notice to agree to purchase its *pro rata* share of the Equity Securities for the price and upon the terms and conditions specified in the Notice by giving written notice to the Company and stating therein the quantity of Equity Securities to be purchased. Notwithstanding the foregoing, the Company shall not be required to offer or sell such Equity Securities to any New Investor who would cause the Company to be in violation of applicable federal securities laws by virtue of such offer or sale.

4.3 Issuance of Equity Securities to Other Persons. If not all of the New Investors elect to purchase their *pro rata* share of the Equity Securities, then the Company shall promptly notify in writing the New Investors who do so elect and shall offer such New Investors the right to acquire such unsubscribed shares (on a pro rata basis among those New Investors electing to do so). The New Investors shall have five (5) days after receipt of such notice to notify the Company of its election to purchase all or a portion thereof of the unsubscribed shares. If the New Investors fail to exercise in full the rights of first refusal, the Company shall have ninety (90) days thereafter to sell the Equity Securities in respect of which the New Investor's rights were not exercised, at a price and upon general terms and conditions materially no more favorable to the purchasers thereof than specified in the Company's Notice to the New Investors pursuant to Section 4.2 hereof. If the Company has not sold such Equity Securities within ninety (90) days of the Notice provided pursuant to Section 4.2, the Company shall not thereafter issue or sell any Equity Securities, without first offering such securities to the New Investors in the manner provided above.

4.4 Termination and Waiver of Rights of First Refusal. The rights of first refusal established by this Section 4 shall not apply to, and shall terminate upon the earlier of (a) the effective date of the registration statement pertaining to the Qualified Public Offering or (b) a Change in Control. The rights of first refusal established by this Section 4 may be amended, or any provision waived, with the written consent of New Investors holding sixty-six and two-thirds percent (66-2/3%) of the Registrable Securities held by all New Investors.

4.5 Transfer of Rights of First Refusal. The rights of first refusal of each New Investor under this Section 4 may be transferred to the same parties, subject to the same restrictions, as any transfer of registration rights pursuant to Section 2.10.

4.6 Excluded Securities. The rights of first refusal established by this Section 4 shall have no application to any of the following Equity Securities:

(a) Common Stock (and/or options, warrants or other Common Stock purchase rights issued pursuant to such options, warrants or other rights) issued to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary, pursuant to stock purchase or stock option plans or other arrangements that are approved by the Board of Directors;

(b) stock issued pursuant to any rights or agreements outstanding as of the date of this Agreement, options and warrants outstanding as of the date of this Agreement; and stock issued pursuant to any such rights or agreements granted after the date of this Agreement;

(c) any Equity Securities issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board of Directors, including at least one director nominated by the holders of the Series B Stock or Series A-1 Stock;

(d) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization by the Company;

(e) shares of Common Stock issued upon conversion of the Shares;

(f) any Equity Securities issued pursuant to any equipment leasing or loan arrangement, or debt financing from a bank or similar financial or lending institution approved by the Board of Directors;

(g) any Equity Securities that are issued by the Company pursuant to a registration statement filed under the Securities Act; and

(h) any Equity Securities issued in connection with strategic transactions involving the Company and other entities, including (i) joint ventures, manufacturing, marketing or distribution arrangements or (ii) technology transfer or development arrangements; *provided* that such strategic transactions and the issuance of shares therein, has been approved by the Board of Directors; provided, however, that the number of Equity Securities issued pursuant to (f) and (h) above shall not exceed 343,980 shares of Common Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like).

SECTION 5. MISCELLANEOUS

5.1 **Governing Law**. This Agreement, and the rights of the parties hereto, shall be governed by, construed in accordance with and enforced under the laws of the State of New York without regard to the principles of conflicts of law of such state.

5.2 **Survival**. The representations, warranties, covenants, and agreements made herein shall survive any investigation made by any Holder and the closing of the transactions contemplated hereby. All statements as to factual matters contained in any certificate or other instrument delivered by or on behalf of the Company pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties by the Company hereunder solely as of the date of such certificate or instrument.

