

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

**QUANTUM CORP /DE/**

**Form: 8-K**

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Corporate Issuer CIK: 709283

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

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 OR 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 12, 2020

**Quantum**<sup>®</sup>

**Quantum Corporation**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**001-13449**

(Commission File No.)

**94-2665054**

(I.R.S. Employer Identification No.)

**224 Airport Parkway**      **Suite 550**  
**San Jose**                      **CA**  
(Address of Principal Executive Offices)

**95110**

(Zip Code)

**(408) 944-4000**

Registrant's telephone number, including area code

(Former name, former address and former fiscal year, if changed since last report)

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

Title of each class

Common Stock, \$0.01 par value per share

Trading Symbol

QMCO

Name of each exchange on which registered

Nasdaq Global Market

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Emerging growth company ☐

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

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#### Item 1.01. Entry into a Material Definitive Agreement.

On December 12, 2020, Quantum Corporation (the “Company”) entered into a Stock Purchase Agreement (the “SPA”) with the securityholders (the “Securityholders”) of Square Box Systems Limited, a company incorporated in England and Wales (“Square Box”), and consummated the transactions contemplated therein on the same day.

Pursuant to the terms of the SPA, the Company acquired from the Securityholders the entire issued share capital of Square Box in exchange for aggregate consideration of up to approximately \$13.0 million exclusive of transaction costs and expenses. The consideration consists of: (i) approximately \$6.0 million in cash; and (ii) shares of the Company’s common stock (the “Common Stock”) with an aggregate value of up to approximately \$7.0 million as of the closing of the transaction (the “Closing”).

The cash consideration will be paid as follows:

- At the Closing of the transaction, \$3.0 million, net of cash acquired; and
- On the date that is one year from the Closing, \$2.0 million; and
- On the date that is two years from the Closing, \$1.0 million.

The Common Stock is scheduled to be issued subject to the conditions described below:

- At the Closing, shares of Common Stock with an approximate value of \$2.0 million will be issued to the Securityholders<sup>(1)</sup>;
- On the date that is one year from the Closing, shares of Common Stock with an approximate value of up to \$2.0 million will be issued to the Securityholders<sup>(2)</sup>; and
- On the date that is two years from the Closing, shares of Common Stock with an approximate value of up to \$2.0 million will be issued to the Securityholders<sup>(2)</sup>, and additional shares of Common Stock with an approximate value of up to \$1.0 million will be issued to the Securityholders<sup>(3)</sup>.

(1) The number of shares of Common Stock to be issued to the Securityholders was fixed at the Closing and calculated by using the closing price of the Company’s Common Stock over a five-day period ending two business days prior to the Closing.

(2) In order to receive his or her allocated portion of the shares of Common Stock on the first and second anniversary dates of the Closing, each of the respective Securityholders must be employed by the Company at the first and second anniversary date, respectively, subject to certain exceptions.

(3) The additional shares of Common Stock to be paid on the second anniversary of the Closing will be paid to the Securityholders if certain employment and performance targets are met.

The Company’s issuance of the Common Stock under the terms of the SPA was made in a private placement effected in reliance on the exemption from registration under the Securities Act of 1933, as amended (the “Securities Act”) provided by Section 4(a)(2) of the Securities Act, Regulation D promulgated thereunder and/or Regulation S promulgated thereunder, and in reliance on other applicable exemptions from the qualification requirements of applicable state securities laws. The Company has agreed that it will file a Registration Statement on Form S-3 (or such other form as the Company is then eligible to use) to register the shares of Common Stock to be issued pursuant to the SPA within eight weeks of the Closing.

The SPA also contained customary representations, warranties and covenants of the parties to the SPA.

The foregoing description of the SPA does not purport to be complete and is qualified in its entirety by reference to the full text of the SPA, a copy of which is attached hereto as Exhibit 2.1 and is incorporated herein by reference. The SPA has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about the parties. The terms of the SPA govern the contractual rights and relationships, and allocate risks, among the parties in relation to the transactions contemplated by the SPA. In particular, the assertions embodied in the representations and warranties in the SPA reflect negotiations between, and are solely for the benefit of, the parties thereto and may be limited, qualified or modified by a variety of factors, including: subsequent events, information included in public filings, disclosures made during negotiations, correspondence between the parties and in confidential disclosure schedules to the SPA. Moreover, certain representations and warranties in the SPA were used for the purpose of allocating risk between the parties rather

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than establishing matters as facts and may not describe the actual state of affairs at the date they were made or at any other time. Accordingly, you should not rely on the representations and warranties in the SPA as characterizations of the actual state of facts about the parties.

### **Registration Rights Agreement**

In connection with the SPA, the Company and the Securityholders entered into a Registration Rights Agreement. Pursuant to the terms of the Registration Rights Agreement, the Company is required to file and register the shares of Common Stock to be issued pursuant to the SPA on a Registration Statement on Form S-3 (or such other form as the Company is then eligible to use) within eight weeks of the Closing.

The foregoing summary of the Registration Rights Agreement does not purport to be complete and is qualified in its entirety by reference to the Registration Rights Agreement, a copy of which is filed as Exhibit 4.1 to this report and incorporated herein by reference.

The Company issued a press release with additional information about the transaction described above. A copy of the press release is furnished with this report as Exhibit 99.1.

### **Item 2.01 Completion of Acquisition or Disposition of Assets.**

The information provided above in "Item 1.01 – Entry into a Material Definitive Agreement" under the heading "Stock Purchase Agreement" is incorporated herein by reference.

### **Item 3.02 Unregistered Sales of Equity Securities**

The information provided above in "Item 1.01 – Entry into a Material Definitive Agreement" is incorporated herein by reference.

### **Item 8.01 Other Events**

In connection with the transaction described above in "Item 1.01 – Entry into a Material Definitive Agreement," the Company entered into the following agreements with its lenders:

- Amendment No. 5 dated as of December 10, 2020 (the "Term Loan Amendment") to the Term Loan Credit and Security Agreement dated as of December 27, 2018 (as the same may be amended, modified, supplemented, renewed, restated or replaced from time to time, the "Term Loan Credit Agreement") among the Company, Quantum LTO Holdings, LLC, the lenders from time to time party thereto, and U.S. Bank National Association, as disbursing and collateral agent for such lenders. The Term Loan Amendment, among other terms and changes, permits the Company's acquisition of the share capital of Square Box pursuant to the SPA and amends certain terms of the Term Loan Credit Agreement in a manner that enabled the Company to enter into the SPA and consummate the transactions contemplated by the SPA.
- Fourth Amendment dated as of December 10, 2020 (the "Revolver Amendment") to the Amended and Restated Revolving Credit and Security Agreement, dated as of December 27, 2018 (as the same may be amended, modified, supplemented, renewed, restated or replaced from time to time, the "Revolving Credit Agreement"), among the Company, Quantum LTO Holdings, LLC, the lenders from time to time party thereto, and PNC Bank, National Association, as administrative agent for such lenders. The Revolver Amendment, among other terms and changes, permits the Company's acquisition of the share capital of Square Box pursuant to the SPA and amends certain terms of the Revolving Credit Agreement in a manner that enabled the Company to enter into the SPA and consummate the transactions contemplated by the SPA.

The foregoing description of the Term Loan Amendment and the Revolver Amendment does not purport to be complete and is qualified in its entirety by reference to the full text of the Term Loan Amendment and the Revolver Amendment, which are filed as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

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Item 9.01 Financial Statements and Exhibits

Exhibit Number	Name
2.1*	<a href="#"><u>Stock Purchase Agreement between Quantum Corporation and the securityholders of Square Box Systems Limited, a company incorporated in England and Wales, dated December 12, 2020.</u></a>
4.1*	<a href="#"><u>Registration Rights Agreement between Quantum Corporation and the securityholders of Square Box Systems Limited, a company incorporated in England and Wales, dated December 12, 2020.</u></a>
10.1	<a href="#"><u>Amendment No. 5 to Term Loan Credit and Security Agreement, dated as of December 10, 2020, among the Company, Quantum LTO Holdings, LLC, and the lenders party thereto.</u></a>
10.2*	<a href="#"><u>Fourth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of December 10, 2020, among the Company, Quantum LTO Holdings, LLC, the lenders party thereto, and PNC Bank, National Association, as administrative agent for such lenders.</u></a>
99.1	<a href="#"><u>Press Release dated December 14, 2020.</u></a>

\* Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(b) of Regulation S-K. The registrant hereby undertakes to furnish supplementally a copy of any omitted schedule or exhibit to such agreement to the SEC upon request.

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## SIGNATURES

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

December 14, 2020  
(Date)

**Quantum Corporation**  
(Registrant)

/s/ J. Michael Dodson  
J. Michael Dodson  
Chief Financial Officer  
(Principal Financial Officer)

Exhibit 2.1

**DATE 12 December 2020**

- (1) QUANTUM CORPORATION
- (2) ROLF MICHAEL HOWARTH
- (3) THE PERSONS LISTED IN PART B OF SCHEDULE 1 OF THIS AGREEMENT

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### SHARE PURCHASE AGREEMENT

relating to the acquisition of the entire  
issued share capital of

SQUARE BOX SYSTEMS LIMITED

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Pillsbury Winthrop Shaw Pittman LLP  
Tower 42, Level 21  
25 Old Broad Street  
London EC2N 1HQ

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## SHARE PURCHASE AGREEMENT

**DATE:** 12 December 2020

**BETWEEN:**

- (1) **QUANTUM CORPORATION** whose registered office is 1209 Orange Street, Wilmington, DE, 19801, County of New Castle, United States of America (the “**Buyer**”);
- (2) **ROLF MICHAEL HOWARTH** of Whittington House, Whittington, Cheltenham, Gloucestershire, GL54 4HA, United Kingdom (the “**Seller**”); and
- (3) **THE PERSONS** whose names and addresses are set out in Part B of Schedule 1 (the “**Option Sellers**”).

**INTRODUCTION:**

- (A) The Company (as defined below) is a private company limited by shares. Certain details of the Company are set out in Schedule 2.
- (B) The Seller has agreed to sell and the Buyer has agreed to buy the Sale Shares (as defined below) on the terms of this Agreement.
- (C) The Option Sellers have agreed to sell and the Buyer has agreed to buy the Option Shares (as defined below) on the terms of this Agreement.

**AGREEMENT:**

**1. Definitions and interpretation**

- 1.1 The Introduction and Schedules form part of this Agreement and have the same force and effect as if set out in the body of this Agreement. Any reference to this Agreement includes the Introduction and Schedules.
- 1.2 In this Agreement, the following words and expressions shall have the following meanings unless the context requires otherwise:

**\$:** United States dollars, being the lawful currency for the time being of the United States of America;

**£:** pounds sterling, being the lawful currency for the time being of the United Kingdom;

**Accounts:** the unaudited accounts of the Company for the accounting reference period which ended on the Accounts Date (comprising a balance sheet and profit and loss account and notes);

**Accounts Date:** 31 August 2020;

**Anti-Corruption Laws:** any laws, regulations or conventions in any part of the world related to combating bribery and corruption, including the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions; in the United Kingdom, the Bribery Act 2010; and in the United States, the Foreign Corrupt Practices Act;

**Anti-Terrorism and Anti-Money Laundering Laws:** any laws, regulations or conventions in any part of the world related to terrorism or money laundering, including, the European Union Money Laundering Directives; in the United Kingdom, the Money Laundering Regulations 2003, the Proceeds of Crime Act 2002, the Serious Organised Crime and Police Act 2005, the Anti-Terrorism, Crime and Security Act 2001; in the United States, the Executive Order and statutes authorising the establishment of trade and economic sanctions programs enforced by the Office of Foreign Assets Control of the U.S. Treasury Department, the Bank Secrecy Act of 1970 and the PATRIOT Act of 2001;

**Approved Medical Practitioner:** in the context of determining possible Incapacity, a licensed medical practitioner in the United Kingdom and as agreed between the relevant person and the Buyer;

**Automatic Enrolment Scheme:** a money purchase pension scheme within the meaning of the Pension Schemes Act 1993 section 181 used by the Company for the purposes of complying with the automatic enrolment employer duties arising under Part 1 of the Pensions Act 2008 and associated regulations operated by the People's Pension;

**Bespoke Software:** all software written or customised specifically for the Company, including any bespoke amendments to Standard Software;

**Business Day:** any day (other than a Saturday or Sunday) on which banks generally are open in London (UK) and San Jose, California (USA) for the transaction of normal business;

**Buyer Group Company:** the Buyer and any Group Company of the Buyer;

**Buyer Shares:** common stock with a par value of \$0.01 of the Buyer;

**Buyer Representative:** Lewis Moorehead (or such other person as the Buyer may notify to the Seller in writing);

**Cash:** all cash or cash equivalents in hand or credited to the account of or held in any account on behalf of the Company with any bank, financial, credit, lending or other similar institution (together with accrued interest) including securities with a maturity of less than 12 months that are readily convertible into cash, cash in transit, sums receivable in accordance with uncleared cheques or other methods of payment to the Company and excluding any tax credits, reliefs and/or losses in each case as recorded in the Company's books of account;

**CatDV Products:** CatDV Worker; CatDV Desktop; CatDV Server; CatDV Web and CatDV Archive Plugins;

**Cause:**

- a. Commit or repeat or continue any serious breach of their employment agreement or are guilty of any gross misconduct or any wilful neglect in the discharge of their duties;

- b. are guilty of any fraud or dishonesty, whether in the course of the employment or outside their course of employment and whether relating to the Company or any Group Company;
- c. are (in the reasonable opinion of the Buyer) guilty of conduct tending to bring themselves or the Company or any Group Company into disrepute;
- d. commit any act of bankruptcy, enter into any deed or arrangement with their creditors or take advantage of any statute offering relief for insolvent debtors;
- e. are convicted of any criminal offence (excluding offences under legislation in the United Kingdom or elsewhere for which a fine or a non-custodial penalty is imposed);
- f. become of unsound mind or are or become a patient for the purposes of any statute relating to mental health;
- g. become addicted to or habitually under the influence of alcohol or any drug (other than a drug prescribed for them by a medical doctor for the treatment of a condition other than drug addiction) the possession of which is controlled by law;
- h. knowingly, willfully, or negligently breach any of the rules and regulations, as amended from time to time, of any regulatory authority or body relevant to the business of the Company or any Group Company; or
- i. are convicted of an offence under a statutory enactment or regulation relating to insider dealing or market abuse,

but excluding Incapacity;

**Claim:** has the meaning given to it in Schedule 5;

**Company:** Square Box Systems Limited, a company incorporated in England and Wales (registered number 03819556) with its registered office at Unit 40 Lake View House, Tournament Fields, Wilton Road, Warwick, CV34 6RG, United Kingdom;

**Company's Bank Account:** the bank account of the Company with National Westminster Bank Plc, sort code: 60-12-35, account number 66516293, account name Square Box Systems;

**Company IP Rights:** all rights in the Registered IP and the Unregistered IP;

**Companies Act:** the Companies Act 2006;

**Completion:** completion of the actions of the Buyer, Seller and Option Sellers as set out in Clause 4.1;

**Completion Date:** the date of Completion;

**Completion Cash Consideration:** £3,803,505;

**Completion Share Consideration:** Buyer Shares to be issued to the Seller and the Option Sellers in the proportions set out in column 3 of Part C of Schedule 1;

**Confidential Information:** all information not in the public domain, which the Seller or an Option Seller (as applicable) shall have received or obtained at any time by reason of or in connection with their relationship with the Company including: trade secrets; customer/client lists, contact details of clients, customers and suppliers and individuals within those organisations; technical information, know-how, research and development; financial projections, target details and accounts; fee levels, pricing policies, commissions and commission charges; budgets, forecasts, reports, interpretations, records and corporate and business plans; planned products and services; marketing and advertising plans, requirements and materials, marketing surveys and research reports and market share and pricing statistics; and computer software and passwords;

**Connected Person:** in relation to a relevant person, any one or more of that relevant person's spouse, civil partner and/or children under the age of 18 living in the home of the relevant person (including step-children);

**Consideration:** has the meaning given to it in Clause 3.1;

**Contingent Share Consideration:** Buyer Shares to be issued to the Seller and the Option Sellers in the proportions set out in column 8 of Part C of Schedule 1;

**Controller:** has the meaning given in Article 4(1) of the GDPR;

**Controlling Interest:** means the ownership by a person and his or its connected persons of shares of either (i) the Buyer and/or (ii) the Company of the right to more than 51 per cent. of the total number of votes which may be cast on a poll at a general meeting;

**CTA 2009:** the Corporation Tax Act 2009;

**CTA 2010:** the Corporation Tax Act 2010;

**Data Protection Laws:** all laws relating to data protection and privacy which are from time to time applicable to the Company (or any part of its business), including: (a) the European Directive 95/46/EC and all applicable national laws, regulations and secondary legislation implementing the European Directive 95/46/EC including the Data Protection Act 1998; (b) GDPR and all related national laws, regulations and secondary legislation including the UK Data Protection Act 2018; and (c) the European Directive 2002/58/EC and all other applicable national laws, regulations and secondary legislation implementing the European Directive 2002/58/EC including the UK Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426), in each case as amended, replaced or updated from time to time and together with any subordinate or related legislation made under any of the foregoing;

**Data Room:** the data room hosted by Entrepreneurs Hub as at 11:36 am on 11<sup>th</sup> December 2020 and made available to the Buyer and as recorded on the two USB memory sticks initialled by or on behalf of the Buyer and the Seller for the purposes of identification;

**Debt:** all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, excluding, for the avoidance of doubt, any deferred revenue, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (g) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) to (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing paragraphs (a) to (g);

**Disclosed:** disclosed to the Buyer with sufficient detail to allow the Buyer (acting reasonably) to identify the nature and scope of the matters, facts and circumstances disclosed;

**Disclosure Letter:** the letter dated the date of this Agreement from the Warrantors to the Buyer making certain disclosures against the Warranties (other than the Fundamental Warranties) together with the documents attached or appended to it (if any);

**Disposal:** a Sale or the sale of all or the majority of the business, assets, property, and undertakings of either (i) the Buyer and/or (ii) the Company, whether in one transaction or a series of transactions;

**EMI Options:** means all of the subsisting options that have been granted by the Company on the basis that they are "qualifying options" (as defined in paragraph 1(2) of Schedule 5 to ITEPA 2003) under the Share Option Plan, and are currently held by the Option Sellers in respect of a total of 47 Option Shares;

**Employed:** a person (i) employed by a Buyer Group Company under a contract of employment or (ii) terminated as an employee of a Buyer Group Company other than for Cause or (iii) ceasing to be employed by a Buyer Group Company due to Incapacity;

**Employee:** any person employed by the Company under a contract of employment;

**Encumbrance:** any interest or equity of any person (including any right to acquire, option or right of pre-emption) or any mortgage, charge, pledge, lien, assignment, hypothecation, security interest (including any such interest registered pursuant to the Personal Property Securities Act 2009 (Cth)), title retention or any other security agreement or arrangement or other third party right, or any agreement, arrangement or obligation to create any of the same;

**Finally Determined:** means agreed in writing between the Buyer and the Seller or the relevant Option Seller (as applicable) or adjudged payable in legal proceedings in a court of competent jurisdiction from which there is no right of appeal or such right has become time-barred;

**Fundamental Warranties:** Warranties set out in paragraphs 4, 5, 7 and 10 of Schedule 4;

**GDPR:** the General Data Protection Regulation (EU) 2016/679;

**Group Company:** in relation to any company, any body corporate which is from time to time a holding company of that company, a subsidiary of that company or a subsidiary of a holding company of that company;

**Hardware:** any and all computer, telecommunications and network equipment used in the business of the Company (including PCs, mainframes, servers, screens, terminals, keyboards, disks, printers, cabling, associated and peripheral electronic equipment);

**HMRC:** Her Majesty's Revenue & Customs;

**Incapacity:** death, disability, long-term illness of the relevant person and/or their Connected Person or as a result of circumstances agreed between the relevant person with a Buyer Group Company;