5.3 **Successors and Assigns**. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors, and administrators of the parties hereto and shall inure to the benefit of and be enforceable by each person who shall be a holder of Registrable Securities from time to time; *provided, however*, that prior to the receipt by the Company of adequate written notice of the transfer of any Registrable Securities specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such shares in its records as the absolute owner and holder of such shares for all purposes, including the payment of dividends or any redemption price.

5.4 **Entire Agreement**. This Agreement, the Exhibits and Schedules hereto, the Purchase Agreement and the other documents delivered pursuant thereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

5.5 **Severability**. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

5.6 **Aggregation**. For the purposes of this Agreement, the number of Shares held by an Investor shall include the holdings of its Affiliates, and such holdings shall be aggregated together; provided, that the Investor and any Affiliate assignees and transferees shall have a single attorney-in-fact for the purpose of exercising any rights, receiving notices or taking any action under this Agreement.

5.7 **Amendment and Waiver**.

(a) Except as otherwise expressly provided, this Agreement may be amended or modified only upon the written consent of the Company and the holders of at least sixty-six and two-thirds percent (66-2/3%) of the Registrable Securities.

(b) Except as otherwise expressly provided, the obligations of the Company and the rights of the Holders under this Agreement may be waived only with the written consent of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the Registrable Securities.

(c) Notwithstanding the foregoing, this Agreement may be amended with only the written consent of the Company to include on Exhibit A hereto additional purchasers of the Company's Preferred Stock, pursuant to the terms of the Purchase Agreement, as "Investors," "Holders" and parties hereto.

(d) For the purposes of determining the number of Holders or Investors entitled to vote or exercise any rights hereunder, the Company shall be entitled to rely solely on the list of record holders of its stock as maintained by or on behalf of the Company.

5.8 **Delays or Omissions**. It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any Holder, upon any breach, default or noncompliance of the Company under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any Holder's part of any breach, default or noncompliance under this Agreement or any waiver on such Holder's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to Holders, shall be cumulative and not alternative.

5.9 **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified, (b) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth on the signature pages hereof or *Exhibit A* hereto or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

5.10 Attorneys' Fees. In the event that any suit or action is instituted to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

5.11 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

5.12 Additional Investors.

(a) Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of its Preferred Stock pursuant to the Purchase Agreement, any purchaser of such shares of Preferred Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor" hereunder and Exhibit A hereto shall be amended to include such purchaser.

(b) Notwithstanding anything to the contrary contained herein, if the Company shall issue Equity Securities and such issuance shall be approved by the holders of at least sixty-six and two-thirds percent (66-2/3%) of the outstanding Shares, any purchaser of such Equity Securities may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed an "Investor" hereunder and Exhibit A shall be amended to include such Investor.

5.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

In Witness Whereof, the parties hereto have executed this **Amended and Restated Investor Rights Agreement** as of the date set forth in the first paragraph hereof.

COMPANY:

BROADBAND STORAGE, INC.
a Delaware corporation

By: /s/ ERIC KELLY
Name: Eric Kelly
Title: Chief Executive Officer, President and Secretary

INVESTORS:

MOORE TECHNOLOGY VENTURE FUND II, L.P.
By: /s/ KEVIN SHANNON
Name: Kevin Shannon, Chief Financial Officer, Moore Capital Management, Inc.

MOORE GLOBAL INVESTMENTS LTD.
By: /s/ KEVIN SHANNON
Name: Kevin Shannon, Chief Financial Officer, Moore Capital Management, Inc.

MELLON VENTURES II, L.P.
By: _____

By: MVMA II, L.P. a Delaware Limited Partnership
Its: General Partner

By: MVMA, Inc., a Delaware Corporation
Its: General Partner

By: /s/ JEFFREY H. ANDERSON
Mr. Jeffrey H. Anderson

[Signature Page to Amended and Restated Investor Rights Agreement]

Signature Page of Additional Holder to
Amended and Restated Investor Rights Agreement
Subsequent Closing on October 28, 2002

INVESTOR

QUANTUM CORPORATION

By: /s/ LARRY ORECKLIN
Name: Larry Orecklin
Title: President, SSG

EXHIBIT A

Moore Technology Venture Fund II, L.P.
Moore Global Investments Ltd.
Mellon Ventures II, L.P.