**Ineligible Recipient:** has the meaning given to it in Clause 6.2;

**Intellectual Property:** patents, registered designs, rights in design, copyright, database right, rights in databases, trademarks, service marks, trade or business names, domain names, logos, inventions or secret processes, formulae, know-how and all rights or forms of protection of a similar nature or effect subsisting anywhere in the world, including applications or registrations for any such right;

**Investment Representation Letter:** a letter provided by the relevant Seller or Option Seller and dated on or around the date of this Agreement in relation to their eligibility to receive Buyer Shares;

**IT Contracts:** (a) all licences granted to the Company in respect of the Software, (b) all maintenance agreements in relation to the IT Systems, (c) all consultancy or professional services agreements relating to the IT Systems and IT Services, (d) all support agreements relating to the IT System and IT Services, (e) all lease agreements relating to the Hardware, (f) all contracts relating to the provision of connectivity for the IT System and IT Services, including hosting agreements and agreements with internet service providers, and (g) any other contracts relating to the IT Systems or the IT Services entered into by the Company;

**IT Services:** any and all services relating to the IT Systems or to any other aspect of the Company's data processing or data transfer requirements (including facilities management, hardware maintenance, software development or support, back-up and disaster recovery, source code deposit, recovery and network services);

**IT Systems:** the Hardware and the Software;

**ITEPA 2003:** Income Tax (Earnings and Pensions) Act 2003;

**Management Accounts:** the unaudited accounts of the Company for the twenty four month period to 30 September 2020 (comprising a balance sheet and profit and loss account);

**Off-the-Shelf Software:** all standard office application software used by the Company, including word processing, email, calendar, customer relationship management, spreadsheet and database functions;

**Open Source Software:** any software that is distributed or made available under “free software” or “open source” terms, including software licensed under the GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL), as well as any open source software distributed with any license term or condition, in each of the foregoing cases, that requires or purports to require as a condition of its use, modification or distribution that it, or other software incorporated, distributed with, or derived from it, be disclosed or distributed in source code form or made available at no charge;

**Option Exercise Monies:** the monies due from the Option Sellers to the Company in respect of the exercise of their Options as set out opposite each relevant Option Seller’s name in column 5 of Part B of Schedule 1 of this Agreement;

**Options:** the EMI Options all of which are (or were, prior to their exercise) outstanding and capable of being exercised in accordance with their terms and the rules of the Share Option Plan as a consequence of, and by reference to, Completion;

**Option Shares:** Ordinary Shares of £1.00 each in the capital of the Company issued immediately prior to Completion pursuant to the exercise by the Option Sellers of their Options and set out against the name of each relevant Option Seller in Column 4 of Part B of Schedule 1;

**Option Tax Liability:** any amount that represents the liability of the Company or of any other person (apart from the relevant Option Seller) to account to a Tax Authority for any amount of, or representing, income tax or social security contributions (whether under the laws of the United Kingdom or other overseas jurisdiction) that may arise on or in connection with the exercise of their Option or the acquisition, holding, disposal or part-disposal of any of their Option Shares;

**Ordinary Shares:** means the ordinary shares of £1.00 each in the capital of the Company;

**Parties:** the parties to this Agreement, and each a “Party”;

**Pension Scheme:** the Automatic Enrolment Scheme operated by the Company;

**Personal Data:** has the meaning given in Article 4(1) of the GDPR;

**Registered IP:** all patents, trademarks, domain names, and registered designs and any other registered Intellectual Property and applications for the same owned by the Company;

**Registration Rights Agreement:** means the registration rights agreement entered into on or around the date of this Agreement between the Buyer, the Seller and the Option Sellers;

**Relevant Date:**



- a. in respect of an issue of Buyer Shares under Clause 4.1.4, means the Completion Date;
- b. in respect of an issue of Buyer Shares under Clause 5.1.2, means the Year 1 Date; and
- c. in respect of an issue of Buyer Shares under Clause 5.2.1(a) and 5.2.1(b), means the Year 2 Date;

**Relief:** has the meaning given to it in the Tax Covenant;

**Sale:** means the sale, transfer or other disposal of a Controlling Interest to any person who is not a member of the Buyer's Group;

**Sale Shares:** the shares in the capital of the Company as set out against the name of the Seller at column 4 of Part A of Schedule 1;

**Sanctions and Export Control Laws:** all laws, statutes, measures, orders, and regulations relating to (i) economic or trade sanctions; and (ii) export, import, deemed export, transfer, and retransfer controls, including the EU Dual-Use Regulation (428/2009) and the UK Export Control Order 2008;

**Sellers' Solicitors:** Mackrell.Solicitors of Savoy Hill House, Savoy Hill, London, WC2R 0BU, United Kingdom;

**Sellers' Solicitor's Account:** the client account of the Seller's Solicitors with Coutts & Co, sort code: 18-00-02, account number 03837017, account name Mackrell. client account;

**Share Option Plan:** the Square Box Systems Limited 2016 EMI Share Option Plan established by the Company on 18 May 2016;

**Shares:** the Sale Shares and the Option Shares;

**Software:** together, the Off-the-Shelf Software, the Standard Software and the Bespoke Software, including all source and other preparatory materials relating to such programs;

**Sterling Equivalent:** in respect of an amount in \$ means that amount translated into pounds sterling at the rate of £1:\$1.334;

**Standard Software:** all off-the-shelf software applications used by the Company other than Off-the-Shelf Software;

**Stock Price:** \$5.54 per Buyer Share;

**Supervisory Authority:** any local, national, supranational, state, governmental or quasi-governmental agency, body, department, board, official or entity exercising regulatory or supervisory authority pursuant to any Data Protection Laws, including the Information Commissioner's Office in the UK;

**Surplus Cash:** has the meaning give in Clause 10.2;

**Target Revenue:** has the meaning given in Schedule 8;

**Taxation** and **Tax:** have the meaning given to them in the Tax Covenant;

**Tax Authority:** has the meaning given to it in the Tax Covenant;

**Tax Covenant:** provisions of Schedule 6 to this Agreement;

**Tax Warranties:** the Warranties set out in Clause 21 of Schedule 4;

**TCGA 1992:** Taxation of Chargeable Gains Act 1992;

**a third party:** any person other than the Parties;

**Unregistered IP:** Intellectual Property owned, used or held by the Company excluding any Registered IP;

**VATA 1994:** Value Added Tax Act 1994;

**Warranties:** the warranties set out in Schedule 4;

**Warrantors:** the Seller and David Clack;

**Workers:** any person who personally performs work for the Company who is not an Employee, and who is not on business on their own account or in a client/customer relationship;

**Working Capital:** means the aggregate current assets (including Cash, but excluding the Surplus Cash) at the relevant time less the aggregate current liabilities including any Tax liabilities, calculated in accordance with IFRS;

**Year 1 Cash Consideration:** £1,499,250;

**Year 1 Date:** has the meaning given to it in Clause 5.1;

**Year 1 Share Consideration:** Buyer Shares to be issued to the Seller and the Option Sellers in the proportions set out in column 5 of Part C of Schedule 1;

**Year 2 Cash Consideration:** £749,625;

**Year 2 Date:** has the meaning given to it in Clause 5.2; and

**Year 2 Share Consideration:** Buyer Shares to be issued to the Seller and the Option Sellers in the proportions set out in column 7 of Part C of Schedule 1.

1.3 In this Agreement, unless otherwise specified:

- 1.3.1 any reference to any statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, whether before or after the date of this Agreement;

- 1.3.2 any reference to any legislation (whether of the United Kingdom or elsewhere), including to any statute, statutory provision or subordinate legislation ("**Legislation**"):
- a. includes a reference to that Legislation as from time to time amended or re-enacted, whether before or after the date of this Agreement;
  - b. in the Warranties and Tax Covenant only, includes a reference to any past Legislation (as from time to time amended or re-enacted) which that Legislation re-enacted,
- except, in the case of each of Clauses 1.3.1 and 1.3.2, to the extent that any amendment or re-enactment coming into force, or Legislation made, on or after the date of this Agreement would create or increase the liability of any Party; and
- 1.3.3 any reference to re-enactment includes consolidation and rewriting, in each case whether with or without modification.
- 1.4 In this Agreement (unless the context requires otherwise):
- 1.4.1 words and expressions which are defined in the Companies Act and which are not otherwise defined in this Agreement shall have the same meanings as are given to them in the Companies Act where used in this Agreement;
  - 1.4.2 references to an "associate" in relation to another person are references to a person who is an associate of another within the meaning of CTA 2010 sections 448, 1122 and 1123 as applicable;
  - 1.4.3 words suggesting a gender shall include all other genders;
  - 1.4.4 words in the singular shall include the plural and vice versa;
  - 1.4.5 any reference to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.4.6 any reference to "holding company" or "subsidiary" means a "holding company" or "subsidiary" (as the case may be) as defined in the Companies Act 2006 section 1159 save that:
    - a. a company shall be treated, for the purposes only of the membership requirement contained in sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or that person's nominee), whether by way of security or in connection with the taking of security, or (b) its nominee;
    - b. in the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, Companies Act 2006 section 1159 shall apply as if: (a) references in sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section

1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;

- 1.4.7 any reference to a “person” includes a natural person, partnership, company, body corporate, association, organisation, government, state, foundation and trust (in each case whether or not having separate legal personality);
- 1.4.8 any reference to the Introduction, a Clause or Schedule is to the Introduction, a Clause or Schedule (as the case may be) of or to this Agreement;
- 1.4.9 any reference to this Agreement or to any other document is a reference to this Agreement or that other document as amended, varied, supplemented, or novated (in each case, other than in breach of the provisions of this Agreement) at any time;
- 1.4.10 “directly or indirectly” means either alone or jointly with any other person and whether on their own account or in partnership with another or others or as the holder of any interest in or as officer, employee or agent of or consultant to any other person;
- 1.4.11 any phrase introduced by the terms “including”, “include”, “in particular” or a similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.4.12 any reference to something being “in writing” or “written” shall include a reference to that thing being produced by any legible and non-transitory substitute for writing (including in electronic form) or partly in one manner and partly in another;
- 1.4.13 any reference to time is to time in the United Kingdom; and
- 1.4.14 where it is necessary to determine whether a monetary limit or threshold set out in this Agreement has been reached or exceeded (as the case may be) and the value of the relevant claim or any of the relevant claims is expressed in a currency other than pounds sterling, the value of each such claim shall be translated into pounds sterling at the prevailing exchange rate applicable to that amount of that non-sterling currency by reference to middle-market rates quoted by Barclays Bank plc immediately before close of business in London on the date of receipt by the relevant person(s) of written notification from the Buyer in accordance with this Agreement of the existence of such claim, or if such day is not a Business Day, on the Business Day immediately preceding such day;

- 1.5 The table of contents and Clause headings in this Agreement are included for ease of reference only and do not affect the interpretation of this Agreement.

## **2. Sale and purchase**

- 2.1 The Seller shall sell the Sale Shares with full title guarantee free from all Encumbrances and the Buyer shall purchase the Sale Shares, with effect from and including the Completion Date to the intent that as from that date all rights and advantages accruing to the Sale Shares, including any dividends or distributions declared or paid on the Sale Shares after that date, shall belong to the Buyer.

- 2.2 Each Option Seller shall sell that number of Option Shares set out opposite their name in Column 4 of Part B of Schedule 1 with full title guarantee free from all Encumbrances and the Buyer shall purchase such Option Shares, with effect from and including the Completion Date to the intent that as from that date all rights and advantages accruing to the Option Shares, including any dividends or distributions declared or paid on the Option Shares after that date, shall belong to the Buyer.
- 2.3 The Seller and each Option Seller hereby irrevocably waives any rights of pre-emption or other restrictions on transfer in respect of the transfer of the Shares (or any of them) to the Buyer conferred under the Company's articles of association or otherwise.
- 2.4 The Buyer shall not be obliged to complete the purchase of any of the Sale Shares or the Option Shares unless the sale of all of the Shares is completed simultaneously.
- 2.5 Each of the Option Sellers (acting directly or through a duly appointed attorney):
- 2.5.1 agrees and confirms that they have delivered to the Company a duly completed notice exercising their Options immediately prior to but conditional upon Completion and agreeing to sell the Option Shares that they acquire on the exercise of their Options pursuant to this Agreement;
  - 2.5.2 acknowledges and affirms that any Options that they hold and which are not exercised prior to Completion shall not be exercised and shall lapse immediately on Completion;
  - 2.5.3 undertakes to pay to the Company the amount set out opposite their name in column 5 of Part B of Schedule 1, which they are liable to pay in respect of the exercise of their Options by way of the mechanism set out at Clause 2.5.4;
  - 2.5.4 irrevocably authorises, directs and instructs the Buyer to deduct from their proportion of the Completion Cash Consideration such amount as is necessary to satisfy:
    - a. the proportion of the Option Exercise Monies that they are liable to pay on the exercise of their Options; and
    - b. where applicable or relevant, their Option Tax Liability,
 and to pay such amount to the Company in accordance with Clause 4.1.3 in discharge of each Option Seller's obligation in respect of their proportion of the Option Exercise Monies and, where applicable, the Option Tax Liability.

### 3. Consideration

- 3.1 The total consideration (the "**Consideration**") for the Shares shall be the aggregate of:
- 3.1.1 the Completion Cash Consideration;
  - 3.1.2 the Completion Share Consideration;
  - 3.1.3 the Year 1 Cash Consideration;

- 3.1.4 the Year 1 Share Consideration;
- 3.1.5 the Year 2 Cash Consideration;
- 3.1.6 the Year 2 Share Consideration; and
- 3.1.7 the Contingent Share Consideration.

#### 4. Completion

- 4.1 Completion shall take place immediately following execution of this Agreement when:
  - 4.1.1 the Seller shall deliver to the Buyer, or procure the delivery to the Buyer of, the documents and other items referred to in paragraph 1 of Schedule 3;
  - 4.1.2 each Option Seller shall deliver to the Buyer, or procure the delivery to the Buyer of the documents referred to in paragraph 2 and paragraph 3 (where relevant) of Schedule 3;
  - 4.1.3 the Buyer shall pay the Completion Cash Consideration to the Seller and the Option Sellers (in the amounts set out in column 2 of Part C of Schedule 1) by way of transfer of funds to the Sellers' Solicitor's Account, less:
    - a. in respect of the Option Sellers, any amounts referred to in Clause 2.5.4 which, where applicable, the Buyer shall pay to the Company's Bank Account and which shall be retained by the Company; and
    - b. any amounts in respect of an Option Tax Liability, which the Buyer shall pay to the Company's Bank Account and shall procure that the Company shall promptly pay to the relevant Tax Authority to discharge such Option Tax Liability,
 

and payment to the Sellers' Solicitors Account and the Company's Bank Account (as the case may be) shall be an effective discharge of the Buyer's obligation to pay the Completion Cash Consideration; and
  - 4.1.4 the Buyer shall direct Computershare Trust Company, N.A., a federally chartered trust company in the United States of America (the "**Transfer Agent**") to issue the Completion Share Consideration in the amounts set out in column 3 of Part C of Schedule 1.
- 4.2 The performance by the Seller of his obligations under Clause 4.1.1 and of the Option Sellers of their obligations under Clause 4.1.2 shall be conditions precedent to the performance by the Buyer of its obligations under Clause 4.1 to the intent that, if any of the Seller or the Options Sellers shall fail or shall be unable to perform any of their obligations under Clause 4.1, the Buyer shall at its option (and without prejudice to any other remedies or rights which it may have against the Seller, or any Option Seller in respect of such nonperformance) cease to be liable to perform its obligations under Clauses 4.1.3 and 4.1.4.
- 4.3 The Buyer shall within five Business Days of the Completion deliver to Sellers' Solicitor confirmation of the book entries entered by the Transfer Agent under Clause 4.1.4.

## 5. Deferred Consideration

- 5.1 On the date which is 12 months from the Completion Date or, if such date is not a Business Day, on the next following Business Day (the "**Year 1 Date**"), the Buyer shall:
- 5.1.1 pay the Year 1 Cash Consideration (in the amounts set out in column 4 of Part C of Schedule 1) to the Seller and the Option Sellers by way of transfer of funds to the Sellers' Solicitor's Account, less any amounts in respect of an Option Tax Liability, which the Buyer shall pay to the Company's Bank Account and shall procure that the Company shall promptly pay to the relevant Tax Authority to discharge such Option Tax Liability. Payment to the Sellers' Solicitors Account and the Company's Bank Account (as the case may be) shall be an effective discharge of the Buyer's obligation to pay the Year 1 Cash Consideration; and
  - 5.1.2 conditional upon the relevant Seller or Option Seller being Employed on the Year 1 Date, direct the Transfer Agent to issue the Year 1 Share Consideration in the amounts set out in column 5 of Part C of Schedule 1 and within (5) Business Days of the Year 1 Date deliver to Sellers' Solicitor confirmation of the book entries entered by the Transfer Agent under this Clause 5.1.2.
- 5.2 On the date which is 24 months from the Completion Date or, if such date is not a Business Day, on the next following Business Day (the "**Year 2 Date**"), the Buyer shall:
- 5.2.1
    - a. pay the Year 2 Cash Consideration (in the amounts set out in column 6 of Part C of Schedule 1) to the Seller and the Option Sellers by way of transfer of funds to the Sellers' Solicitor's Account, less any amounts in respect of an Option Tax Liability, which the Buyer shall pay to the Company's Bank Account and shall procure that the Company shall promptly pay to the relevant Tax Authority to discharge such Option Tax Liability. Payment to the Sellers' Solicitors Account and the Company's Bank Account (as the case may be) shall be an effective discharge of the Buyer's obligation to pay the Year 2 Cash Consideration; and
    - b. conditional upon the relevant Seller or Option Seller being Employed on the Year 2 Date issue the Year 2 Share Consideration in the amounts set out in column 7 of Part C of Schedule 1; and
  - 5.2.2 direct the Transfer Agent to issue the Contingent Share Consideration in the proportions set out in column 8 of Part C of Schedule 1 and within five Business Days of such direction deliver to Sellers' Solicitor confirmation of the book entries entered by the Transfer Agent under this Clause 5.2.2, conditional upon:
    - a. the Seller and David Clack both being Employed; and
    - b. Target Revenue having been achieved.

5.2.3 For the purposes of determining whether the Target Revenue has been achieved:

- a. within 30 Business Days of the end of 31 August 2021 the Buyer Representative shall deliver to the Warrantors a statement ("**Revenue Statement**") setting out the revenue in respect of CatDV Products for the period referred to in Clause 5.2.2(b) and whether the Target Revenue has been achieved. For these purposes, calculation shall be undertaken on a basis consistent with historical accounting policies of the Company as at Completion;
- b. unless within 10 Business Days of receipt of the Revenue Statement (excluding the day of receipt) by the Warrantors, the Warrantors notify the Buyer Representative in writing, giving reasonable particulars and reasons, of any respect in which it is not satisfied that the details of the Revenue Statement are correct ("**Dispute Notice**"), then the contents of Revenue Statement shall be final and binding as between the Parties;
- c. if the Warrantors serve a Dispute Notice, the Warrantors and the Buyer Representative shall, within the period expiring 14 Business Days after receipt of the Dispute Notice (excluding the day of receipt), seek in good faith to resolve the matter in dispute and if the matter is resolved then the Revenue Statement shall be final and binding as between the Parties. If the matter is not resolved it shall be referred to an accountant (the "**Independent Accountant**") in accordance with the provisions of Clause 5.2.3(d);
- d. the Independent Accountant shall be a firm of independent chartered accountants in the UK (with whom neither the Buyer nor the Seller has had any dealings) agreed on by the Seller and the Buyer Representative or, if they cannot agree on such appointment within 10 Business days of either party giving notice in writing to the other that it requires an Independent Accountant to be appointed, such firm of chartered accountants as may be nominated on the application of either one of them by the President or other senior officer for the time being of the Institute of Chartered Accountants in England and Wales;
- e. when reviewing the and revising the Revenue Statement:
  - i. the Warrantors and the Buyer Representative will each use their respective reasonable endeavours to co-operate with the Independent Accountant in resolving such disagreement or dispute, and for that purpose will provide to him such information and documentation as he may reasonably require;
  - ii. the Independent Accountant shall have the right to seek such professional assistance and advice as he may require;
  - iii. the fees of the Independent Accountant and other professional fees incurred by him shall be paid 50% by the Seller and 50% by the Buyer save where the Independent Accountant directs otherwise in writing;



- iv. the Independent Accountant will be requested by both parties to make a decision within 30 Business Days of the referral;
- v. the Independent Accountant shall act as expert and not as arbitrator and his written decision shall be final and binding on the parties save as in respect of fraud or manifest error.