CERTIFICATE OF AMENDMENT

OF

THIRD AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

SNAP APPLIANCE, INC.

The undersigned hereby certifies as follows:

1. He is the duly elected, qualified and acting President of Snap Appliance, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Corporation").

2. The first sentence of Section C.4(l)(ii) of Article IV of the Corporation's Third Amended and Restated Certificate of Incorporation is hereby amended to read as follows:

"(ii) In the event any holder of Series A Preferred does not purchase at least his, her or its Pro Rata Share (as defined below) of the shares of Series B Preferred issued and sold by the Company pursuant to the terms of the Purchase Agreement (a "Non-Participating Holder") on or prior to November 15, 2002, then each share of Series A Preferred owned by such Non-Participating Holder shall automatically and without further action on the part of such Non-Participating Holder be converted into one (1) share of Common Stock effective as of 11:59 P.M. Pacific time on November 15, 2002."

3. The amendment set forth herein has been duly approved and adopted by the Board of Directors of the Corporation.

4. The necessary number of issued and outstanding shares of capital stock of the Corporation required by statute were voted in favor of the amendment.

5. Such amendment was duly adopted in accordance with the provisions of Sections 228 and 242 of the General Corporation Law of the State of Delaware.

(Signature page follows)

IN WITNESS WHEREOF, Snap Appliance, Inc. has caused this Certificate of Amendment to be signed by Eric Kelly, its President, this 6th day of November, 2002.

/s/ ERIC KELLY
Eric Kelly, President

BROADBAND STORAGE, INC.

AMENDED AND RESTATED VOTING AGREEMENT

THIS AMENDED AND RESTATED VOTING AGREEMENT (this "Agreement") is made as of October 15, 2002, by and among Broadband Storage, Inc., a Delaware corporation (the "Company"), Moore Technology Venture Fund II, L.P. and Moore Global Investment Ltd. (collectively, "Moore"), Mellon Ventures II, L.P. ("Mellon") and the investors listed on *Exhibit A* hereto and who execute this Agreement from time to time (Moore, Mellon and such other investors, the "Holders" and each individually a "Holder"), and amends and restates that certain Voting Agreement dated as of March 12, 2001 among the Company, Moore, Mellon and certain other stockholders of the Company (the "Prior Voting Agreement").

RECITALS:

Whereas, certain of the Holders are being issued shares of the Company's Series B Convertible Preferred Stock (the "Series B Stock") and/or the Company's Series A-1 Convertible Preferred Stock (the "Series A-1 Stock") pursuant to that certain Series B Preferred Stock Purchase and Recapitalization Agreement (the "Purchase Agreement") dated as of even date herewith (the "Financing");

Whereas, the obligations in the Purchase Agreement are conditioned upon the execution and delivery of this Agreement by the Company and the Holders;

Whereas, certain undersigned Holders who are a party to the Prior Voting Agreement and who hold 66 2/3% of the Series A Preferred Stock desire to amend and restate the Prior Voting Agreement and to accept the rights and obligations created pursuant hereto in lieu of their rights and obligations under the Prior Voting Agreement; and

Whereas, in connection with the consummation of the Financing, the parties desire to enter into this Agreement in order to grant voting and certain other rights to the Holders as set forth below.

Now, Therefore, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Voting Arrangement.