5.2.4 The Buyer undertakes with the Seller and the Option Sellers that during the period from Completion until 31 August 2021 (i) to run the Company in the ordinary course and (ii) not to implement any scheme or arrangement or enter into any transaction the principal purpose of which is to frustrate, defeat or prejudice the provisions of Clause 5.2.2(b).

5.2.5 If there is a Disposal following Completion, the Year 1 Cash Consideration and the Year 2 Cash Consideration shall be accelerated to the extent not already paid, and shall be paid within 10 Business Days of the Disposal. The provisions of Clauses 5.1.1 and 5.2.1(a) shall apply *mutatis mutandis*.

5.2.6 For the avoidance of doubt, if any one of the Seller or the Option Sellers ceases to be Employed then such termination or cessation shall not in any way affect the remaining sellers' right to receive the Year 1 and/or the Year 2 Share Consideration subject always to such ongoing seller remaining Employed.

## **6. Ineligible Recipients**

6.1 Under the terms of the Registration Rights Agreement, the Buyer Shares to be issued by the Buyer to the Seller and each Option Seller pursuant to this Agreement shall be subject to certain restrictions regarding their disposal.

6.2 Notwithstanding the provisions of Clauses 3, 4 and 5 and Part C of Schedule 1, if the Buyer, in its sole discretion and in reliance on the representations set out in the Investment Representation Letter provided by the relevant Seller or Option Seller, determines that the relevant Seller or Option Seller is ineligible under applicable securities laws to receive Buyer Shares, that Seller or Option Seller shall not be entitled to be issued Buyer Shares (each such Seller or Option Seller being an "**Ineligible Recipient**").

6.3 In lieu of receiving Buyer Shares as set out in Clauses 4.1.4, 5.1.2, 5.2.1(a) and 5.2.1(b), each Ineligible Recipient shall receive an additional amount of payment in cash (converted into the Sterling Equivalent), on the Relevant Date, equal to the number of Buyer Shares such Ineligible Recipient otherwise would have received but for Clause 6.2, multiplied by the Stock Price.

6.4 For the avoidance of doubt, nothing in this Clause 6 shall cause the aggregate number of Buyer Shares or the amount of cash payable on any Relevant Date to exceed such amounts as would be payable in the case that there are no Ineligible Recipients at that Relevant Date.

## **7. Registration**

7.1 Subject to the terms of the Registration Rights Agreement, the Buyer undertakes to file and register for public resale the Completion Share Consideration, the Year 1 Share Consideration, the Year 2 Share Consideration and the Contingent Share

Consideration on a Form S-3 (or such other form as the Buyer is then eligible to use) within 8 weeks following the Completion Date. Notwithstanding anything in this Agreement to the contrary, following such registration the Seller and each Option Seller, agrees (except with the prior written approval of the Buyer not to be unreasonably withheld or delayed, unless such transfer is prohibited or restricted under the Quantum Insider Trading Policy) to not sell any Buyer Shares on a particular day, if the sale of such shares would on such one-day period, exceed 5% of the average daily trading volume of the Buyer's Shares on NASDAQ over the 5 trading days preceding such date of sale.

- 7.2 The Seller and the Option Sellers shall be free to sell the Buyer Shares if such sale is required to satisfy payment of a claim pursuant to this Agreement, unless such sale is prohibited or restricted under the Quantum Insider Trading Policy.

## **8. Restrictive covenant**

In consideration for the Buyer agreeing to assume obligations under this Agreement, the Seller and David Clack covenant with the Buyer and the Company that they shall not for a period of 24 months from the date of this Agreement be involved as agent, consultant, director, employee, worker, owner, partner, shareholder or otherwise in any business concern which is, or intends to be in competition with the business undertaken by the Company as at Completion anywhere within the United Kingdom or the United States of America.

## **9. Warranties**

- 9.1 The Seller and each Option Seller severally warrant to the Buyer, in respect of themselves only, that each of the following warranties is true and accurate in all respects as at the date of this Agreement:
- 9.1.1 such person has full power to enter into and perform their obligations under this Agreement and all the documents to be executed by them pursuant to this Agreement and this Agreement constitutes and all the documents to be executed by them pursuant to this Agreement when executed will constitute, binding obligations of such Seller or Option Seller in accordance with its terms;
  - 9.1.2 the execution and delivery of this Agreement and all the documents to be executed by the Seller or Option Seller pursuant to this Agreement and the performance of and compliance by such Seller or Option Seller with its and their terms and provisions will not:
    - a. conflict with or result in a breach of, or constitute a default under, any agreement or instrument to which such Seller or Option Seller is a party or by which such Seller or Option Seller is bound; or
    - b. conflict with or result in a breach of any law, regulation, order, writ, injunction or decree of any court or agency;
  - 9.1.3 the Seller or Option Seller is not party to any agreement or bound by any obligation the terms of which will prevent the Buyer from enjoying the full benefit of this Agreement;

- 9.1.4 the Seller's Sale Shares, or such Option Seller's Option Shares are legally and beneficially owned by such Seller or Option Seller at Completion free from all Encumbrances (other than as set out in the Company's articles of association); and
  - 9.1.5 neither they nor any person connected with them has any interest, direct or indirect, in any business other than that now carried on by the Company which is or is likely to be or become competitive with the business of the Company.
- 9.2 The Buyer warrants to the Seller and the Option Sellers, that each of the following warranties is true and accurate in all respects as at the date of this Agreement:
- 9.2.1 it has full power to enter into and perform its obligations under this Agreement and all the documents to be executed by it pursuant to this Agreement and this Agreement constitutes and all the documents to be executed by it pursuant to this Agreement when executed will constitute, binding obligations of the Buyer in accordance with its terms;
  - 9.2.2 the execution and delivery of this Agreement and all the documents to be executed by the Buyer pursuant to this Agreement and the performance of and compliance by the Buyer with their terms and provisions will not:
    - a. conflict with or result in a breach of, or constitute a default under, any agreement or instrument to which the Buyer is a party or by which such Buyer is bound; or
    - b. conflict with or result in a breach of any law, regulation, order, writ, injunction or decree of any court or agency; and
  - 9.2.3 the Buyer is not party to any agreement or bound by any obligation the terms of which will prevent the Seller or the Option Sellers from enjoying the full benefit of this Agreement; and
  - 9.2.4 the Buyer Shares to be issued and delivered to the Seller and the Option Sellers in accordance with this Agreement, when so issued and delivered, will be:
    - a. duly authorised, validly issued, fully paid and nonassessable and not subject to pre-emptive, subscription or similar rights; and
    - b. based in part upon the statements provided or to be provided in the accredited investor questionnaires, Investment Representation Letters, and the Registration Rights Agreement signed by each of the Seller and the Option Sellers, issued pursuant to available and valid exemptions from the registration and qualification provisions of applicable federal and state securities laws.
  - 9.2.5 Buyer has, and shall continue to have, sufficient authorised but unissued or treasury Buyer Shares to meet its obligations to deliver Buyer Shares under this Agreement.
- 9.3 Each of the Warrantors confirms (severally as regards themselves) that, save as Disclosed they do not have any actual knowledge (whether constructive or otherwise)

of any fact, matter or circumstance which could give rise to a breach of any of the Warranties.

- 9.4 The Warrantors undertake to the Buyer that, in the event of any claim being made against them arising out of or relating to this Agreement, they will not make any claim against the Company or against any director, officer, employee or adviser of the Company on which or on whom they may have relied before agreeing to any terms of this Agreement or authorising any statement in the Disclosure Letter. The Company and any such director, officer, employee or adviser may enforce the terms of this Clause 9.4 in accordance with the Contracts (Rights of Third Parties) Act 1999, provided that, as a condition precedent thereto, any such third party shall:
- 9.4.1 obtain the prior written consent of the Buyer; and
  - 9.4.2 not be entitled to assign their rights under this Clause 9.4.
- 9.5 The Warrantors shall cease to have any liability for any breach of the Fundamental Warranties on the seventh anniversary of Completion, except in respect of a claim for a breach of a Fundamental Warranty of which the Buyer has given notice to the Warrantors before that date, provided proceedings are brought in respect of that claim within a period of nine months following the date of notification of the claim. Without prejudice to the foregoing, when giving such notice, the Buyer shall specify, in such detail as is reasonably available to it at that time, the nature of the potential liability and, so far as is practicable, the amount likely to be claim in respect of it.
- 9.6 The Warranties:
- 9.6.1 other than Fundamental Warranties are qualified by reference to those matters Disclosed in the Disclosure Letter and those matters within the actual knowledge of the Buyer and not otherwise; and
  - 9.6.2 are given separately and independently and, unless expressly provided to the contrary, are not limited or restricted by reference to, or inference from, the terms of any other Warranty or item of this Agreement.
- 9.7 None of the Warranties, nor any provision in the Tax Covenant, shall be, or shall be deemed to be, qualified, modified or discharged by reason of any investigation or inquiry made by or on behalf of the Buyer and no information relating to the Company of which the Buyer, its agents or advisers have knowledge (whether imputed or constructive), other than (in the case of the Warranties) by reason of its being Disclosed in the Disclosure Letter in accordance with this Agreement or within the actual knowledge of the Buyer, shall prejudice any claim which the Buyer shall be entitled to bring or shall operate to reduce any amount recoverable by the Buyer under this Agreement.
- 9.8 The provisions of Schedule 5 shall (where relevant) apply to limit the liability of the Warrantors under the Warranties provided that the provisions of Schedule 5 shall not apply in respect of:
- 9.8.1 any claim under the Fundamental Warranties; and
  - 9.8.2 any claim arising out of (or to the extent it is increased by) any fraud or fraudulent misrepresentation, intentional misrepresentation or wilful non-disclosure on the part of the Warrantors.

## 10. Specific Indemnities and undertakings

If at Completion:

- 10.1 the Working Capital of the Company as calculated by the Buyer in accordance with Schedule 7, based on the management accounts for November is less than £524,738; and/or
  - 10.2 the cash held on account by the Company (excluding any cash included in Working Capital for the purposes of Clause 10.1) is less than £1,554,629 (the “**Surplus Cash**”), then
- the Warrantors shall pay, within 10 Business Days of a request by the Buyer to do so (providing evidence of their calculations of any such deficit), an amount equal to the deficit by which:
- 10.2.1 the Working Capital is less than £524,738; and
  - 10.2.2 the Surplus Cash is less than £1,554,629.
- 10.3 If the Warrantors challenge the calculation of any payments due pursuant to Clause 10.2, the provisions of Clauses 5.2.3(b) to 5.2.3(e) (inclusive) shall apply to this Clause 10 *mutatis mutandis* as applicable, except that the role of the Independent Accountant shall be to determine the Working Capital as at Completion using the methodology set out in this Agreement.
  - 10.4 The Seller shall (at his cost) procure, taking appropriate legal advice, that within 14 days of Completion, the statutory books of the Company are re-constituted so that the position of such records as at Completion is true and accurate.
  - 10.5 The Seller shall indemnify the Buyer and the Company from and against all claims, actions, proceedings and demands which may be brought against the Buyer or the Company and all losses, liabilities, charges, costs, damages and expenses which the Buyer or the Company may incur as a result of the Company’s statutory books having been (i) incorrectly maintained on or prior to Completion, (ii) lost and/or (iii) not being true and accurate as at Completion. This indemnity will continue in force even if the original statutory books are found.
  - 10.6 The Seller undertakes within two Business Days of Completion to transfer ownership of the domain name [www.squarebox.co.uk](http://www.squarebox.co.uk) to the Buyer and within 180 days following Completion shall cease and desist from using any email accounts utilising the email domain @squarebox.co.uk, including but not limited to rolf@squarebox.co.uk.

**11. Set-Off**

- 11.1 The Buyer may at any time set off any liability which the Seller and/or the Option Sellers owe to the Buyer (to the extent that such liability is attributable to that Seller or Option Seller) and only where such liability has been Finally Determined against any then outstanding payment due to that Seller or Option Seller under Clause 5, whether the liability of the Seller or Option Seller is present or future, liquidated or unliquidated, and whether or not the liability of the Seller or Option Seller arises under this Agreement. If the liabilities to be set off are expressed in different currencies, the Buyer may convert that liability at a market rate of exchange for the purpose of set-off. Any exercise by the Buyer of its rights under this Clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.
- 11.2 All amounts due under this Agreement from the Seller or an Option Seller to the Buyer shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**12. Release by Sellers**

- 12.1 The Seller and each Option Seller confirms that they have no claim (whether in respect of any breach of contract, compensation for loss of office or monies due to them or on any account whatsoever) outstanding against the Company or against any of the shareholders, directors, officers, employees or professional advisers of the Company and that no agreement or arrangement (including any contract of employment) is outstanding under which the Company or any of such persons has or could have any obligation of any kind to them.
- 12.2 To the extent that any such claim or obligation exists or may exist, each of the Seller and the Option Sellers irrevocably and unconditionally waives such claim or obligation and releases the Company and any such other persons from any liability whatsoever in respect of such claim or obligation.
- 12.3 The Company and any shareholder, director, officer, employee or professional adviser of the Company may enforce the terms of Clauses 12.1 and 12.2 in accordance with the Contracts (Rights of Third Parties) Act 1999, provided always that, as a condition thereto, any such third party shall:
- 12.3.1 obtain the prior written consent of the Buyer; and
- 12.3.2 not be entitled to assign their rights under this Clause 12.3.

**13. Matters following Completion**

- 13.1 The Seller and the Option Sellers shall, following Completion, forthwith send to the Buyer all papers, books, accounts and other records relating wholly to the Company and within the Seller or such Option Seller's control, which are not required to be delivered under Schedule 3 or which are not kept at the registered office from time to time of the Company.

**14. Taxation**

The provisions of Schedule 6 shall have effect.

## 15. Announcements and confidentiality

- 15.1 Subject to the provisions of Clause 15.2, neither the Seller nor any Option Seller shall issue any press release or publish any circular to shareholders or any other public document or make any statement or disclosure to any person who is not a Party (including any document, statement or disclosure published, issued or made by the Seller or Option Sellers or any of them to any supplier to or client of the Company) in each case relating to this Agreement, its terms or the matters contained in it, without obtaining the prior written approval of the Buyer to its contents and the manner and extent of its presentation and publication or disclosure (such approval not to be unreasonably withheld or delayed or made subject to unreasonable conditions).
- 15.2 The provisions of Clause 15.1 do not apply to:
- 15.2.1 any announcement relating to or connected with or arising out of this Agreement required to be made by any Party:
- a. by any court or governmental or administrative authority competent to require the same; or
  - b. by any applicable law or regulation;
- 15.2.2 any disclosure made by the Seller or an Option Seller to its professional advisers, provided that such disclosure is made under obligations of confidentiality; and any disclosure made to a Tax Authority in connection with the Tax affairs of the disclosing party.

## 16. Assignment

- 16.1 Subject to this Clause 16, this Agreement shall be binding upon and enure for the benefit of the successors and assignees of the Parties including, in the case of individuals, their respective estates after their deaths and, subject to any succession or assignment permitted by this Agreement, any such successor or assignee of the Parties shall in its own right be able to enforce any term of this Agreement.
- 16.2 Neither the Seller, nor any Option Seller nor their successors and assignees shall be entitled to assign their respective rights or obligations under this Agreement without the prior written consent of the Buyer.
- 16.3 The Buyer and its assignees may at any time (i) assign (ii) transfer, (iii) charge, or (iv) declare or create a trust or other interest over the Buyer's rights under this Agreement to a Buyer Group Company (an "**Assignee**").
- 16.4 If an Assignee ceases to be a Group Company of the Buyer then the Buyer shall procure that any interest assigned to that Assignee under Clause 16.3 shall be re-assigned to the Buyer or another Buyer Group Company.

## 17. Voting Power of Attorney

- 17.1 The Seller and each of the Option Sellers appoints the Buyer (acting by its officers from time to time) as their attorney ("**Attorney**"), with full power to exercise all rights in relation to the Sale Shares or the Option Shares, as the case may be, to be sold by such Seller or Option Seller registered in the name of that Seller or Option Seller as the Attorney in its absolute discretion sees fit, including but not limited to:

- 17.1.1 receiving notice of, attending and voting at any general meeting of the members of the Company and all or any adjournments of such meetings, or signing any resolution as registered holders of the relevant Shares;
  - 17.1.2 completing and returning proxy cards (or equivalent), consent to short notice and any other documents required to be signed by the registered holder of the relevant Shares;
  - 17.1.3 dealing with and giving directions as to any moneys, securities, benefits, documents, notices or other communications (in whatever form) arising by right of the relevant Shares or received in connection with the relevant Shares from the Company or any other person; and
  - 17.1.4 otherwise executing, delivering and doing all deeds, instruments and acts in the name of the Seller or the relevant Option Seller name insofar as may be done in the relevant capacity as registered holder of the relevant Shares and only insofar as to secure registration of the relevant Shares .
- 17.2 The power of attorney granted by Clause 17.1 shall expire in respect of the Seller or an Option Seller on the date on which the Buyer is registered in the register of members of the Company as the legal owner of the Seller or the relevant Option Seller's Shares.

## **18. General**

- 18.1 Each Party undertakes, for no further consideration or payment but at the cost and expense of the requesting Party, to sign all documents and to do all other acts as the requesting Party reasonably requires which may be necessary to give full effect to the vesting of the title of the Shares or the Buyer Shares.
- 18.2 Each Party shall pay the costs and expenses incurred by it in connection with the negotiation, preparation, execution and carrying into effect of this Agreement and each document referred to in it.
- 18.3 This Agreement shall, as to any of its provisions remaining to be performed or capable of having or taking effect following Completion, remain in full force and effect notwithstanding Completion.
- 18.4 Unless expressly provided otherwise, all representations, warranties, undertakings, covenants, agreements and obligations made, given or entered into in this Agreement by more than one person are made, given or entered into severally.
- 18.5 The rights of each Party under this Agreement:
  - 18.5.1 may be exercised as often as necessary;
  - 18.5.2 are cumulative and not exclusive of rights or remedies provided by law; and
  - 18.5.3 may be delayed, released or waived only in writing and specifically.
- 18.6 Delay in the exercise or non-exercise of any right or remedy provided by this Agreement or by law is not a waiver of that right or remedy.