(a) Each Holder hereby agrees to take such action as may be required so that all shares of voting securities of the Company beneficially owned (as such term is defined in Rule 13d-3 promulgated under the Securities Exchange Act of 1934) by such Holder, whether now held or hereafter acquired by conversion, purchase or otherwise (the "Voting Stock"), are voted at each election of directors to the Board of Directors of the Company (the "Board") (whether by written consent or at an annual or special meeting of stockholders) for: (i) the Chief Executive Officer of the Company; (ii) one representative nominated by Moore and/or Affiliates of Moore; (iii) one representative nominated by Mellon and/or Affiliates of Mellon; (iv) one representative to be nominated by the Financial Investor (as defined below); and (v) one representative recommended by the Chief Executive Officer of the Company and nominated jointly by a majority of the outstanding shares of Series B Stock and Series A-1 Stock, who will be an outside director not employed by or otherwise affiliated with the Company, and initially to be _____. For purposes of this Section 1(a), "Affiliate" shall have the meaning set forth under Rule 144(a) of the Securities Act of 1933, as amended (the "Securities Act"), and for purposes of this Agreement shall include (A) a subsidiary or parent of a Holder, (B) a general, limited or retired partner of a Holder, (C) an affiliate fund of a Holder, (D) a member of a Holder that is a limited liability company, (E) a member of a limited liability company which is a member of a Holder, (F) the spouse, children, grandchildren or spouse of such children or grandchildren of a Holder, (G) senior employees of the manager of affiliated Holders that are investment funds, (H) persons and entities under common investment management with a Holder, or (I) trusts for the benefit of a Holder or such natural persons identified in clauses (F)-(H) above. For the purposes of this Section 1(a), the term "Financial Investor" shall mean an investor who purchases for cash at least Five Million Dollars ($5,000,000) worth of Series B Stock at a price per share equal to or in excess of $0.661179408 on substantially the same terms and conditions as in the Purchase Agreement (excluding any Holder and/or its Affiliates that is a party to this Agreement on the execution date hereof).

(b) The Holders, as holders of the Voting Stock, agree to be present, in person or by proxy, at all meetings of stockholders of the Company so that all shares of the Voting Stock held by the Holders may be counted for the purpose of determining the presence of a quorum at such meetings and voted as required herein.

(c) Any vote taken to remove any director elected pursuant to this Section 1, or to fill any vacancy created by the resignation or death of a director elected pursuant to this Section 1, shall also be subject to the provisions of this Section 1.

2. **Termination of Voting Arrangement**. The voting arrangement contained herein shall terminate and be of no further force and effect upon the earlier to occur of: (a) the tenth anniversary of this Agreement or (b) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least $3.50 per share (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) and (ii) the net cash proceeds to the Company (after underwriting discounts, commissions and fees) are at least $25,000,000, and pursuant to which the Series B Stock and Series A-1 Stock would be automatically converted into Common Stock under the Company's then effective Certificate of Incorporation.

3. **Board Observation Rights.** Each purchaser of shares of Series B Stock in the Financing that purchases shares for an aggregate purchase price in excess of Four Million Five Hundred Thousand Dollars ($4,500,000), except that such limit shall be Three Million Eight Hundred Ninety-Nine Thousand Nine Hundred Ninety-Nine Dollars ($3,899,999) for Quantum Corporation, shall be entitled, at each such purchaser's option to appoint one (1) board observer (each such board observer a "Board Observer"), which option may be exercised or waived at any time by such purchaser. Each Board Observer so appointed shall be entitled to notice of and to attend and participate (but not vote) in all meetings of the Board and, in addition, any Board Observer appointed by Quantum Corporation shall be entitled to notice of and to attend and participate (but not vote) in all meetings of the Audit Committee of the Board (but not any other committee of the Board). Each Board Observer entitled to attend a meeting of the Board and/or Audit Committee, as applicable, shall be entitled to receive upon issuance to the members of the Board or Audit Committee, as applicable, any package of materials prepared for the members of the Board or Audit Committee, including the Company's monthly financial statements; provided, however, that at the request of any member of the Board or Audit Committee, as applicable, any meeting of the Board or Audit Committee, as applicable, will be converted to a closed meeting and all Board Observers shall be excluded from the meeting at that time. No Board Observer shall have any duties, responsibilities or liability by virtue of any Board Observer's attendance at any meetings of the Board or Audit Committee or the failure to attend the same.

4. **Third Party Beneficiary.** Each Holder agrees that the Company shall be a third party beneficiary under this Agreement and that, as such, the Company shall be empowered to demand, through legal action or otherwise, the strict adherence by each Holder to the terms hereof and the enforcement of this Agreement. In addition, the Company shall be entitled to recover damages from any Holder who breaches this Agreement.

5. **Legend.** Each Holder understands and agrees that a legend in substantially the form set forth below shall appear on all stock certificates representing the Voting Stock:

> THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN COVENANTS REGARDING THE VOTING OF SUCH SHARES IN THE ELECTION OF DIRECTORS, AS SET FORTH IN AN AMENDED AND RESTATED VOTING AGREEMENT BY AND AMONG THE COMPANY AND CERTAIN HOLDERS OF ITS CAPITAL STOCK. A COPY OF SUCH AGREEMENT MAY BE OBTAINED FROM THE SECRETARY OF THE COMPANY.

6. **Remedies.** Each Holder agrees that it would be impossible or inadequate to measure and calculate the damages to the other parties hereto and to the Company resulting from any breach of the voting arrangement set forth herein. Accordingly, each Holder agrees that if such party breaches such arrangement, each other party hereto, including the Company, will have, in addition to any other right or remedy available, the right to obtain an injunction from a court of competent jurisdiction restraining such breach or threatened breach and to specific performance of such arrangement.

7. **General Provisions.**

(a) This Agreement, and the rights of the parties hereto, shall be governed by, construed in accordance with and enforced under the laws of the State of New York without regard to the principles of conflicts of law of such state, except for intrinsic rights of stockholders which shall be governed by, construed in accordance with and enforced under the laws of the State of Delaware.

(b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors, and permitted transferees, except as may be expressly provided otherwise herein.

(c) This Agreement, the Purchase Agreement (including any exhibits thereto) and the other documents delivered pursuant thereto constitute the full and entire understanding and agreement among the parties with regard to the subjects hereof and no party shall be liable or bound to any other in any manner by any representations, warranties, covenants and agreements except as specifically set forth herein and therein.

(d) Except as otherwise expressly provided herein, this Agreement may be amended only upon the written consent of: (i) Holders holding at least sixty-six and two-thirds percent (66-2/3%) of the outstanding shares of Series B Stock (on an as converted to common stock basis), (ii) Holders holding at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Series A-1 Stock (on an as converted to common stock basis) and (iii) the Company. Notwithstanding the foregoing, each Holder's respective right to appoint a director under Section 1(a) and/or Board Observer under Section 3 may not be amended without the prior written consent of the Holder possessing such right.

(e) In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(f) For purposes of this Agreement, the number of shares of Voting Stock held by a Holder shall include the holdings of its Affiliates, and such holdings shall be aggregated together; provided, that the Holder and any Affiliate assignees and transferees shall have a single attorney-in-fact for the purpose of receiving any notices or taking any action under this Agreement.

(g) The rights and obligations of the parties hereto may not be assigned without the prior written consent of the other parties hereto; provided, however, that such rights may be freely assigned by any of the parties hereto to their respective Affiliates; and, provided further, that such permitted assignees shall execute and deliver an additional counterpart signature page to this Agreement and shall be deemed "Holders" hereunder.

(h) It is agreed that no delay or omission to exercise any right, power, or remedy accruing to any party hereto, upon any breach, default or noncompliance of the other party or parties under this Agreement shall impair any such right, power, or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent, or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to parties, shall be cumulative and not alternative.

(i) The parties hereto agree upon request to execute any further documents or instruments necessary or desirable to carry out the purposes or intent of this Agreement.

(j) All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the party to be notified at the address as set forth on *Exhibit A* or the signature pages hereof or at such other address as such party may designate by ten (10) days advance written notice to the other parties hereto.

(k) In the event that any suit or action is instituted to enforce any provision inthis Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

(l) Notwithstanding anything to the contrary contained herein, if the Company shall issue additional shares of Series B Stock pursuant to the Purchase Agreement, any purchaser of such shares of Series B Stock may become a party to this Agreement by executing and delivering an additional counterpart signature page to this Agreement and shall be deemed a "Holder" hereunder.