- 18.7 A waiver of a breach of any of the terms of this Agreement or a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement.
- 18.8 Notwithstanding any breach of this Agreement or the provisions of any applicable laws or regulations, but save in the event of fraud, the Buyer agrees that, following the date of this Agreement, it will have no right (including any right under common law) to terminate or rescind this Agreement and will not be entitled to treat the other Parties as having repudiated this Agreement.
- 18.9 The Buyer and any other applicable withholding agent shall be entitled to deduct and withhold from any amount payable or otherwise deliverable pursuant to this Agreement to any Seller or Option Seller or to any other Person, such amounts as may be required to be deducted or withheld therefrom under any tax law. To the extent such amounts are so deducted or withheld and remitted to the appropriate governmental entity, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.
- 18.10 The only remedy of the Buyer in respect of any Claim will be damages for breach of contract and the Buyer waives any other remedy (other than specific performance) that it might but for this clause have in respect of any Claim (whether in tort or otherwise), including under the Misrepresentation Act 1967.
- 18.11 Any amendment of this Agreement shall not be binding on the Parties unless set out in writing, expressed to amend this Agreement and signed by each of the Parties or their authorised representatives.
- 18.12 The provisions contained in each Clause and paragraph of this Agreement shall be enforceable independently of each of the others and their validity or enforceability shall not be affected if any of the others is invalid or unenforceable by reason of any provision of applicable law.
- 18.13 If any provision is invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted or modified, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.
- 18.14 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, each of which, when executed and delivered, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement in Portable Document Format (PDF) shall be effective as delivery of a manually executed original counterpart of this Agreement.
- 18.15 The Parties agree that, subject always to and save as expressly provided in the provisions of this Clause 18.15, Clause 9.4, Clause 12.3 Clause 16 and paragraph 9 of Schedule 6:
- 18.15.1 no term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party; and
- 18.15.2 notwithstanding that any term of this Agreement may be or become enforceable by a third party, the terms of this Agreement or any of

them may be varied in any way or waived or this Agreement may be rescinded (in each case) without the consent of any such third party.

## 19. Notices

19.1 Any notice or other communication to be given under this Agreement to a Party shall be in writing and shall be delivered personally or sent by post or email to the Party to be served at its address set out below:

19.1.1 to the Buyer at:

Quantum Corporation  
c/o The Lightbox,  
Willoughby Road,  
Bracknell,  
Berkshire,  
England,  
RG12 8FB

Email Address: legal@quantum.com

Marked for the attention of: General Counsel

with a copy to:

Quantum Corporation,  
224 Airport Parkway, Suite 550  
San Jose, CA 95110,  
United States of America

Email Address: legal@quantum.com

Marked for the attention of: General Counsel

19.1.2 to the Seller at:

Whittington House,  
Whittington,  
Cheltenham,  
Gloucestershire,  
GL54 4HA,  
United Kingdom

Email Address: rolf@squarebox.co.uk

Marked for the attention of: Rolf Howarth

19.1.3 to the Option Sellers at the address or email address set out against their name in Part B of Schedule 1,

or at any other address or email address or to any other addressee as it may have notified to the other Parties in accordance with this Clause 19.1. Any notice or other document sent by post shall be sent by prepaid first class recorded delivery post (if within the United Kingdom) or be prepaid/signed for airmail (if elsewhere).

19.2 Any such notice shall be deemed to have been received:

- 19.2.1 if delivered personally, at the time of delivery;
- 19.2.2 in the case of first class recorded delivery, 24 hours from the date of posting;
- 19.2.3 in the case of airmail, five days from the date of posting; and
- 19.2.4 in the case of email, when transmission by the sender has been successfully completed,

provided that if deemed receipt occurs before 9 am on a Business Day the notice shall be deemed to have been received at 9 am on that day, and if deemed receipt occurs after 5 pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9 am on the next Business Day. For the purpose of this Clause only, "Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

19.3 In proving service of a notice or document it shall be sufficient to prove that delivery was made and recorded or that an email was properly addressed and despatched and the sender did not receive notification of a failure to deliver, as the case may be.

## **20. Entire Agreement**

20.1 For the purposes of this Clause, "Pre-Contractual Statement" means any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement other than as expressly set out in this Agreement.

20.2 The Parties confirm that this Agreement and all other documents to be executed by the Parties pursuant to this Agreement represent the entire understanding, and constitute the entire agreement of the Parties in relation to their subject matter and their terms and supersede any previous agreement between the Parties relating to the subject matter or the terms of this Agreement and such other documents.

20.3 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any Pre-Contractual Statement.

20.4 Each of the Parties acknowledges and agrees that the only remedy available to it for breach of this Agreement shall be for breach of contract and it shall have no right of action against any other Party in respect of any Pre-Contractual Statement.

20.5 This Clause 20 shall exclude liability for misrepresentation save that it shall not exclude any liability for (or remedy in respect of) fraudulent misrepresentation.

## **21. Governing law and jurisdiction**

21.1 This Agreement and any non-contractual obligations arising out of or in connection with this Agreement (including its formation) is governed by and shall be construed in accordance with the law of England and Wales.

- 21.2 Each Party irrevocably agrees to submit to the exclusive jurisdiction of the courts of England over any claim, dispute or controversy (whether contractual or non-contractual) arising under or in connection with this Agreement or the legal relationships established by this Agreement (including its formation).
- 21.3 Each Party irrevocably consents to any process in any legal action or proceedings arising out of or in connection with this Agreement being served on it in accordance with the provisions of this Agreement relating to service of notices. Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law.

Schedule 1

Part A - The Seller

1	2	3	4
Name	Address	Email Address	Sale Shares

Schedule 1

Part B - The Option Sellers

1	2	3	4	5
Name	Address	Email Address	Option Shares	Option Exercise Monies

## Schedule 1

## Part C – The Consideration

1 Name	2 Completion Cash Consideration	3 Completion Share Consideration (Buyer Shares)	4 Year 1 Cash Consideration	5 Year 1 Share Consideration (Buyer Shares)	6 Year 2 Cash Consideration	7 Year 2 Share Consideration (Buyer Shares)	8 Contingent Share Consideration (Buyer Shares)
Totals	£3,803,504.93	361,010	£1,499,250.37	361,010	£749,625.18	361,010	180,506

**Schedule 2**  
**The Company**

1. Registered number: 03819556
  2. Date of incorporation: 4 August 1999
  3. Place of incorporation: England & Wales
  4. Registered office address: Unit 40 Lake View House, Tournament Fields, Wilton Road, Warwick, England, CV34 6RG
  5. Directors: Rolf Michael Howarth
  6. Secretary: Martin Sven Howarth-Moore
  7. Authorised share capital:
    - (a) Amount: £1000.00
    - (b) Number and class of shares:

1000 ordinary shares of £1.00 each
  8. Issued share capital:
    - (a) Amount: £195.00
    - (b) Number and class of shares:

195 ordinary shares of £1.00 each
  9. Charges: None
  10. Accounting Reference Date: 31 August
-



**Schedule 3**  
**Completion obligations of the Seller and the Option Sellers**

1. At Completion, the Seller shall deliver or procure to be delivered to the Buyer:
  - a. a duly executed transfer in favour of the Buyer in respect of the Sale Shares together with either the certificates for the Sale Shares or an indemnity in the agreed form;
  - b. duly executed new employment agreement between the Seller and the Company on such terms as have been agreed between the Seller and the Buyer prior to Completion;
  - c. statement(s) showing the balances on all bank accounts of the Company at the last practical date prior to Completion;
  - d. the statutory books (including registers and minutes books) of the Company made up to Completion;
  - e. all books of account, financial and accounting records, correspondence, documents, files, memoranda and other papers relating to the Company;
  - f. a letter of resignation from the secretary of the Company;
  - g. all credit cards in the name, or for the account, of the Company in the possession of any officer or employee of the Company;
  - h. a letter from the Seller confirming that he has ceased to be a registrable person (within the meaning of section 790C of the Companies Act) in relation to the Company;
  - i. the security code and associated e-mail address for the Company to enable the Company to log in to the Companies House web filing system;
  - j. an appropriate and completed United States of America Internal Revenue Service Form W-8 (or W-9 if applicable) by the Seller, each Option Seller and the Sellers' Solicitor;
  - k. a written resolution of the sole director of the Company approving:
    - a. the transfer of the Shares to the Buyer and the entry of the Buyer into the Company's register of shareholders;
    - b. the registration of the Buyer in its register of persons with significant control;
    - c. the appointment of Lewis Moorehead as the secretary of the Company;
    - d. the change of the Company's registered office address to The Lightbox, Willoughby Road, Bracknell, Berkshire, England, RG12 8FB;
    - e. the entry by the Company into new employment agreements with each of the Seller, David Clack and George John Barry Vaudin; and
    - f. to change the Company's accounting reference date to 31 March.

2. At Completion, each Option Seller shall deliver or procure to be delivered to the Buyer:
  - i. their Option Exercise Notice; and
  - ii. a duly executed transfer in favour of the Buyer in respect of their Option Shares together with the certificates for their Option Shares.
3. At Completion, David Clack and George John Barry Vaudin shall deliver to the Buyer a duly executed new employment agreement with the Company on such terms as have been agreed between themselves and the Buyer prior to Completion.

## Schedule 4 Warranties

### 1. DISCLOSED INFORMATION

- 1.1 The facts set out in the Introduction and in Schedule 2 are true and accurate.
- 1.2 Each Warrantor has disclosed to the Buyer the existence and terms of any warranty and indemnity insurance cover or cover or indemnity providing protection of a similar nature relating to the subject matter of this Agreement.

### 2. CONTRACTS WITH THE SELLER OR THE OPTION SELLERS

- 2.1 There is not outstanding, and there has not at any time during the six years ending on the Completion Date been outstanding, any agreement or arrangement to which the Company is a party and in which any Seller, Option Seller, any person beneficially interested in the Company's share capital, any director of the Company or any person connected with any of them is or has been interested, whether directly or indirectly.
- 2.1 Neither the Seller nor any Option Seller, nor any person connected with any Seller or Option Seller has any interest, direct or indirect, in any business other than that now carried on by the Company which is or is likely to be or become competitive with the business or any proposed business of the Company.

### 3. CONSEQUENCES OF SALE OF THE SHARES

- 3.1 The execution and delivery of this Agreement and any other documents to be executed pursuant to this Agreement will not:
  - 3.1.1 conflict with or result in a breach of, or constitute a default under, any agreement or instrument to which the Company is a party or by which the Company is bound or of the articles of association of the Company; or
  - 3.1.2 cause the Company to lose the benefit of any right or privilege it presently enjoys or, so far as the Warrantors are aware, cause any person who normally does business with the Company not to continue to do so on the same basis or cause any officer or senior employee to leave and the attitude or actions of customers, suppliers, employees and other persons with regard to the Company will not be prejudicially affected thereby.
- 3.2 The Company is not a party to any agreement or bound by any obligation the terms of which will prevent the Buyer from enjoying the full benefit of this Agreement.
- 3.3 There are no agreements concerning the Company or its business which will or may be terminated or the terms of which will or may in any way be varied as a result of compliance with the terms of this Agreement or a change in the control of the Company or in the composition of the board of directors of the Company.
- 3.4 Neither the acquisition of the Shares by the Buyer nor compliance with the terms of this Agreement will entitle any person to receive from the Company any finder's fee, royalty, brokerage or commission.

#### 4. **THE SHARES AND THE COMPANY**

- 4.1 The Shares comprise the whole of the issued share capital of the Company and there are no shares in the capital of the Company allotted but not issued. All of the Shares are fully paid or credited as fully paid.
- 4.2 There are no agreements or arrangements in force which call for the present or future creation, allotment, issue, transfer, redemption or repayment of, or grant to any person the right (whether exercisable now or in the future and whether conditional or not) to call for the creation, allotment, issue, transfer, redemption or repayment of, any share or loanw capital of the Company (including by way of option or under any right of conversion or pre-emption).
- 4.3 The Company does not have, and never has had, any subsidiaries or subsidiary undertakings.
- 4.4 The Company has no associated companies as defined in FRS102.
- 4.5 The Company has no branch, agency, place of business or permanent establishment outside the United Kingdom.
- 4.6 The latest copy of the articles of association of the Company filed with the Registrar of Companies and available for inspection on the date of this Agreement are true and complete and sets out in full the rights and restrictions attaching to each class of the Company's share capital.
- 4.7 The statutory books (including all registers and minute books) of the Company have been properly kept and contain a complete and accurate record of the matters which should be dealt with in them and no notice or allegation that any of them is incorrect or should be rectified has been received by the Company.
- 4.8 In relation to its register of persons with significant control, the Company has at all times complied with its duties under section 790D (Duty to investigate and obtain information) and section 790E (Duty to keep information up-to-date) of the Companies Act.
- 4.9 Neither the Company nor any class of its members has during the period of six years ending on the date of this Agreement passed any resolution (other than resolutions relating to business at annual general meetings which was not special business).
- 4.10 All returns, particulars, resolutions and other documents required under the Companies Act and all other legislation to be delivered on behalf of the Company to the Registrar of Companies or to any other authority whatsoever have been duly and properly made and delivered.

#### 5. **INSOLVENCY**

- 5.1 No order has been made and no resolution has been passed for the winding up of the Company or for a provisional liquidator or manager to be appointed in respect of the Company and no petition has been presented and no meeting has been convened for the purpose of considering the winding up of the Company.
- 5.2 No administration order has been made and no petition for such an order has been presented in respect of the Company.

- 5.3 No receiver, administrator or manager (which expression shall include an administrative receiver) has been appointed in respect of all or any of the assets of the Company, nor has any power of sale or power to appoint a receiver or manager under the terms of any mortgage, charge or other security in respect of all or any assets of the Company become exercisable.
- 5.4 No voluntary arrangement under section 1 of the Insolvency Act 1986 or scheme of arrangement under Companies Act Part 26, the Corporations Act 2001 (Cth) or other compromise or arrangement in respect of the Company's creditors generally, or any class of them, has been proposed or adopted.
- 5.5 No moratorium under Insolvency Act 1986 section 1A or the Corporations Act 2001 (Cth) has been proposed or is in force in respect of the Company.
- 5.6 The Company is not and has not admitted itself to be unable to pay its debts as they fall due, nor has it failed to pay its debts when due (otherwise than by reason of a bona fide dispute as to their amount or enforceability), nor is the Company otherwise liable to be found unable to pay its debts within the meaning of Insolvency Act 1986 section 123 or the Corporations Act 2001 (Cth).
- 5.7 No statutory demand has been served on the Company which has not been paid in full or been withdrawn.
- 5.8 The Company has not been a party to any transaction at an undervalue as defined in Insolvency Act 1986 section 238 nor has it given or received any preference as defined in Insolvency Act 1986 section 239, in either case within the period of two years ending on the date of this Agreement, nor has the Company at any time been party to any transaction defrauding creditors as defined in Insolvency Act 1986 section 423.
- 5.9 No loan capital, borrowings or interest is overdue for payment by the Company and no other obligation or indebtedness of the Company is overdue for performance or payment.
- 5.10 No creditor of the Company has taken steps to enforce any debt or other sum owed by the Company, whether by legal proceedings, the exercise of a lien, power of distraint, sequestration, recovery of possession or otherwise (where such debt or sum remains unpaid).
- 5.11 No unsatisfied judgment is outstanding against the Company.
- 5.12 The Company has not suspended or ceased or threatened to suspend or cease to carry on all or a part of its business.
- 5.13 No event analogous to any of the foregoing has occurred in or outside England.

## 6. **COMPLIANCE WITH LAWS AND REGULATION**

- 6.1 The Company is entitled to carry on the business now carried on by it without conflict with any valid right of any person, firm or company and the Company has conducted its business in accordance with all applicable laws and regulations of the United Kingdom or any foreign country and there is no violation of, or default with respect to, any settlement agreement, statute, regulation, order, decree or judgment of any court

or any governmental agency of the United Kingdom or any foreign country which may effect the assets or business of the Company.

- 6.2 All necessary licences, consents, permits and authorisations (public or private) have been obtained by the Company to enable the Company to carry on its business effectively in the places and in the manner in which such business is now carried on and all such licences, consents, permits and authorisations are valid and subsisting and the Warrantors know of no reason why any of them should be suspended, cancelled or revoked.
- 6.3 None of the activities, contracts or rights of the Company is ultra vires, unauthorised, invalid or unenforceable or in breach of any contract or covenant and all documents in the enforcement of which the Company may be interested are valid and have been duly stamped.
- 6.4 Neither the Company, nor any person for whose acts or defaults the Company may be vicariously liable, is subject to any outstanding order, decree or court stipulation or involved in any civil, criminal, administrative, regulatory or arbitration proceedings or any form of mediation or dispute resolution procedure.
- 6.5 No such order, decree, stipulation, proceedings or procedure as is referred to in paragraph 6.4 are pending or threatened by or against the Company or any such person and, so far as the Warrantors are aware, there are no facts or circumstances which are likely to lead to any such order, decree, stipulation, proceedings or procedure and no person or authority has made any statement suggesting that they might initiate such order, decree, stipulation, proceedings or procedure.
- 6.6 The Company has at all times conducted its business in accordance with Anti-Corruption Laws, the Anti-Terrorism and Anti-Money Laundering Laws and the Sanctions and Export Control Laws and there is no, and has never been any:
  - 6.6.1 violation of or default;
  - 6.6.2 order, decree or judgment of any court or any governmental agency; or
  - 6.6.3 enquiry, investigation, reference, notification, proceeding, report or decision
 (in each case) whether in the United Kingdom or elsewhere, with respect to any such laws, regulations or conventions in relation to the assets or business of the Company or any of its officers, employees or agents.

## 7. **THE ACCOUNTS AND ACCOUNTING RECORDS**

- 7.1 The Accounts:
  - 7.1.1 comply with the requirements of the Companies Act;
  - 7.1.2 have been prepared in accordance with UK Accounting Standards and applicable law (UK Generally Accepted Accounting Practice) including FRS102 and using bases, practices, methods and estimation techniques consistent with those used in preceding accounting periods;

- 7.1.3 show a true and fair view of the state of affairs of the Company as at the Accounts Date and of its profit or loss for the financial year ended on that date;
  - 7.1.4 save as expressly disclosed in the Accounts, are not affected by any exceptional or nonrecurring items;
  - 7.1.5 fully disclose all the assets and liabilities (whether ascertained, contingent or otherwise and whether or not quantified or disputed) of the Company as at the Accounts Date and make proper provision and/or reserve for all such liabilities; and
  - 7.1.6 fully disclose all financial commitments in existence as at the Accounts Date.
- 7.2 The accounting records of the Company:
- 7.2.1 have at all times been fully, properly and accurately kept and completed and contain due and accurate records of all matters required by law to be entered in them; and
  - 7.2.2 contain or reflect no material inaccuracies or discrepancies of any kind.
- 7.3 The Management Accounts have been properly prepared in a manner consistent with that adopted in the preparation of the Accounts.
- 7.4 Having regard to the purpose for which the Management Accounts have been prepared, they are not misleading and do not overstate the assets or understate the liabilities and do not overstate the profits or understate the losses of the Company in respect of the date or period to which they relate.
8. **BUSINESS SINCE THE ACCOUNTS DATE**
- Since the Accounts Date:
- 8.1 the Company has carried on its business in the ordinary and usual course and without entering into any transaction, assuming any liability or making any payment not provided for in the Accounts which is not in the ordinary course of its business and without any interruption or alteration in the nature, scope or manner of its business;
  - 8.2 the Company has not borrowed or raised any money or taken any financial facility;
  - 8.3 the Company has paid its creditors within the times agreed with such creditors;
  - 8.4 there has been no change in the manner or time of issue of invoices or the collection of debts;
  - 8.5 the Company has not entered into, or agreed to enter into, any capital commitment nor has it disposed of or realised any capital assets;
  - 8.6 no share or loan capital has been allotted or issued or agreed to be allotted or issued by the Company;

8.7 no distribution of capital or income has been declared, made or paid in respect of any share capital of the Company and (excluding fluctuations in overdrawn current accounts with bankers) no loan or loan capital or preference capital of the Company has been repaid in whole or part or has become liable to be repaid;

8.7.1 there has been no depletion in the net assets of the Company;

8.7.2 the Company has not offered or agreed to offer price reductions or discounts or allowances on sales of goods or services, nor provided them or agreed to provide them at less than cost, to an extent which may materially affect the profitability of the Company; and

8.7.3 there has been no material deterioration in the financial position, or turnover or, so far as the Warrantors are aware (without having made any enquiry), prospects of the Company.

## 9. **DEBTS**

9.1 The amount of all Debts recorded in the Accounts or, in the case of an amount arising after the Accounts Date, the Management Accounts and the books of the Company as being due to the Company (less the amount of any specific provision or reserve for such debts made in the Accounts) are so far as the Warrantors are aware (without having made enquiry of persons owing Debts to the Company) expected to be received in full in the ordinary course of business and in any event not later than three months after the Completion Date and none of those Debts is subject to any counterclaim or setoff.

9.2 No part of the amounts included in the Accounts or, in the case of an amount arising after the Accounts Date, the Management Accounts and the books of the Company as due from debtors has been released on terms that any debtor pays less than the full book value of their debt or has been written off or has proved to any extent irrecoverable or is now regarded as irrecoverable.

## 10. **FINANCIAL ARRANGEMENTS**

10.1 The Company has Working Capital of at least £524,738, and Surplus Cash of at least £1,554,629.

10.2 The Company has sufficient working capital for the purpose of continuing to carry on its business in its present form and at its present level of turnover and for the purposes of executing, carrying out and fulfilling in accordance with their terms all existing orders, projects and contractual obligations which have been placed with, or undertaken by, the Company.

10.3 The Company has no borrowings, and has not agreed to create any borrowings, from its bankers or any other source.

10.4 There is no Encumbrance (other than a lien arising by operation of law in the ordinary course of business) over or affecting the whole or any part of the undertaking or assets of the Company.

10.5 No part of the borrowings or loan capital of the Company is dependent on the guarantee or indemnity of or security provided by any other person.



- 10.6 No person apart from the Company has given any guarantee of or security for any overdraft, loan or loan facility granted to the Company.
- 10.7 There are no debts owing by the Company, other than debts which have arisen in the ordinary course of business.
- 10.8 The Company is not, and has not been, engaged in any arrangements (including arrangements which would be required to be disclosed under section 410A Companies Act) which involve the raising or provision of finance and under which the Company is or might become liable to repay borrowings or other liabilities in the nature of indebtedness, in any such case where such arrangements or liabilities are not properly shown or reflected in the Accounts.
- 10.9 The Company is not under any obligation to pay, purchase or provide funds (whether by the advance of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment of, indemnity against the consequences of default in the payment of, or otherwise to be responsible for, any indebtedness of any other person.
- 10.10 During the period of six years ending on the date of this Agreement, the Company has not applied for or received any grant or allowance from any authority or agency.
- 10.11 The Company has not made any political donation to any political party or to any other political organisation or to any independent election candidate, nor has it incurred any political expenditure, in any such case either since the Accounts Date or in the year preceding the Accounts Date and it is not under any commitment to do so.

## 11. **TRADING ARRANGEMENTS**

- 11.1 During the period of three years ending on the Completion Date:

- 11.1.1 the Company has not lost any major or substantial customer for or supplier of all or any of its services or requirements;
- 11.1.2 no major or substantial client has significantly reduced its orders for all or any of the services of the Company;
- 11.1.3 there has been no substantial change (apart from normal price changes) in the basis or terms on which any person is prepared to enter into contracts or do business with the Company,

and no such cessation, reduction, loss or change has been threatened or is anticipated whether as a result of Completion or otherwise.

For the purposes of this paragraph 11:

**“major or substantial”** means any person purchasing services from the Company in excess of £50,000 in any of the three financial years prior to the Accounts Date (in the case of a customer) or with whom the Company has spent in excess of £50,000 in any of the three financial years prior to the Accounts Date (in the case of a supplier), in each case converting any foreign currency at the rates used in preparing the annual accounts in any such financial years; and

**“significantly reduced”** means any reduction in the percentage of orders placed by such customer in a financial year by more than 5% relative to the number of orders placed by such customer in the preceding financial year.

- 11.2 Neither in the financial period ending on the Accounts Date nor in the period since then has any person (together with other persons connected with them) purchased from, or sold to, the Company more than 10% of the aggregate amount of all sales or purchases made by the Company during such period and there is no person (together with other persons connected with them) on whom the Company is substantially dependent or the cessation of business with whom would substantially affect the business of the Company.
- 11.3 The Company has no agreement or arrangement with any customer who accounts for over 1% of the turnover of the Company on terms which are materially different from the Company’s standard terms of business, a copy of which is included in the Data Room with reference 02.41.
- 11.4 The Company has not supplied any services which do not comply with any warranties or representations expressly or impliedly made by the Company or with any applicable regulations, standards and requirements.
- 11.5 There is in force no power of attorney or other authority (express, implied or ostensible) given by the Company to any person to enter into any contract or commitment on its behalf other than to its employees to enter into routine trading contracts in the usual course of their duties.
- 11.6 The Company has not appointed any agent or distributor or granted any licences carrying the right to grant sub-licences to third parties in respect of any of its products or services in any part of the world.

## 12. **LIABILITIES AND COMMITMENTS**

- 12.1 The Company is not a party to or subject to any agreement, transaction, obligation, commitment, understanding, arrangement or liability which:
  - 12.1.1 is (in the case of a contract with a customer) incapable of complete performance in accordance with its terms within 24 months after the date on which it was entered into or undertaken;
  - 12.1.2 is (in the case of a contract with a supplier) incapable of complete performance in accordance with its terms within six months after the date on which it was entered into or undertaken;
  - 12.1.3 is likely to result in a loss to the Company on completion of performance;
  - 12.1.4 cannot readily be fulfilled or performed by the Company on time without unusual expenditure of money and effort;
  - 12.1.5 may be terminated or cease to be performed by any counterparty without notice or by giving three months’ notice or less;
  - 12.1.6 involves or is likely to involve obligations, restrictions or expenditure of an unusual, onerous or exceptional nature;

- 12.1.7 involves or is likely to involve the supply of goods or services by or to the Company the aggregate sales value of which will represent more than 5% of the turnover of the Company for its last financial year;
  - 12.1.8 requires the Company to pay any, finders' fee, royalty or commission;
  - 12.1.9 requires the Company, or under which the Company is or may become liable, to make any investment (as defined in Part III of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended from time to time)) with, or to deposit any money with, or to provide any loan or financial accommodation or credit (other than normal trade credit) to any person, or to subscribe, convert, acquire, dispose of or underwrite any investment;
  - 12.1.10 in any way restricts the Company's freedom to carry on the whole or any part of its business in any part of the world in such manner as it thinks fit;
  - 12.1.11 is an agreement or arrangement otherwise than by way of bargain at arm's length; or
  - 12.1.12 is in any way otherwise than in the ordinary and proper course of the Company's business.
- 12.2 Neither the Company nor any other party to any agreement with the Company is in default under any such agreement nor (so far as the Warrantors are aware) are there any circumstances likely to give rise to such a default and none of the Warrantors are aware of the invalidity of or grounds for rescission, avoidance or repudiation of any of such agreements or any allegation of such a thing, and the Company has not received notice of any intention to terminate any of such agreements.
- 12.3 The Company is not a party to, nor have its profits or financial position since the Accounts Date been affected by, any agreement or arrangement which is not entirely of an arm's length nature.
- 12.4 No offer, tender or the like is outstanding which is capable of being converted into any obligation of the Company by an acceptance or other act of some other person.
- 12.5 The Company has not entered into any indemnity, guarantee or covenant under which the Company has agreed to pay or discharge any other person's liability to Tax (or any amount equivalent to Tax).
- 13. INSURANCES**
- 13.1 The Company and all its normally insurable assets are, and at all material times have been, covered to their full replacement or reinvestment value by valid insurances containing no special or unusual terms or conditions against all the risks (including in the case of let property for three years' loss of rent) against which it is normal or prudent to insure.
- 13.2 All liabilities of the Company in respect of the business carried on by it (including risks which it is contractually required by a third party to cover, third party risks, public and employers' liability, consequential loss liability and loss of profits) are fully covered by valid insurances containing no special or unusual terms or conditions.

- 13.3 The Company has paid all premiums due and has not done or omitted to do anything the doing or omission of which would make any such policy of insurance void or voidable or would or might result in an increase in the rate of premiums payable under any such policy and the Company has neither received notice of any increase in premium or of change in the terms of cover under any of such policies nor of the withdrawal (in whole or in part) of cover in respect of any of such policies.
- 13.4 There is adequate cover available within the maximum limits on cover under the insurance policies in which the Company has an interest to meet all claims in respect of the Company, its assets and liabilities.
- 13.5 Folder 8.6 of the Data Room contains all insurance policies held by the Company or in which it has an interest.
- 13.6 No claim is outstanding under any of the policies referred to in paragraph 13.4 and no fact or circumstance exists which might give rise to a claim under any of those policies.

#### 14. **ASSETS**

- 14.1 All assets included in the Accounts or acquired after the Accounts Date as well as all the assets used in the Company's business:
  - 14.1.1 are legally and beneficially owned by the Company free from any mortgage, charge, lien or other Encumbrance;
  - 14.1.2 are not held subject to any agreement for lease, hire, hire purchase or sale on conditional or deferred terms; and
  - 14.1.3 are in the possession or under the control of the Company.
- 14.2 In respect of any of the items referred to in paragraph 14.1 which were previously held under any agreement for lease, hire, hire purchase or sale on conditional or deferred terms, there has been no default by the Company in the performance or observance of any of the provisions of such agreements.
- 14.3 The plant and machinery, including fixed plant and machinery, and all vehicles and office and other equipment used in connection with the business of the Company are in good repair and condition and in satisfactory working order, have been regularly and properly maintained and are not surplus to the Company's requirements.

#### 15. **DATA PROTECTION**

- 15.1 The Company has at all times complied with the Data Protection Laws in all respects.
- 15.2 The Company has:
  - 15.2.1 introduced and applied appropriate data protection policies and procedures concerning the collection, use, storage, retention, deletion and security of Personal Data, and implemented regular staff training, audits or other documented mechanisms to ensure and monitor compliance with such policies and procedures;

- 15.2.2 introduced and maintained complete and up-to-date records of all processing activities carried out by it as required by Article 30 of the GDPR;
  - 15.2.3 appointed a data protection officer if required to do so under the Data Protection Laws ;
  - 15.2.4 carried out and maintained complete, accurate and up-to-date records of, all data protection impact assessments required by the Data Protection Laws;
  - 15.2.5 issued appropriate privacy notices to data subjects whose Personal Data the Company processes as a Controller and such notices comply with all applicable requirements of the Data Protection Laws;
  - 15.2.6 introduced and maintained appropriate consent mechanisms where required by the Data Protection Laws where cookies and other online tracking devices are used by the Company;
  - 15.2.7 implemented appropriate technical and organisational measures to protect against the unauthorised or unlawful processing of, or accidental loss or damage to, any Personal Data processed by the Company and ensures a level of security appropriate to the risk represented by the processing and the nature of the Personal Data to be protected; and
  - 15.2.8 put in place an adequate data breach response plan that enables the Company to comply with the related requirements of the Data Protection Laws and any contractual provisions contained in any contract or standard terms to which the Company is a party.
- 15.3 The Company has, where required by Data Protection Laws, obtained valid consents from individuals to whom it sends direct marketing communications.
- 15.4 The Company has:
- 15.4.1 undertaken appropriate due diligence on any third party appointed by the Company to process Personal Data or with access to Personal Data processed by the Company, including requirements for employee background checks and ongoing training;
  - 15.4.2 implemented appropriate technical and organisational measures to minimise and secure any Personal Data shared with or accessed by each third party appointed by the Company to process Personal Data or with access to Personal Data processed by the Company; and
  - 15.4.3 an agreement in place with each third party appointed by the Company to process Personal Data or with access to Personal Data processed by the Company which, where required by the GDPR, incorporate the terms stipulated by Article 28 of the GDPR and any contractual provisions required by any customer of the Company who is a Controller of the Personal Data, and complies with all other applicable requirements of the Data Protection Laws.
- 15.5 The Company has not disclosed or transferred any Personal Data outside the European Economic Area without a valid legal basis for such transfer under Chapter

V of the GDPR, and/or in breach of any contractual provisions contained in any contract or standard terms.

- 15.6 No data subject requests have been received by the Company from data subjects, including any requests for access to their Personal Data, the cessation of specified processing activities or the rectification or erasure of their Personal Data, in each case in accordance with the requirements of the Data Protection Laws. The Company has not received any claims or complaints under the Data Protection Laws from data subjects whose Personal Data is processed by the Company, and no fact or circumstance exists which might give rise to any such claim or complaint.
- 15.7 The Company has not received any notice, request, correspondence or communication from any Supervisory Authority, and has not been subject to any enforcement action (including any fine or other sanction), in each case for breach or alleged breach of the Data Protection Laws and no fact or circumstance exists which might give rise to any such notice, request, correspondence, communication or enforcement action.
- 15.8 Neither the Company nor any third party appointed by the Company by the Company to process Personal Data or with access to Personal Data processed have suffered any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to any Personal Data and each of the Company and the third parties appointed by the Company have passed all regulatory audits by Supervisory Authorities to which they have been subject.
- 15.9 The Company has implemented backup and disaster recovery technology consistent with industry standards and practices. The Company has policies and procedures in place designed to ensure the integrity and security of the IT Systems and Personal Data and comply with such policies and procedures.
- 15.10 The Company has duly complied with all applicable notification or registration obligations and paid the appropriate level of fees or charges in respect of their processing activities, in each case as required by the Data Protection Laws.

## 16. IT SYSTEMS

- 16.1 All Hardware is either owned by the Company free of all Encumbrances, liens, charges and other third party rights or is properly leased or licensed to the Company.
- 16.2 The IT Systems are not wholly or partly dependent on any facilities which are not under the exclusive ownership and control of the Company.
- 16.3 The Company has full and unrestricted access to and use of the IT Systems and will continue to have such access over the next 12 months and no third party agreements or consents are required to enable the Company to have such access and use. The Company is not aware that maintenance for any part of the IT Systems will cease to be provided during the 12 months after the Completion Date.
- 16.4 The Company is using the most recent release of each Software program.
- 16.5 The Company is and has at all times in the past been properly licensed to use all Off-the-Shelf Software used in its business.

- 16.6 Copies of all IT Contracts necessary for the Company to use the Standard Software are contained in the Data Room.
- 16.7 Appropriate escrow arrangements are in place to ensure that in the event of the insolvency of the owner of any of the Standard Software or of any provider of maintenance for the same, the Company will (i) be able to obtain access to the source code to such Standard Software and (ii) be permitted to maintain or procure a third party to maintain such Standard Software.
- 16.8 The Bespoke Software:
- 16.8.1 was developed exclusively by employees of the Company within the course of their employment; or
- 16.8.2 to the extent not so developed, has been transferred (including the Intellectual Property in it) absolutely to the Company or licensed to it exclusively and irrevocably (in each case in writing) without limit of time and not subject to conditions as to use or transferability or as to payment.
- 16.9 The Company has in its possession and control the source code for all the Bespoke Software.
- 16.10 The Bespoke Software does not include and was not based upon any Open Source Software.
- 16.11 The Hardware and the Software have appropriate and adequate capability and capacity to carry out the processing, communications and other functions for which they are used and to enable the Company to carry on its business in the manner and in the places in which that business is carried on as at Completion.
- 16.12 The Hardware and the Software is in good working order and has been regularly and properly maintained and supported. No part of the IT Systems:
- 16.12.1 has failed to function at any time in the 24 months prior to the Completion Date; or
- 16.12.2 has been subject to any security breach in the 24 months prior to the Completion Date.
- 16.13 As far as the Warrantors are aware, the use by the Company of the IT Systems as now and as currently planned to be carried on does not infringe, has not infringed and will not infringe the rights of any third party.
- 16.14 The IT Services are adequate to support the business of the Company, and details of the IT Services that are required for the Company to operate are provided in the Data Room.
- 16.15 Disaster recovery plans are in place and are appropriate and adequate to ensure that the IT Systems and the data stored on them can be replaced or substituted without disruption to the business of the Company in the event of a failure of the IT Systems (whether due to natural disaster, power failure or otherwise) and all steps necessary have been taken to ensure that, in the event of such a failure, the business of the Company can continue in the ordinary course and without loss. All data stored on the

IT Systems has been regularly archived in properly stored, catalogued and secure hard copy form, to which the Company has unimpeded access.

16.16 Each of the IT Contracts required for the operation of the business of the Company in the manner it is operated at Completion is:

16.16.1 valid and binding;

16.16.2 not the subject of a written notice to terminate it; and

16.16.3 not the subject of any breach or default and nor are there any grounds (including the events contemplated by this Agreement) for termination, rescission, avoidance or repudiation of it.

16.17 All data stored on the IT Systems that is required for the operation of the business of the Company in the manner it is operated at Completion and in respect of which backup procedures are a reasonable measure, has been regularly archived in properly stored, catalogued and secure form, to which the Company has access.

16.18 The Company operates a documented procedure and has taken all actions necessary for ensuring the security and integrity of the IT Systems and the confidentiality and integrity of the data stored or contained therein or transmitted thereby, including by implementing industry standard procedures preventing the introduction of any virus infections or other extraneously and maliciously induced malfunctions and unauthorised access to the IT Systems which are appropriate to a business of its nature and size.

16.19 The IT Contracts relating to the outsourcing arrangements of the Company as at Completion have been provided in the Data Room at document reference 08.02.03 and 08.02.16.

## 17. **INTELLECTUAL PROPERTY**

17.1 In respect of the Registered IP:

17.1.1 the Registered IP is owned absolutely in the name of the Company free of all liens, charges and Encumbrances, and the Company is not obliged to grant any liens, charges or Encumbrances in respect of it;

17.1.2 all documents necessary to establish the Company's title to the Registered IP are in its possession;

17.1.3 no oppositions have been made or applications refused and the Company has no grounds to believe any applications will be opposed or refused;

17.1.4 all payments due and all registration and renewal formalities relating to the Registered IP are up-to-date, complete and correct; and

17.1.5 nothing is due to be done within 30 days of the Completion Date the omission of which would jeopardise the maintenance or prosecution of any of the Registered IP.

17.2 In respect of the Unregistered IP:



- 17.2.1 the Unregistered IP is owned by or licensed to the Company; and
- 17.2.2 true copies of all licences and other arrangements pursuant to which Unregistered IP is licensed to the Company are provided in the Data Room and such copies contain all the terms applicable to each such licence or arrangement. No party to any such licence or arrangement is or has been in breach of it.
- 17.3 The Company IP Rights (excluding any Unregistered IP which is not owned by the Company or any of its employees or contractors) that are required for the operation of the business of the Company in the manner carried on at Completion:
  - 17.3.1 are not limited in time save by statute;
  - 17.3.2 are not subject to conditions as to use save as set out in licences disclosed pursuant to paragraph 17.2.2; and
  - 17.3.3 to the extent that they comprise trademarks, are not potentially subject to revocation for non-use;
  - 17.3.4 to the extent that they relate to inventions in respect of which, as at Completion, the Company has a pending patent application for (or has expressed in writing a continuing intention to apply for) protection by patent those inventions have not been:
    - (1) exploited in such a way that an order may be made under the Patents Act 1977 section 49;
    - (2) disclosed in such a way as to prevent the grant of a patent.
- 17.4 True copies of all licences and other arrangements pursuant to which Company IP Rights are licensed by the Company to third parties are provided in the Data Room, and such copies contain all the terms applicable to each such licence or arrangement. No party to any such licence or arrangement is or has been in breach of it.
- 17.5 The Company IP Rights which were developed specifically for use by the Company:
  - 17.5.1 have been developed exclusively by employees of the Company within the course of their employment; or
  - 17.5.2 to the extent not so developed, have been transferred absolutely to the Company or licensed to it exclusively and irrevocably (in each case in writing) without limit of time and not subject to conditions as to use or transferability or as to payment, and any moral rights capable of being exercised in relation to them have been waived.
- 17.6 The Company and the conduct of the Company's business as conducted at Completion:
  - 17.6.1 does not infringe, has not infringed and will not infringe the rights of any third party in relation to any Intellectual Property;

17.6.2 does not constitute, has not constituted and will not constitute any breach of confidence, passing off or actionable act of unfair competition; or

17.6.3 does not give rise, has not given rise and will not give rise to any obligation to pay any royalty, fee, compensation or any other sum whatsoever.