(m) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument

In Witness Whereof, the parties hereto have executed this **AMENDED AND RESTATED VOTING AGREEMENT** as of the date set forth in the first paragraph hereof.

COMPANY:
BROADBAND STORAGE, INC.
a Delaware corporation

By: /s/ ERIC KELLY
Name: Eric Kelly
Title: Chief Executive Officer, President and Secretary

HOLDERS:

MOORE TECHNOLOGY VENTURE FUND II, L.P.

By: /s/ KEVIN SHANNON
Name: Kevin Shannon, Chief Financial Officer,
Moore Capital Management, Inc.

MOORE GLOBAL INVESTMENTS LTD.
By: /s/ KEVIN SHANNON
Name: Kevin Shannon, Chief Financial Officer,
Moore Capital Management, Inc.

MELLON VENTURES II, L.P.
By:_____

By: MVMA II, L.P. a Delaware Limited Partnership
Its: General Partner
By: MVMA, Inc., a Delaware Corporation
Its: General Partner

By: /s/ JEFFREY H. ANDERSON
Mr. Jeffrey H. Anderson

[Signature Page to Amended and Restated Voting Agreement]

Signature Page of Additional Holder to
Amended and Restated Voting Agreement
Subsequent Closing on October 28, 2002

HOLDER

QUANTUM CORPORATION
By: /s/ LARRY ORECKLIN
Name: Larry Orecklin
Title: President, SSG

EXHIBIT A

Moore Technology Venture Fund II, L.P.
Moore Global Investments Ltd.
Mellon Ventures II, L.P.

News Release

Contact:
Leigh Nixon
Public Relations
Quantum Corp.
(408) 944-6538

leigh.nixon@quantum.com

Audrey Krat
Investor Relations
Quantum Corp.
(408) 944-4455

audrey.krat@quantum.com

For Release:

Oct. 28, 2002

1:00 p.m. PST

QUANTUM CORPORATION Achieves revenue Growth across all businesses in FISCAL SECOND QUARTER

Milpitas, Calif., Oct. 28, 2002 – Quantum Corp. (NYSE:DSS), a leading provider of data protection systems, today announced that revenue for the fiscal second quarter (FQ2) 2003, ended Sept. 29, 2002, increased sequentially to $204 million, from $202 million in the prior quarter. These figures exclude results from the company's network attached storage (NAS) business, which it has since sold. Excluding the NAS results, Quantum's pro forma net loss for FQ2 was $11 million, or 7 cents per share. With the NAS results included, the company's FQ2 revenue was $215 million, and the pro forma net loss was $13 million, or 8 cents per share. On a GAAP basis, with the NAS business treated as a discontinued operation, Quantum announced a net loss of $111 million, or 71 cents per share. This loss included goodwill and intangible asset write-downs and charges associated with the company's cost reduction efforts and restructuring actions. For a reconciliation of pro forma to GAAP results, please see the table below.

"With sequential revenue improvements across all our businesses in fiscal Q2, Quantum made progress toward the goal of renewed profitability in the fiscal fourth quarter," said Rick Belluzzo, CEO of Quantum. "We began to see a greater revenue contribution from products launched earlier this year, and we took decisive steps to ensure our continued momentum in further growing revenue and reducing spending over the next two quarters."

These steps included Quantum's decisions to acquire Benchmark Storage Innovations, outsource much of Quantum's manufacturing, sell its NAS business, and implement restructuring actions to reduce the company's operating expenses by 20 percent. With these steps, Quantum is also able to increase its focus and leadership in its core business of data protection, where there are significant long-term growth opportunities.

Excluding NAS sales, September quarter revenue in the Storage Solutions Group was $51 million (or $62 million with NAS included). One of the highlights for SSG in FQ2 was a 20 percent sequential increase in OEM sales. In addition, SSG channel sales continued to show solid growth in FQ2, reflecting the benefits of the refocused channel strategy the group launched in April. Another positive for the September quarter was the 10 percent sequential increase in revenues from Quantum's tape automation line, as its newer products -- including the ATL P7000, ATL M2500 and Quantum SuperLoader™ -- gained traction.

FQ2 revenue in the DLTtape™ Group was $163 million, comprised of $69 million in tape drive revenue and $94 million in total tape media revenue. In the September quarter, DLTG saw a 2 percent sequential increase in overall tape drive shipments. Another highlight for DLTG in FQ2 was a 20 percent increase in shipments of its Super DLTtape— drives, which partly reflected the momentum behind the SDLT 320. The SDLT 320 is the industry's highest-capacity midrange tape drive and is currently shipping through HP, Overland Storage, Qualstar, StorageTek, Tandberg, and Quantum, with all remaining major systems OEMs and tape automation partners in qualification and expected to begin shipping the SDLT 320 in the next few months.

In setting its fiscal Q3 expectations, however, the company said it continues to see sluggishness in customer buying behavior and overall uncertainty in the broader IT spending environment. In addition, the Benchmark revenue included in Quantum's December quarter results will only be realized after the acquisition closes later this quarter.

"Based on these considerations, we currently expect Quantum's fiscal Q3 revenues to be relatively flat to slightly up on a sequential basis, excluding the discontinued NAS operations," said Belluzzo. "We also expect pro forma gross margins to be relatively flat to slightly up on a sequential basis and pro forma operating expenses to continue to decline due to our restructuring actions. As a result, we expect our pro forma earnings per share to track toward break-even performance for fiscal Q3, excluding special charges.

"With the revenue growth we experienced this quarter in all of our businesses and many of the restructuring actions taking effect in the next two quarters, we continue to believe we can achieve our goal of renewed profitability in fiscal Q4. Quantum's leadership in data protection is strengthening as we expand our tape drive business through the Benchmark acquisition and benefit from recent OEM and channel customer wins in our tape automation business."

About Pro Forma Earnings Per Share

Quantum has historically reported pro forma earnings per share and given guidance based on GAAP earnings adjusted for any special charges. Effective fiscal Q1 of 2003, the company began reporting pro forma earnings per share defined as GAAP earnings adjusted for special charges, acquisition-related expenses -- including amortization of intangibles -- and other significant one-time charges.

QUANTUM CORPORATION

GAAP TO PRO FORMA NET LOSS RECONCILIATION
DISCONTINUED OPERATIONS VIEW

	Three months ended	Six months ended
	September 29, 2002	
GAAP net loss	$ (111,444)	$ (242,327)
Adjusting items:		
Restructuring related		
Special charges	14,096	14,720
Investment related		
Equity investment write-downs	-	17,061
Acquisition and divestiture related		
Results of NAS discontinued operations, net of income taxes	2,884	12,137
Impairment of NAS net assets, net of income taxes	16,491	16,491
Other		
Cumulative effect of an accounting change (SFAS No. 142 adjustment)	-	94,298
Goodwill impairment	58,689	58,689
Amortization of intangible assets	2,894	5,621
Income tax expense related to outsourced manufacturing	10,293	10,293
Income tax effect related to all other charges	(4,803)	(6,076)
Pro forma net loss	$ (10,900)	$ (19,093)
Pro forma net loss per share	$ (0.07)	$ (0.12)

QUANTUM CORPORATION

GAAP TO PRO FORMA NET LOSS RECONCILIATION
CONSOLIDATED VIEW

	Three months ended	Six months ended
	September 29, 2002	
GAAP net loss	$ (111,444)	$ (242,327)
Adjusting items:		
Restructuring related		
Special charges	14,168	19,053
Investment related		
Equity investment write-downs	-	17,061
Acquisition and divestiture related		
Impairment of NAS net assets, net of income taxes	16,491	16,491
Other		
Cumulative effect of an accounting change (SFAS No. 142 adjustment)	-	94,298
Goodwill impairment	58,689	58,689

Amortization of intangible assets		4,259		8,351
Income tax expense related to outsourced manufacturing		10,293		10,293
Income tax effect related to all other charges		(5,349)		8,760)
Pro forma net loss	$	(12,983)	$	(26,851)
Pro forma net loss per share	$	(0.08)	$	(0.17)