17.7 No third party has outstanding any claim against the Company based on such third party's Intellectual Property and there are no grounds to anticipate that there will be such claim.

17.8 So far as the Warrantors are aware, the Company IP Rights are not being and have not been infringed by any third party, and there are no grounds to anticipate that any of them will be so infringed.

17.9 The Company has not infringed and is not infringing any such obligations of confidentiality which the Company is subject to.

17.10 A change of control of the Company, or any other transaction contemplated under this Agreement, will not result in the termination of, or trigger a payment in respect of, or otherwise materially affect, any of the Company IP Rights.

## 18. PROPERTIES

The Company has:

18.1.1 no interest in and does not occupy or use any freehold, commonhold, leasehold, licensed or other immovable property; and

18.1.2 no liability (whether actual, contingent or prospective) or obligation in respect of any property whether freehold, commonhold, leasehold, licensed or occupied under an informal or undocumented arrangement,

in each case in any part of the world.

## 19. DIRECTORS, EMPLOYEES AND WORKERS

19.1 The particulars of the director and the secretary shown in Schedule 2 are true and complete and no person who is not named as a director in Schedule 2 is or is held out as a director or shadow director of the Company.

19.2 Copies of all the terms of appointment or employment for the director of the Company (including any amendments to them) have been provided in the Data Room, and each such appointment is compliant with Section 188 of the Companies Act.

19.3 A document that sets out (i) the names of all of the Employees and Workers of the Company, (ii) details of all persons who are not Workers and who are providing services to the Company; and (iii) the following principal terms of the employment or engagement for each such person, including:

19.3.1 their current remuneration (including any entitlement to salary, fees, benefits, commission, bonus, allowances, premiums, performance-related pay, benefits in kind, whether contractual or discretionary, and whether provided for the benefit of the Employer or Worker or for the benefit of their dependants);

- 19.3.2 their job title;
- 19.3.3 the date of commencement of their employment or engagement and the date upon which their continuous employment commenced;
- 19.3.4 the length of notice required to terminate their employment or engagement, or, where the employment or engagement is for a fixed term, the date upon which the fixed term is to expire together with details of any previous renewals of that employment or engagement;
- 19.3.5 their date of birth;
- 19.3.6 any bespoke working arrangements, including details of any part-time or short-time working;
- 19.3.7 confirmation of the country from which the Employee or Worker works or undertakes their duties;
- 19.3.8 the governing law of the contract of employment or engagement

has been provided in the Data Room at document reference 06.03.22.

19.4 Provided in the Data Room at folder 06 are copies of:

- 19.4.1 the standard written terms of employment applicable to each grade or class of employee employed by the Company;
- 19.4.2 the standard written terms of engagement applicable to Workers;
- 19.4.3 all handbooks, policies, and other documents which apply to any of the Employees or Workers; and
- 19.4.4 all agreements or arrangements with any trade union, employees representative or body of employees or their representatives whether binding or not, and details of any such unwritten agreements or arrangements which may affect any Employee or Worker.

19.5 All Employees are employed on the applicable standard written terms of employment for employees of their grade or class.

19.6 All Workers are engaged on written terms of engagement.

19.7 The Company has complied with all applicable industrial and occupational health and safety awards, agreements, statutes and relevant jurisdictional occupational health and safety legislation, in respect of each employee and officeholder (and each former employee and officeholder). There are no actual or threatened orders, assessments, penalties or investigations made under any applicable industrial or occupational health and safety law relating to the Company.

19.8 Since the Accounts Date, no change has been made, offered or proposed by the Company to any of the terms (including the remuneration, other emoluments or pension provision) of the appointment, employment or engagement of any director, Employee, or Worker. The Company has not made any offer to change the terms of

appointment, employment or engagement which is still outstanding or has not yet been accepted by the director, Employee or Worker in question.

- 19.9 The Company has not appointed, employed or engaged, nor made an offer to appoint, employ or engage any director, employee or worker or any other person to provide services to the Company where that offer has not yet been accepted, or where it has been accepted but the appointment, employment or engagement has not yet started.
- 19.10 No director, Employee or Worker has given or received notice terminating their appointment, employment or engagement. No such notice of termination is pending, outstanding or has been threatened by the Company and no such notice of termination from any director, Employee or Worker is pending, outstanding or threatened.
- 19.11 All contracts between the Company and any director, Employee or Worker are terminable on not more than three months' prior notice without compensation (other than statutory compensation or in respect of accrued salary and other emoluments).
- 19.12 There is not in force at the date of this Agreement any agreement to which the Company is party which provides that a change of control of the Company (however such change of control may be defined) shall entitle any director, Employee or Worker to any payment or benefit whatsoever or to terminate their employment or engagement with the Company.
- 19.13 The Company has not made or agreed to make a payment or provided or agreed to provide a benefit to a director or former director, Employee or former employee, Worker or former worker or to any of their dependants in connection with the actual or proposed termination of employment or engagement or the variation of any of the terms of the contract of employment or engagement.
- 19.14 No amounts due to or in respect of any of the directors, former directors, Employees, former employees, Workers or former workers are in arrears or unpaid save for salary and benefits accruing in the current salary period in which this Agreement is entered into.
- 19.15 In the two years preceding the date of this Agreement, in respect of each of the Employees, former employees, Workers and former workers, all holiday pay for periods of holiday taken under regulation 13 of the Working Time Regulations 1998 has been calculated and paid in accordance with the Working Time Directive (2003/88/EC).
- 19.16 The Company is not a party to, bound by, or proposing to introduce for the benefit of any director, former director, Employee, former employee, Worker or former worker or any of their associates or nominees, any incentive arrangement (including any share option or share award plan, commission, profit sharing or bonus scheme).
- 19.17 There are no incentive schemes or arrangements (including any share option or share award plan, commission, profit sharing, or bonus scheme) established by the Company or any other person in which any director, Employee or Worker (or former director, employee or worker) or any of their associates or nominees participates or has participated.

- 19.18 Full details of all Employees and Workers who are absent from work for any reason (other than on paid annual holiday) and who are likely to be or have been absent for more than two consecutive weeks are disclosed in the Disclosure Letter, such details to include the reason for their absence and their likely return date, if known.
- 19.19 No dispute is outstanding or threatened between the Company and any director, Employee or Worker, any representative of any such person, or any former director, employee or worker, nor are there pending disputes nor any circumstances or grounds which may give rise to such a dispute.
- 19.20 There is no outstanding claim against the Company by any person who is a current or former director, employee or worker and the Company has not incurred any actual or contingent liability in connection with any termination of employment or engagement of any of its current or former employees or current or former workers, (including redundancy payments) or for a failure to comply with any order for the reinstatement or re-engagement of any Employee or former employee.
- 19.21 No Employee or former employee is currently, or has been within the period of six months before the Completion Date, subject to any disciplinary or capability process nor has any Employee or former employee raised any grievance in relation to their employment.
- 19.22 No Employee is subject to a current or live disciplinary or capability sanction.
- 19.23 Every director, Employee and Worker who requires permission to work in the United Kingdom has the necessary and appropriate current permission. The Company has carried out the specified checks on employees' original documents which would enable it or them to establish a statutory defence under the Immigration, Asylum and Nationality Act 2006.
- 19.24 The Company is not a party to any agreement, arrangement or negotiations with, or commitment to, any trade union, works council or staff association nor are any of the Company's employees members of any trade union.
- 19.25 No request has been received by the Company and nor does any trade union, works council, staff association or group of employees propose submitting any such request:
- 19.25.1 pursuant to Part I of Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 for recognition of any trade union;
  - 19.25.2 pursuant to Regulation 7 of the Information and Consultation of Employees Regulations 2004 to negotiate an agreement in respect of information or consultation;
  - 19.25.3 pursuant to Regulation 9 of the Transnational Information and Consultation of Employees Regulations 1999 to negotiate an agreement for a European Works Council or an information and consultation procedure; or
  - 19.25.4 otherwise in relation to the possibility of establishing the representation of employees or workers.

- 19.26 During the 12 months preceding the Completion Date, there has been no trade dispute, nor any industrial or similar action by or in relation to the Employees or former employees or any of them and there is nothing which may give rise to a trade dispute; no industrial or similar action is being or has been threatened, and no ballot for such action has been approved or arranged.
- 19.27 In the 24 months preceding the date of this Agreement, the Company has not:
- 19.27.1 given notice of redundancies to the relevant Secretary of State or started consultations with a trade union under Chapter II of Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 or failed to comply with its obligations under Chapter II of Part IV of that Act; or
  - 19.27.2 been a party to a relevant transfer (as defined in the Transfer of Undertakings (Protection of Employment) Regulations 2006) or failed to comply with an obligation imposed by those Regulations.
- 19.28 The Company has not made or proposed any variations to the terms and conditions of employment or engagement of any Employee or Worker (or former employee or former worker) as a result of or connected with a relevant transfer (as defined in the Transfer of Undertakings (Protection of Employment) Regulations 2006).
- 19.29 The Company does not operate and has not operated, any custom, policy, practice or arrangement (whether contractual or non-contractual) pursuant to which:
- 19.29.1 Employees who are made redundant (within the meaning of section 139 of the Employment Rights Act 1996 and/or section 195 of the Trade Union and Labour Relations (Consolidation) Act 1992) are entitled to payments which are in excess of those required to be paid under Part XI of the Employment Rights Act 1996; or
  - 19.29.2 there is a process to be followed by the Company in effecting any redundancy dismissals.
- 19.30 In the 12 months prior to the date of this Agreement, no Employee has made a request for flexible working pursuant to sections 80F – 80I of the Employment Rights Act 1996.
- 19.31 There are no loans or notional loans to any director, Employee or Worker, or former director, employee or worker or any of their nominees or associates, made or arranged by the Company.
- 19.32 The Company has not entered into any secondment arrangement in respect of any Employee or Worker.
- 19.33 The Company has, in relation to each director, Employee and Worker (and, so far as relevant, to each of its former directors, employees and workers):
- 19.33.1 complied with and performed all obligations and duties which are required to be performed (and settled all outstanding claims) whether arising under contract, statute, treaty, directive, regulations, order, code of practice, collective agreement, custom and practice, at common law, in equity or otherwise;

19.33.2 complied with any recommendations made by the Advisory Conciliation and Arbitration Service and with all awards and declarations made by the Central Arbitration Committee; and

19.33.3 maintained current, adequate and suitable records.

## 20. Retirement benefits

20.1 Save for the Pension Scheme, the Company does not have (nor may it have) any obligation (whether or not legally binding) to provide or contribute towards pension, lump sum, death, ill-health, disability or accident benefits ("**Relevant Benefits**") in respect of its current or former officers or employees and no proposal or announcement has been made to any employee or officer of the Company about the introduction, continuance, increase or improvement of, or the payment of a contribution towards, any Relevant Benefits.

20.2 The following details of the Pension Scheme have been provided in the Data Room at folder 06.02 , including:

20.2.1 copies of all documentation governing the Pension Scheme and of any announcements, explanatory booklets and accounts relating to them;

20.2.2 a complete, accurate and up-to-date list of all Employees including all details relevant to their membership and necessary to establish their entitlements under the Pension Scheme; and

20.2.3 full details of the Company's and each Employee's obligations and liabilities under the Pension Scheme.

20.3 The Company has complied with its prescribed minimum level of support as required by relevant superannuation legislation and automatic enrolment obligations as required by the Pensions Act 2008 and associated legislation. Full details of this compliance are provided in the Data Room at folder reference 06.02, including (but not limited to) any documents relating to the staging date for the Company, copies of any correspondence between the Company and the Pensions Regulator regarding auto-enrolment, copies of any records kept in accordance with regulations 5 to 8 of the Employers' Duties (Registration and Compliance) Regulations 2010 in respect of the Employees and details of any Employees who have opted out and copies of any opt-out letters in respect of those employees.

20.4 The Pension Scheme is a money purchase scheme within the meaning of 'money purchase scheme' in section 181 of the Pension Schemes Act 1993.

20.5 All contributions, insurance premiums, taxes and expenses due to and in respect of the Pension Scheme have been duly paid by the Company to the Pension Scheme within the statutory timescales and there are no liabilities outstanding in respect of the Pension Scheme at Completion.

20.6 The Pension Scheme is a registered pension scheme for the purposes of Chapter 2 of Part 4 of the Finance Act 2004 and there is no reason why HMRC would de-register the Pension Scheme.

- 20.7 Where any power under the Pension Scheme to provide additional benefits has been exercised in relation to any person, full and accurate details of the additional benefits have been Disclosed.
- 20.8 No notices, fines, or other sanctions have been issued by the Pensions Regulator and no instances of non-compliance with the automatic enrolment obligations have been notified to the Pension Regulator in respect of the Company.
- 20.9 The Company has complied with its stakeholder pensions obligations arising under Section 3 of the Welfare Reform and Pensions Act 1999 from time to time.
- 20.10 With respect to each Employee and former employee of the Company (where required by law):
- 20.10.1 they have been properly offered a choice of superannuation fund to receive employer contributions payable;
  - 20.10.2 the Company has provided at least the prescribed minimum level of superannuation support for that Employee or former employee as required under the scheme, fund or legislative and regulatory requirements and proper provision has been made for contributions payable in the current quarter, for that period up to and including Completion;
  - 20.10.3 there are no outstanding or unpaid superannuation contributions on the part of the Company for that Employee or former employee however arising (including under statute, award or agreement); and
  - 20.10.4 there are no complaints or outstanding claims for unpaid superannuation contributions or superannuation benefits.
- 20.11 The Company has not discriminated on grounds of age, sex, disability, marital status, hours of work, fixed-term or temporary agency worker status, sexual orientation, religion or belief or on any other grounds that amount to discrimination in the provision of, or failure to provide Relevant Benefits.
- 20.12 No claims or complaints have been made in respect of the provision of (or failure to provide) any Relevant Benefits by the Company in relation to any of the Employees or any beneficiaries claiming by or through them and there is no fact or circumstance likely to give rise to such claims or complaints.
- 20.13 The Company has never at any time participated in any defined benefit scheme meaning a scheme under which the amount of some or all of the benefits payable to or in respect of a member of the scheme or any beneficiary claiming by or through the member is calculated in accordance with a formula which takes account of the service of the member to retirement, death or withdrawal and the remuneration of the member average over their service at or close to their retirement, death or withdrawal, and the Company has never been associated or connected with any other legal person (within the meaning of associated and connected in the Insolvency Act 1986 sections 635 and 269) who has participated in such a defined benefit scheme.
- 20.14 The Company does not have, has never had and has not inherited through the transfer of employees any custom and practice in relation to granting pensions before



normal retirement age, whether due to redundancy, early retirement or otherwise. No undertakings or assurances (whether legally enforceable or not) have been given in respect of the Employees in relation to granting pensions before normal retirement age, whether due to redundancy, early retirement or otherwise.

- 20.15 No contribution notice or financial support direction under the Pensions Act 2004 has been issued to the Company in respect of the Pension Scheme or any other pension scheme or to any other person in respect of the Pension Scheme and there is no fact or circumstance likely to give rise to any such notice or direction.
- 20.16 No employee has ever had their contract of employment transferred to the Company in circumstances where: (a) the Transfer of Undertakings (Protection of Employment) Regulations 1981 or the Transfer of Undertakings (Protection of Employment) Regulations 2006 applied; and (b) the employee was entitled to defined benefit occupational pension scheme rights in respect of their employment before such transfer.

## 21. TAXATION

### 21.1 Compliance

#### 21.1.1 Returns

The Company has duly and properly submitted all computations and returns, supplied all information, made all statements and disclosures and given all notices to any relevant Tax Authority as reasonably requested or required by law to be made for the purposes of Tax within any applicable time limits. All such returns, information, statements, disclosures and notices were made on a proper basis and were when submitted and remain at Completion complete, correct and accurate. None of these computations and returns are, or are likely to be, the subject of any dispute with any Tax Authority.

#### 21.1.2 Payment

The Company has duly and punctually paid all Tax for which it has become liable to pay or account for and the Company is not liable, nor has it been liable to make a payment under an accelerated payment notice or partner payment notice or to pay any penalty, interest, fine, surcharge or other payment in connection with any Tax. There is no payment of Tax which has been deferred or postponed by agreement with any Tax Authority or pursuant to any right under a Tax Statute or the practice of any Tax Authority.

#### 21.1.3 Disputes

The Company is not, nor has it been, involved in any dispute with any Tax Authority and is not, nor has it been, the subject of any investigation, non-routine audit, enquiry, notice, discovery, determination, assessment, visit or access order by any Tax Authority and there are no facts or circumstances which make it likely that the Company will, in the foreseeable future, be the subject of any such investigation, non-routine audit, enquiry, notice, discovery determination, assessment, visit or access order.

#### 21.1.4 Records

The Company has maintained and has in its possession or under its control all records and documentation which are required by law to be maintained for the purposes of Tax together with such additional records as are necessary to enable it to prepare complete, correct and accurate returns and to determine an accurate calculation of its liability to Tax (including on the future disposal of any asset owned by the Company at Completion) or its entitlement to Relief.

#### **21.1.5 Claims and elections**

The Company has duly submitted all claims, disclaimers, elections, surrenders and applications which have been assumed to have been made for the purposes of the Accounts and all such claims, disclaimers, elections, surrenders and applications were and remain valid. No such claims, disclaimers, elections, surrenders or applications are likely to be disputed or withdrawn. Details of all claims, disclaimers, elections, surrenders and applications which have been assumed to have been made for the purposes of the Accounts are provided in the Data Room together with details of all claims, disclaimers, elections, surrenders and applications which the Company is or will at Completion be entitled to make.

#### **21.1.6 Clearances**

No transaction, scheme or arrangement has been undertaken by the Company in respect of which any consent or clearance from any relevant Tax Authority was required without such consent or clearance being validly obtained on the basis of full and accurate disclosure of all material facts and considerations relating to the transaction, scheme or arrangement. Any transaction, scheme or arrangement in respect of which a clearance or consent has been obtained was implemented strictly in accordance with the terms of such clearance or consent, any conditions attaching to such clearance or consent were and will immediately following Completion continue to be met and none of the clearances or consents have been withdrawn, nullified or rendered void.

#### **21.1.7 Special arrangements**

The Company's liability to Tax during any accounting period (including the accounting period current at Completion) has not depended on any concession, agreement or other formal or informal arrangement (being concessions, agreements or arrangements which are not based on any relevant legislation, published extra-statutory concessions, statements of practice or convention) operated by or agreed with any Tax Authority in relation to the Tax affairs of the Company.

#### **21.1.8 Tax arising as a result of this Agreement**

The Company will not become liable to any Tax or lose any Relief or allowances otherwise available to it in consequence of Completion, entering into this Agreement or any other thing done pursuant to its terms.

#### **21.1.9 Instalment payments**

- (1) The Company has fully complied with the requirements of the Corporation Tax (Instalment Payments) Regulations 1998, SI 1998/3175 (the “**Regulations**”) and has duly and punctually made all payments (**Instalment Payments**) required to be made under the Regulations. Full details of the amounts and dates of Instalment Payments required to be made under the Regulations which have been or will be required to be made in relation to the current accounting period of the Company are provided in the Data Room.
- (2) Any and all Instalment Payments have been made on the basis of a reasonable estimate of the Company’s total Tax liability for the purposes of the Regulations and there are no facts or circumstances which would render any Instalment Payment an underpayment.
- (3) The Company has not incurred any liability to interest or penalties under the Regulations nor is it entitled to any repayment or reimbursement of any Instalment Payment already made.
- (4) The Company has not been served with any notice by HMRC under the Regulations and has in its possession all such records as would be required to be furnished produced or made available to HMRC under the Regulations.
- (5) The Company has not entered into any transaction or been involved in any arrangement such that Regulation 14 (Anti-avoidance provision) of the Regulations could apply.

#### **21.1.10 Withholdings**

The Company has duly and punctually complied with its obligations to deduct, withhold or retain all amounts of or on account of Tax at source from any payments made or deemed to have been made by it and has duly paid or accounted for such amounts as should have been made to any relevant Tax Authority in respect of such deductions or retentions and the Company has complied with all its reporting obligations to any relevant Tax Authority in connection with any such payments made or deemed to have been made.

#### **21.1.11 Accounts**

Full provision or reserve (as appropriate) has been made in the Accounts in accordance with generally accepted accounting principles in respect of any period ended on or before the Accounts Date for any liability to Tax (whether actual, deferred, contingent or disputed) assessed or liable to be assessed on the Company or for which it is accountable at the Accounts Date whether or not the Company has or may have any right or reimbursement against any other person including Tax in respect of income, profits or gains held, earned, accrued or received by or to any person on or before the Accounts Date or by reference to any event occurring, act done, or circumstances existing on or before the Accounts Date.

#### **21.1.12 Position since the Accounts Date**

Since the Accounts Date:

- (1) the Company has not been involved in any transaction other than on arm's length terms;
- (2) no event has occurred which has given or may give rise to a liability to Tax or which would have given or might give rise to such a liability but for the availability of any Relief other than a liability to Tax arising from the ordinary course of its business as carried on at the Accounts Date;
- (3) the Company has not made any payment of a revenue nature (or incurred any liability to make any such payment) which has not been and will or may not be allowable in full for corporation tax purposes or which could be disallowed as a deduction or set-off in computing the taxable profits of the Company or as a charge on the Company's income;
- (4) the Company has not declared or paid any dividend or made any other distribution or deemed distribution for Tax purposes except as provided for in the Accounts and nor is the Company required to make any such distribution;
- (5) no accounting period (as defined in CTA 2009, Pt 2, Ch 2) of the Company has ended;
- (6) the Company has not ceased to be a member of a group for tax purposes, and
- (7) the Company has not been a party to any transaction whereby the Company was or is or could become liable to stamp duty reserve tax.

## **21.2 Continuing obligations**

All sums of a revenue nature (including any rents, interest and any other annual payments) payable by the Company pursuant to any obligation incurred by the Company before Completion and which will continue to bind the Company after Completion have been and will continue to be fully deductible for the purposes of Tax either in computing the income profits of the Company or in computing the Tax chargeable on it.

## **21.3 Corporation tax**

### **21.3.1 Transfer pricing**

All transactions entered into by the Company have been entered into on an arm's length basis and consideration (if any) charged or received or paid by the Company on all transactions entered into by it has been equal to the consideration which would have been expected to be charged, received or paid between independent persons dealing at arm's length. No notice has been issued or enquiry initiated by any relevant Tax Authority in connection with any transactions entered into by the Company and the Company has retained all records, contemporaneous documents and other evidence which are sufficient to satisfy any requirement to demonstrate that any transaction to which it was a party was entered into on arm's length terms or which relate to its transfer pricing arrangements and are required to be retained by any relevant law.

**21.3.2 Loan relationships**

- (1) The Company is not party to any loan relationship as defined in CTA 2009, Part 5 which may give rise to debits or credits other than those in respect of which the interest is taxable or deductible on an amortised cost basis.
- (2) The Company has obtained Tax relief on an amortised cost basis of accounting in relation to all loan relationships which are debtor relationships for the purposes of CTA 2009, Pts 5 and 6 and in relation to such relationships:
  - (a) the deduction given in computing the taxable profits of the Company in consequence of its debtor relationships is not less than the interest accruing during the relevant accounting period;
  - (b) the Company would not suffer any adverse Tax consequences were such debts to be repaid at face value save for the cessation of the Tax deduction for interest accrued.
- (3) The Company has not since the Accounts Date held or been the debtor under any deeply discounted security, deep gain security or relevant discounted security.

**21.3.3 Derivative contracts**

The Company is not party to any derivative contract as defined in CTA 2009, Part 7 which may give rise to debits or credits other than those in respect of which the interest is taxable or deductible on an amortised cost basis.

**21.3.4 Patent box**

The Company does not hold, and has not held, any right to which CTA 2010, Pt 8A applies (including an exclusive licence within the meaning of CTA 2010 Section 357BA).

**21.4 Capital assets**

All necessary conditions for all capital allowances (or any equivalent system relating to the depreciation of any asset of the Company for Tax purposes in any relevant jurisdiction) claimed by the Company were at all times satisfied and remain satisfied.

**21.5 Distributions and repayments of share capital****21.5.1 Distributions**

- (1) The Company has not made (and will not be deemed to have made) any distribution except dividends properly authorised and shown or reflected in the Company's audited accounts and nor is the Company bound to make any such distribution.
- (2) The Company has not at any time issued any security (within the meaning of CTA 2010, Section 1117(1)) where the interest or other

amount payable on such securities in respect of any period up to and including the Completion Date is or is deemed to be a distribution.

### **21.5.2 Repayments of share capital**

- (1) The Company has not at any time repaid, redeemed, purchased or otherwise acquired or agreed to repay, redeem, purchase or otherwise acquire any of its own share capital.
- (2) The Company has not at any time capitalised or agree to capitalise in the form of shares, debentures or other securities or in paying up amounts unpaid on any shares, debentures or other securities any profits or reserves of any class or description, or passed or agreed to pass any resolution to do so.

## **21.6 Secondary liabilities**

### **21.6.1 Secondary liability**

- (1) No transaction, act, omission or event has occurred in consequence of which the Company is or may be held liable for any Tax or deprived of any Relief or allowances otherwise available to it in consequence of any Tax where some other company or person is primarily liable for the Tax in question and has failed to discharge such Tax (whether by reason of any such company being or having been a member of the same group of companies or otherwise).
- (2) No transaction, act, omission or event has occurred which has resulted or could result in any charge, lien, security interest, encumbrance or other third party right arising over any of the Company's assets in respect of unpaid Tax.

## **21.7 Anti-avoidance**

### **21.7.1 Tax schemes**

- (1) The Company has not entered into nor been a party to nor otherwise been involved in any scheme, arrangement, transaction or series of transactions:
  - (a) designed wholly or mainly, or containing steps or stages having no commercial purpose and designed wholly or mainly, for the purposes of avoiding, deferring or reducing a liability to Tax or amounts to be accounted for to a Tax Authority;
  - (b) the main benefit or purpose or one of the main benefits or purposes of which was the avoidance or reduction of Tax or the relief from Tax or the repayment of Tax or the obtaining of a tax advantage;
  - (c) that has been or could be counteracted under Finance Act 2013, Part 5;

- (d) forming part of notifiable arrangements (within the meaning given by Finance Act 2004, Section 306) or in respect of which disclosure has been made or is required to be made to any Tax Authority under any other relevant legislation (including, in relation to indirect taxes, VATA 1994, Sch 11A or Finance (No 2) Act 2017, Sch 17) requiring the disclosure of tax avoidance schemes;
- (e) in respect of which the Company may be liable to Tax under the principles set out in *W.T. Ramsay Limited v IRC* or *Furniss v Dawson* as developed in subsequent cases;
- (f) that has been or could be counteracted under Finance Act 2003, Sections 75A–75C; or
- (g) which was a marketed tax avoidance scheme for the avoidance or deferral of tax.

#### **21.7.2 Tax fraud**

The Company has not been party to any transaction within Taxes Management Act 1970 Section 106A (Offence of fraudulent evasion of income tax).

#### **21.8 Close companies**

The Company has paid all Tax for which it has become liable to pay or account on or before the date of this Agreement pursuant to sections 455, 459 and/or 460 CTA 2010 in connection with any loan or advance.

#### **21.9 International**

##### **21.9.1 Residence**

The Company is and always has been solely resident for Tax purposes in the territory in which it was incorporated and has never been resident in any other territory or treated as so resident for any Tax purposes or any double tax treaty. The Company does not have a permanent establishment or other taxable presence, and has at no time incurred any liability to Tax, in any jurisdiction other than that in which it was incorporated. The Company is not liable to register with any Tax Authority outside of the territory in which it was incorporated for the purposes of paying or administering any Tax. The Company is not an agent or permanent establishment of any other person for the purposes of assessing that other person to Tax in the territory in which the Company is resident for Tax purposes.

##### **21.9.2 Company migration**

The Company has not at any time made an election as the principal company (within the meaning given by TCGA 1992 Section 187) nor has any company over which the Company had control or which was a member of the same group of companies as the Company ceased to be resident in the UK otherwise than in compliance with Taxes Management Act 1970 Sections 109B to 109F.

### **21.9.3 Controlled foreign companies**

The Company does not hold and has never held, directly or indirectly, any interest in a controlled foreign company which has resulted in any liability to Tax pursuant to Part 9A of Taxation (International and Other Provisions) Act 2010.

## **21.10 Employees**

### **21.10.1 Disguised remuneration**

The Company is not, and could not become, liable to make a payment of Tax under ITEPA 2003, Part 7A in respect of any relevant arrangement (as defined in ITEPA 2003 Section 554A) entered into before Completion.

### **21.10.2 Pay As You Earn**

The Company has made all payments, deductions, withholdings or reductions as required by law from all payments to or amounts treated as paid to or benefits provided for or on behalf of any Employees, ex-employees, officers, ex-officers, independent contractors or other workers in respect of Tax, national insurance, social security or like contributions and the Company has duly and punctually paid or accounted to (or will before Completion pay or account to) any Tax Authority for such amounts as have been required to be paid by the Company to any relevant Tax Authority on or before Completion in respect of such deductions, withholdings or reductions. The Company has complied with all its reporting obligations to any Tax Authority in connection with any such payments made or benefits provided and no audit or other enquiry has been made by any Tax Authority in respect of such payments made or benefits provided nor has the Company been notified that any such audit or other enquiry will be made.

### **21.10.3 Employment schemes**

The Data Room contains full details of all profit sharing, share option, share incentive or bonus schemes (including employee benefits trusts established by the Company) and the Company has complied with all statutory requirements in respect of such schemes and trusts.

### **21.10.4 Employment-related securities**

- (1) The Company will not become liable to pay any Tax as a result of the application of ITEPA 2003 Section 447 to any benefit received after Completion in respect of employment-related securities acquired prior to Completion as a result of anything done prior to Completion (including, for the avoidance of doubt, as a result of the operation after Completion of any rights attached to such securities at Completion).
- (2) The Company has duly and within any appropriate time limits provided HMRC with particulars of all reportable events in accordance with ITEPA 2003 Sections 421J–421L which have occurred prior to the date of Completion.



- (3) Nothing has been done otherwise than for genuine commercial purposes which has increased or reduced or may increase or reduce the market value of employment-related securities to which ITEPA 2003, Pt 7 Chapters 3A or 3B might apply.
- (4) No loan has been or could be treated by ITEPA 2003 Section 446S as having been made by the Company to any Employee or officer or any ex-employee or ex-officer.

#### **21.11 Inheritance tax**

- 21.11.1 The Company is not and will not become liable to be assessed to inheritance tax as donor or donee of any gift or transferor or transferee of value (actual or deemed) nor as a result of any disposition chargeable transfer or transfer of value (actual or deemed) made by or deemed to be made by any other person.
- 21.11.2 There is no unsatisfied liability to inheritance tax attached or attributable to the Shares or any asset of the Company and in consequence no person has the power to raise the amount of such Tax by sale or mortgage of or by a terminable charge on any of the Shares or assets of the Company under Inheritance Tax Act 1984 Section 212 and none of the Shares or assets of the Company are subject to a charge under Inheritance Tax Act 1984 Section 237.

#### **21.12 Value added tax**

- 21.12.1 The Company is a taxable person for the purposes of VATA 1994 and all regulations, orders, notices and other provisions made under such legislation (or the equivalent Tax legislation in any relevant jurisdiction) (the "**VAT legislation**") and is duly registered for the purposes of VAT.
- 21.12.2 The Company is not and has not at any time been treated as a member of a group of companies for the purposes of any relevant VAT legislation and no application has ever been made for the Company to be so treated and no circumstances exist whereby the Company would or might become liable for VAT as an agent.
- 21.12.3 The Company has complied with the requirements and provisions of the relevant VAT legislation and has made, given, obtained and maintained accurate, complete and up-to-date records, invoices, accounts and other documents, required or necessary for the purposes of the VAT legislation. The Company has not been subject to any penalty, interest, forfeiture, fine or surcharge in respect of VAT and no circumstances exist whereby the Company would or might become liable for any such penalty, interest, forfeiture, fine or surcharge.
- 21.12.4 The Company has at all times punctually paid and made all payments and submitted all returns required under the VAT legislation. The Company has not been required by any relevant Tax Authority to give security for any VAT purpose and no warning pursuant to VATA 1994 Section 76(2) or notice pursuant to VATA 1994 Section 77A has been served on the Company and

no circumstances exist whereby such warning or notice would or might be served on the Company.

21.12.5 The Company has not made any exempt supplies in consequence of which it is or will be unable to obtain credit for all input tax paid by it before Completion during any VAT quarter ending after the Accounts Date.

21.12.6 Neither the Company nor any relevant associate of the Company (within the meaning of VATA 1994, Sch 10, para 3) has exercised an option to tax under VATA 1994, Sch 10, para 2, or will exercise such an option prior to Completion and no permission to opt has been sought or granted.

## **21.13 Stamp duties and stamp duty land tax**

### **21.13.1 Stamp duty**

All documents which establish or are necessary to establish or evidence the rights or title of the Company to any asset or in the enforcement of which the Company is or may be interested, in the United Kingdom or elsewhere, have been duly and properly stamped with the correct amount of stamp duty and all such duty together with any interest and penalties have been duly paid. No such documents which are outside of the United Kingdom at Completion would attract stamp duty if they were brought into the United Kingdom.

### **21.13.2 Stamp duty land tax**

The Company has duly and punctually paid all Stamp Duty Land Tax which has arisen as a result of a land transaction (within the meaning given in Finance Act 2003, Part 4) entered into on or before Completion and all land transaction returns have been properly submitted.

**Schedule 5**  
**Limitations on liability**

1. Subject always to Clause 9.7, the Buyer agrees with the Warrantors that any claim by the Buyer in respect of any breach of the Warranties (other than the Fundamental Warranties) (a "**Claim**") shall be governed by and shall be dealt with in accordance with the following provisions of this Schedule 5.
2. The liability of the Warrantors in respect of any Claim shall be several and limited as follows:
  - 2.1 the Buyer shall not be entitled to recover any amount in respect of a Claim unless the amount recoverable, when aggregated with all other amounts recoverable for the Claim, exceeds \$100,000, in which event this limitation shall cease to apply and the whole of such amounts shall be recoverable and not merely the excess over \$100,000; and
  - 2.2 the aggregate liability of the Warrantors in respect of all and any Claims shall be limited to and shall in no event exceed \$4,000,000.
3. The aggregate liability of each of the Seller and the Option Sellers in respect of all and any claims under this Agreement shall be limited to and in no event shall exceed the aggregate of:
  - 3.1 the cash consideration actually paid to each such Seller or Option Seller pursuant to this Agreement; and
  - 3.2 the lower of the issue or the realisable value of the Buyer Shares actually issued to each such Seller or Option Seller (in respect of Buyer Shares issued and continued to be held; and
  - 3.3 the sale proceeds of the sale of any Buyer Shares received as consideration pursuant to this Agreement and sold.
4. Exclusion of Liability

The Warrantors shall not be under any liability:

  - 4.1 to the extent that the Claim arises by reason of any change in law or any increase or alteration in the rates, incidence, imposition or extent of Taxation or any change in legislation or the withdrawal of any generally published extra statutory concession previously made by HMRC (in each case announced and coming into force after the date of this Agreement); or
  - 4.2 to the extent that the Claim arises as a result of a voluntary act, omission or transaction of the Company or the Buyer carried out after Completion otherwise than in the ordinary course of business or pursuant to a legally binding obligation of the Company created on or before Completion;
  - 4.3 in respect of any matter or thing to the extent that the Buyer has been compensated for the same under any other provision in this Agreement;
  - 4.4 in respect of any matter or thing to the extent that the same is provided for or reserved in the Accounts or Management Accounts (but not so as to double count); or

4.5 if the Claim would not have arisen but for any change after Completion in the bases, policies and practices on which the Accounts were prepared unless such base, policies and practices are changed because of a change in generally accepted accounting practice in the United Kingdom.

5. Insurance Cover

No Claim shall be capable of being made under the Warranties to the extent that the Buyer or the Company has fully recovered the amount in respect of the loss or damages suffered by it arising out of the subject matter thereof from insurers under a valid subsisting insurance policy (the Buyer using its reasonable endeavours to effect such recovery).

6. Mitigation

Nothing contained herein shall be deemed to relieve the Buyer of its obligation to mitigate its loss in respect of any Claim.

7. CESSATION OF LIABILITY

The Warrantors shall cease to have any liability:

7.1 for breach of any of the Warranties other than the Tax Warranties on the second anniversary of the Completion Date; and

7.2 for breach of the Tax Warranties, on the sixth anniversary of the Completion Date and any defence to such Claim that the Warrantors may have under the Limitation Act 1980 is excluded, except in respect of a Claim of which the Buyer gives notice to the Warrantors before the sixth anniversary of the Completion Date.

8. BUYER CONDUCT

If any matter comes to the notice of the Buyer which may give rise to a liability under the Warranties, the Buyer shall:

8.1 as soon as reasonably practicable give notice of that matter to the Warrantors, specifying in such detail as is reasonably available to it at that time the nature of the potential liability and, so far as is practicable, the amount likely to be claimed in respect of it;

8.2 consult with, and take reasonable notice of the representations of, the Warrantors before making any admission of liability, agreement or compromise with any person, body or authority in relation to that matter;

8.3 in respect of any third party claim which may give rise to a liability under the Warranties (but not otherwise):

8.3.1 give the Warrantors and their professional advisers reasonable access at any reasonable times to any relevant documents and records within the power or control of the Buyer and/or the Company so as to enable the Warrantors and their professional advisers to examine such documents and records and to take copies at their own expense, save where to do so would or might reasonably breach or endanger the Buyer's or any Group Company of the

Buyer's legal privilege in any such documents or records or any obligations of confidentiality owed to a third party;

- 8.3.2 take such action as the Warrantors may reasonably request to avoid, dispute, resist, compromise or defend any claim arising out of the matter in question, save where the Buyer reasonably considers that any such action would prejudice the legitimate interests of the Buyer or the Company and the goodwill attaching to the business of the Buyer or the Company and subject to the Warrantors indemnifying the Buyer and/or the Company to the Buyer's satisfaction against any liability, costs, damages or expenses which may be thereby incurred.

**Schedule 6**  
**Tax Covenant**

**1. Definitions and interpretation**

1.1 Notwithstanding Clause 1 of this Agreement, in the event of any conflict between the provisions of this Schedule 6 and the rest of this Agreement, the provisions of this Schedule 6 will take precedence in respect of all matters relating to Tax.