Conference Call

Quantum will hold a conference call at 2:00 p.m. PDT. Press and industry analysts are invited to attend in listen-only mode. Dial-in numbers: 800-218-0204 (US), 303-262-2144 (International). Quantum will provide a live audio Webcast of the conference call beginning at 2:00 p.m. PDT. Webcast sites: http://investors.quantum.com/ or http://investors.quantum.com/medialist.cfm

About Quantum

Quantum Corp. (NYSE:DSS), founded in 1980, is a global leader in data protection, meeting the needs of business customers with enterprise-wide storage solutions and services. Quantum is the world's largest supplier of tape drives, and its DLTtape™ technology is the standard for backup, archiving, and recovery of mission-critical data. Quantum is also a leader in the design, manufacture and service of automated tape libraries used to manage, store and transfer data. This year, the company expanded into the area of disk-based backup, with a solution that emulates a tape library and is optimized for data protection. Quantum sales for the fiscal year ending March 31, 2002, were approximately $1.1 billion. Quantum Corp., 501 Sycamore Dr., Milpitas, CA 95035, (408) 944-4000, www.quantum.com.

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"Safe Harbor" Statement under the U.S. Private Securities Litigation Reform Act of 1995: This press release contains certain "forward-looking" statements within the meaning of the Private Securities Litigation Reform Act of 1995. Specifically, statements regarding: i) our anticipated fiscal Q3 2003 revenue and pro forma gross margins, operating expenses and earnings per share; ii) our expectations regarding the improvement of our financial results, including renewed profitability in Q4 FY 2003, and the reduction of our operating expenses by 20%-25%; iii) our expectations regarding the long-term growth opportunities in data protection; iv) the anticipated capabilities, revenue contribution and market penetration of current and future products; v) the expected timing of the qualification of our SDLT 320 with remaining major systems OEMs and tape automation partners; vi) continued sluggishness in customer buying behavior and overall uncertainty in the broader IT spending environment; vii) the closing of, and realization of revenue from, the Benchmark acquisition; and viii) the strengthening of our leadership in data protection are all forward-looking statements within the meaning of the Safe Harbor. These statements are based on management's current expectations and are subject to certain risks and uncertainties. As a result, actual results may differ materially from the forward-looking statements contained herein. Factors that could cause actual results to differ materially from those described herein include the length and severity of the current economic downturn overall and in the DLTtape and storage solutions sectors, our ability to successfully introduce new products, competitive pricing pressure in the market for our DLT and SuperDLT products and the resulting impact on our margins, reliance on major customers, changes in technology, unforeseen technological limitations, the ability of our competitors to introduce new products that compete more successfully with our products, risks associated with international sales and operations, the ability to retain key personnel, the impact of the recent Hewlett-Packard/Compaq merger on sales of our DLT and Super DLT products, and our ability to close the Benchmark acquisition and integrate it into Quantum as planned.

More detailed information about risk factors and uncertainties relating to Quantum's business generally, including risk factors and uncertainties in addition to those described above, are set forth in Quantum's periodic filings with the Securities and Exchange Commission (the "SEC"), including, but not limited to, those described in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Trends and Uncertainties," pages 44 to 54, in our Annual Report on Form 10-K filed with the SEC on July 1, 2002, those described in the section entitled "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Trends and Uncertainties," pages 40 to 49, in our Quarterly Report on Form 10-Q filed with the SEC on August 14, 2002, including, for example, the risk factor on page 40 under the heading "We are exposed to general economic conditions that have resulted in significantly reduced sales levels and if such adverse economic conditions were to continue or worsen, our business, financial condition and operating results could be adversely impacted," and those described in subsequently filed reports. Such reports contain and identify important factors that could cause actual events and results to differ materially from those contained in our projections or forward-looking statements. Quantum expressly disclaims any obligation to update or alter its forward-looking statements, whether as a result of new information, future events or otherwise.