1.2 In this Schedule 6, unless the context provides otherwise:

**Accounts Relief:** any Relief to the extent that Relief is taken into account in the Accounts as an asset of the Company or in computing any provision for deferred Tax or in reducing or extinguishing any provision for deferred Tax made or which would, but for the Relief, have been made in the Accounts;

**Actual Tax Liability:** any liability to make an actual payment or increased payment of Tax or on account of or in respect of Tax (whether or not such liability is a primary liability of the Company and whether or not the person so liable has or may have any right of indemnity or reimbursement against any other person) and the amount of the Tax Liability is set out in paragraph 5 (Payments under this Schedule) of this Schedule 6;

**Buyer's Group:** means:

- a. the Buyer; and
- b. any other company (including the Company) or companies which are treated as a member of the same group as, or otherwise connected or associated in any way with, the Buyer for any Tax purpose from time to time;

**Buyer's Relief** means:

- a. any Accounts Relief;
- b. any Relief arising in respect of any period or Event between the Accounts Date and the Completion Date in the ordinary course of the Company's business;
- c. any Relief arising to the Company in respect of any period (or part of any period) or Event occurring or deemed to occur after Completion; and
- d. any Relief arising to any member of the Buyer's Group (other than the Company) whenever such Relief arises;

**Company:** the Company listed in Schedule 1 to this Agreement;

**CTA 2009:** the Corporation Tax Act 2009;

**CTA 2010:** the Corporation Tax Act 2010;

**Deemed Tax Liability:**

- a. the Loss of any Accounts Relief which is a right to repayment of Tax;

- b. the Loss of any Accounts Relief, other than a right to a repayment of Tax; and
- c. the use, setting off or deduction in whole or in part of any Buyer's Relief against income, profits or gains earned, accrued or received on or before Completion or in respect of any period ended on or before Completion or against any Tax arising in respect of an Event occurring on or before Completion or in respect of any period ended on or before Completion where the use, setting off or deduction of that Buyer's Relief has the effect of reducing or eliminating an Actual Tax Liability of the Company which would but for such use, setting-off or deduction, have given rise to a claim by the Buyer against the Warrantors under this Schedule 6,

and, in each case, the amount of the Tax Liability is set out in paragraph 5 (Payments under this Schedule);

**Disguised Remuneration Provisions:** the provisions in ITEPA 2003, Part 7A;

**Event:** includes any transaction, act, omission, circumstance, payment or other event (including the execution of and Completion of this Agreement and this Schedule, the death or change in the residence for the purposes of Tax of any person and the Company becoming or ceasing to become a member of a group of companies, or becoming or ceasing to be associated or connected with any person for the purposes of any Tax) and the earning, receipt or accrual for any Tax purpose of any income, profits or gains;

**HMRC:** HM Revenue & Customs;

**IHTA 1984:** the Inheritance Tax Act 1984;

**IHT Liability:** any liability to inheritance tax which:

- a. arises as a result of a transfer of value occurring or being deemed to occur on or before Completion (whether or not related to the death of any person);
- b. on or before Completion gives rise to a charge on any of the shares in or assets of the Company or gives the power to sell, mortgage or charge any of the shares or assets of the Company; or
- c. after Completion gives rise to a charge on or gives the power to sell, mortgage or charge any of the shares in or assets of the Company as a result of a liability in respect of additional inheritance tax payable on the death of any person within seven years after a transfer of value occurring before Completion

and, in determining whether a charge on or power to sell, mortgage or charge any of the shares or assets of the Company exists at any time, the fact that the inheritance tax is not yet payable, or may be paid by instalments, shall be disregarded and such Tax shall be treated as becoming due and a charge or power to sell, mortgage or charge shall be treated as arising on the date of the transfer of value (or other date or Event on or in respect of which it becomes payable or arises) and the provisions of IHTA 1984, section 213 (Refunds by instalments) shall not apply to any payments under this Schedule 6;

**ITEPA 2003:** the Income Tax (Earnings and Pensions) Act 2003;

**Loss:** the loss, denial, disallowance, clawback, nullification, unavailability, reduction, or cancellation in whole or in part of any Relief and derivative words (such as Lost) shall be construed accordingly;

**Refund:** any repayment of Tax which the Company receives in respect of an Event occurring on or before Completion or in respect of any period ended on or before Completion where or to the extent such repayment was not included as an asset in the Accounts;

**Relief:** any relief, loss, allowance, credit, debit, charge, expense, exemption, set off or any deduction in computing, reducing or eliminating Tax or profits, income or gains of any description or from any source for the purposes of Tax and any right to a repayment of Tax;

**Straddle Period:** the accounting period of the Company beginning before Completion and ending after Completion;

**Tax:** any and all forms of taxation, levy, contributions, duty, impost, charge, tariff, withholding, deduction, and governmental charge (whether national or local) in the nature of tax whenever created, enacted or imposed and whether of the United Kingdom or elsewhere, and any amount payable to any Tax Authority or any other person as a result of any enactment relating to tax, together with all penalties, charges, surcharges, fines and interest regardless of whether such taxes, penalties, charges, surcharges, fines and/or interest are directly or indirectly or primarily chargeable or attributable to the Company provided that Tax shall exclude United Kingdom stamp duty and any penalties and interest in respect of such stamp duty;

**Tax Assessment:**

- a. any claim, notice, demand, assessment, letter, determination or other document issued or action taken by or on behalf of a Tax Authority, or any other person whereby it appears to the Buyer that the Company is, or may become, subject to a Tax Liability and whether or not such Tax Liability is primarily or directly payable by or attributable to the Company; and
- b. any self-assessment made by the Company in respect of any Tax Liability which it considers that it is, or may become, liable to pay;

**Tax Authority:** any taxing, fiscal or other authority (wherever situated) competent to impose, collect or enforce any liability to Tax, including HMRC;

**Tax Claim:** any Tax Assessment that comes to the attention of the Buyer or the Company from which it appears that the Warrantors are, or may become, liable to the Buyer under paragraph 2 (Covenant by the Warrantors) of this Schedule 6;

**Tax Liability:** any Actual Tax Liability or any Deemed Tax Liability;

**Tax Notice:** has the meaning given in paragraph 7.1.1 of this Schedule 6;

**Tax Statute:** any directive, statute, enactment, law or regulation wherever enacted or issued, coming into force or entered into providing for or imposing any Tax and shall include orders, regulations, instruments, bye-laws or other subordinate legislation made under the relevant statute or statutory provision and any directive, statute, enactment, law, order, regulation or provision which amends, extends, consolidates



or replaces the same or which has been amended, extended, consolidated or replaced by the same;

**Tax Warranties:** the warranties set out in paragraph 21 of Schedule 5 to this Agreement;

**TCGA 1992:** the Taxation of Chargeable Gains Act 1992;

**TMA 1970:** the Taxes Management Act 1970;

**VAT:** value added tax and any equivalent tax on the sale of goods and supply of services;

**VATA 1994:** the Value Added Tax Act 1994;

**Warrantor's Group:**

- a. a Warrantor; and
- b. any company (other than the Company) that may be treated, on or at any time prior to or after Completion, as being or having been, a member of the same group as, or otherwise connected or associated in any way with, the Warrantor for any Tax purpose; and

**Warrantors' Relief:** any Relief other than a Buyer's Relief.

- 1.3 References to an Event on or before a particular date or in respect of a particular period include Events which are for the purposes of Tax deemed to have occurred at or before that date or in respect of that period.
- 1.4 References to any Statute shall include any supplementary, subordinate or amending legislation and any consolidating or rewritten legislation.
- 1.5 For the purposes of this Schedule 6 and in particular for computing any Tax Liability or Relief and for determining whether and to what extent a Tax Liability or a Relief relates to a pre- or post-Completion period, an accounting period of the Company shall be deemed to have ended on the Completion Date and the Completion Date shall be deemed to be an accounting date of the Company.
- 1.6 References to something occurring in the ordinary course of business shall, without prejudice to the generality of the term, not include:
  - 1.6.1 anything which relates to or involves the making or receiving of a distribution or deemed distribution for Tax purposes;
  - 1.6.2 the acquisition, disposal or supply, whether actual or deemed, of any asset, goods, service or facility for an actual amount less than the consideration deemed to be received for Tax purposes;
  - 1.6.3 the creation, cancellation or reorganisation of any share or loan capital;
  - 1.6.4 a company ceasing to be associated with any person for the purposes of any Tax;

- 1.6.5 the failure by the Company to deduct, charge, recover or account for Tax;
- 1.6.6 anything which results in a liability for Tax which is primarily the liability of another person (other than another Company or a member of the Buyer's Group) becoming a liability of the Company;
- 1.6.7 any transaction or arrangement (or series of transactions or arrangements) which has or had no commercial or business purpose other than the deferral, reduction or avoidance of a liability to Tax;
- 1.6.8 anything with results in the issue of an accelerated payment notice or counteraction notice under the general anti-abuse rule; and
- 1.6.9 the Company changing its residence for Tax purposes.

## 2. **Covenant by the WARRANTORS**

- 2.1 Subject to paragraph 3 of this Schedule 6 (Exclusions and limitations of liability), the Warrantors each hereby severally covenant to pay to the Buyer an amount equal to:
  - 2.1.1 any Actual Tax Liability of the Company arising in respect of or in consequence of an Event which occurred on or before Completion (or in respect of any period on or before) Completion;
  - 2.1.2 any Actual Tax Liability which is primarily the liability of a person other than the Company or a member of the Buyer's Group (the "**Primary Person**") for which the Company is liable as a consequence of:
    - a. the Primary Person failing to discharge such Tax Liability; and
    - b. the Company, at any time on or before Completion, being a member of the same group of companies as, in control of, controlled by, or otherwise connected or associated with the Primary Person or being controlled by the same person as the Primary Person, in each case for the purposes of any Tax;
  - 2.1.3 any amount which the Company is liable to pay pursuant to an indemnity, guarantee or covenant entered into before Completion under which the Company has agreed to meet or pay a sum equivalent to or by reference to another person's liability to Tax;
  - 2.1.4 any liability of the Company which arises as a result of an assessment by a Tax Authority under the provisions of CTA 2010, Part 18 in connection with or by reference to the disposal of any land or interest in land which the Company has previously owned;
  - 2.1.5 any IHT Liability;
  - 2.1.6 the value of a Deemed Tax Liability;
  - 2.1.7 any Actual Tax Liability which the Company is liable to account for in respect of:

- a. any option or other right granted on or before Completion to acquire securities;
- b. the exercise of any option or other right granted on or before Completion to acquire securities;
- c. any employment-related securities (as defined for the purposes of ITEPA 2003, Part 7) acquired on or before Completion or acquired as a result of a right or obligation (whether or not legally binding) created on or before Completion;

2.1.8 any Actual Tax Liability of the Company under the Disguised Remuneration Provisions that arises at any time as a consequence of a relevant step (within the meaning of the Disguised Remuneration Provisions) having been entered into where the relevant arrangement (within the meaning of the Disguised Remuneration Provisions), pursuant to which the relevant step is taken, was entered into before Completion;

2.1.9 all reasonable costs and expenses properly incurred and payable by the Company or the Buyer in connection with any Tax Liability or other liability under this paragraph 2 (Covenant by the Warrantors) or in connection with any action taken in successfully taking, defending or settling any action under this Schedule 6.

### 3. Exclusions and limitations of liability

3.1 The Warrantors shall not be liable to make any payment under paragraph 2 (Covenant by the Warrantors) of this Schedule 6 or under the Tax Warranties in respect of any Tax Liability or other liability (a "**Covenant Liability**"), to the extent that:

- 3.1.1 a provision or reserve other than a provision for deferred tax was made in the Accounts in respect of the liability, or to the extent that payment or discharge of that liability has been taken into account in the Accounts or the Management Accounts (but not so as to double count); or
- 3.1.2 the liability (other than a liability for interest, a fine, a penalty, a charge or a surcharge relating to Tax) arises from actual income, profits or gains earned, accrued or received after the Accounts Date, but on or before Completion, by the Company in the ordinary course of the Company's business provided that the related income, profits or gains remain in the Company as at Completion or have been expended in the Company's ordinary course of business before Completion; or
- 3.1.3 the liability arises or is increased as a result of any increase in the rates of Tax or a change in legislation, applicable law, published concessions or published practice of any Tax Authority of general application announced and coming into force after Completion and having retrospective effect other than any measure specifically introduced to target tax avoidance or evasion; or
- 3.1.4 the liability arose as a direct result of a voluntary transaction, act entered into or carried out by or on behalf of the Company or the Buyer after Completion, in each case where the Buyer knew or ought reasonably to have known such

transaction or act would give rise to, or increase, the liability in question, other than any such transaction or act:

- a. which is entered into or carried out or effected under a legally binding commitment of the Company created on or before Completion; or
  - b. which is entered into or carried out or effected at the written request or with the written approval of the Warrantors after Completion; or
  - c. which is carried out or effected in the ordinary course of business of the Company as carried on at Completion;
- 3.1.5 the liability would not have arisen but for the withdrawal or amendment by the Company or the Buyer after Completion of any claim, surrender, disclaimer, notice or consent made by the Company prior to Completion or made after Completion in respect of the period ending on or before Completion;
- 3.1.6 the Buyer has made a claim in respect of the same matter which gave rise to such liability under this Agreement or pursuant to any other agreement with the Warrantors and such liability has been satisfied;
- 3.1.7 the liability arises or is increased as a result of any change after Completion in any accounting policies or practice used in preparing the Company's accounts (including a change in the length of any accounting period) other than a change which is necessary to comply with the law or generally accepted accounting practice applicable to the relevant accounting periods of the Company where the accounting practice before Completion did not comply with such law or policies; or
- 3.1.8 such liability arises or is increased as a result of any instalment of corporation tax paid prior to Completion pursuant to the Corporation Tax (Instalment Payments) Regulations 1998 (SI 1998/3175) being insufficient or such liability comprises interest, penalties or fines arising by virtue of an underpayment of tax for the accounting period commencing prior to Completion, insofar as such underpayment would not have arisen but for the entering into of this Agreement or but for the amount of income, profits or gains earned, accrued or received after Completion by the Company proving to be greater than the anticipated income, profits or gains expected to be earned, accrued or received using a good faith estimate at the date of the relevant instalment payment; or
- 3.1.9 such liability arises solely as a result of the Company joining the Buyer's Group; or
- 3.1.10 such liability arises or is increased as a result of a failure or omission by or on behalf of the Company after Completion to make any election, claim, surrender or disclaimer, or give any notice or consent to do any other thing, in relation to Tax, the anticipated making, giving or doing of which was taken into account in computing any provision or reserve for Tax in preparing the Accounts, provided that the need to make such election, claim, surrender or disclaimer or to give any notice or consent has been notified to the Buyer in writing within a reasonable time of the need to make such election, claim, surrender or disclaimer, or give any notice or consent; or

- 3.1.11 any Warrantors' Relief is available to the Company (or would have been available but for the use of that Relief against profits arising after Completion or taken in to account in the Accounts or a liability for Tax in respect of which the Warrantors would not have been liable to make a payment under this Schedule 6) to set against or otherwise mitigate the liability in question;
  - 3.1.12 such liability arises or is increased as a result of any election, claim, surrender or disclaimer made, or the giving of any notice or consent, or any other thing done, in relation to Tax, by or on behalf of the Company after Completion other than the making, giving or doing of which was taken into account in computing any provision or reserve for Tax in preparing the Accounts; or
  - 3.1.13 the income, profits or gains in respect of which the liability in question arises were actually earned, accrued or received by the Company prior to the Accounts Date but were not reflected in the and the income, profits or gains were retained by the Company at Completion or were expended by the Company in its ordinary course of business;
  - 3.1.14 the liability would not have arisen but for a cessation or any change in the nature or conduct of any trade carried out by the Company on or after Completion; or
  - 3.1.15 such liability arises or increases as a result of any transaction, act, or omission entered into or carried out by or on behalf of the Company at the written request or with the written approval of the Buyer prior to Completion or which is expressly authorised in this Agreement save that this exclusion shall not apply to claims under Clause 2.1.7 of this Schedule; or
  - 3.1.16 such liability is in respect of stamp duty or stamp duty reserve tax payable on the transfer or agreement to transfer the Sale Shares and Option Shares pursuant to this Agreement; or
  - 3.1.17 such liability has been made good by insurers or otherwise compensated for without cost or loss to the Buyer or the Company; or
  - 3.1.18 such liability arises or is increased as a consequence of any failure (other than a failure caused by a failure of the Warrantors to comply with their obligations) by the Buyer to comply with or procure the compliance of the Company with its obligations under paragraphs 7 (Conduct of Tax disputes), 8 (Management of Pre-Completion Tax Affairs), and 9 (Buyer's covenant) of this Schedule 6.
- 3.2 The Warrantors shall not be liable under this Schedule 6 for a breach of the Tax Warranties unless written notice of such liability, specifying in reasonable detail the circumstances giving rise to such liability, has been served on the Warrantors on or prior to the seventh anniversary of Completion and any such claim which may be made shall (if it has not previously been satisfied, settled or withdrawn) be deemed to be withdrawn and shall become fully barred and unenforceable (and the Warrantors' liability in respect of such claim shall absolutely terminate) at the expiry of the period of three months from the date of giving notice of such claim unless legal proceedings in respect thereof have been commenced by the issuing and service of such proceedings against the Warrantors.

- 3.3 The maximum aggregate liability of the Warrantors in respect of all claims under paragraph 2 (Covenant by the Warrantors) of this Schedule 6 shall not exceed a sum equal to the total amount of monies paid by the Buyer to the Warrantors under this Agreement.

**4. Recovery from third parties**

- 4.1 If any Warrantor has paid the Buyer an amount in full in respect of any claim under paragraph 2 (Covenant by the Warrantors) of this Schedule 6 or for breach of the Tax Warranties and the Company or the Buyer:

4.1.1 is or becomes, within seven years from Completion, entitled to receive a payment or obtain a credit or set-off from any person (other than the Buyer, the Company or a member of the Buyer's Group or an officer or employee of any of them, but including a Tax Authority) in respect of the payment received from the Warrantor or the liability giving rise to such payment; or

4.1.2 has (whether by operation of law, contract or otherwise), within seven years of Completion, a right of reimbursement against any person (other than the Buyer, the Company or a member of the Buyer's Group or an officer or employee of any of them, but including a Tax Authority) in respect of the payment received from the Warrantor or the liability giving rise to such payment,

the Buyer shall, or shall procure that the Company shall, notify the Warrantors in writing as soon as reasonably practicable.

- 4.2 Following the notification under paragraph 4.1 of this Schedule 6, if requested by the Warrantors, the Buyer shall take, or procure that the Company shall take, all reasonable steps to enforce the right to reimbursement or to obtain a repayment of Tax or set-off or credit and shall keep the Warrantors fully informed of any progress, provided that:

4.2.1 the Buyer is not required to take action which in its reasonable opinion, is likely to have an adverse effect on the business of the Company or the Buyer; and

4.2.2 the Warrantors indemnify and, if requested, secure the Buyer and the Company against all reasonable costs and expenses properly incurred in obtaining that amount together with any additional Tax Liability which may be incurred by either of them as a result of any action being taken pursuant to this paragraph 4.

- 4.3 If the Buyer or the Company receives any repayment or recovers from a third party any amount referred to in Paragraph 4.1 of this Schedule 6, then to the extent that the amount is not taken into account in compiling the Accounts, the Buyer shall pay to the relevant Warrantor(s) an amount equal to the lesser of:

4.3.1 the amount of any payment, credit or set-off received or sum recovered (including any related interest or related repayment supplements) by the Company under this paragraph 4 less any reasonable costs and/or expenses incurred by the Buyer or the Company in obtaining the amount from the third party (save to the extent any amount has already been made good by the

Warrantors under paragraph 4.2.2 of this Schedule 6) and less any amount in respect of Tax suffered in respect of that amount; and

- 4.3.2 the amount paid by the relevant Warrantor(s) under paragraph 2 (Covenant by the Warrantors) of this Schedule 6 or the Tax Warranties.
- 4.4 Any amount recovered in accordance with paragraph 4.2 of this Schedule 6 and not paid to the Warrantors under paragraph 4.3 of this Schedule 6 shall be carried forward and set off against any future payment due from the Warrantors under this Schedule 6.
- 4.5 Where the Buyer is liable to make any payment under this paragraph 4, the due date for the making of that payment shall be:
  - 4.5.1 ten Business Days following the receipt, reimbursement or recovery in question by the Buyer or the Company; or
  - 4.5.2 in the case where the Buyer or the Company obtains a Relief, the date on which Tax would have become due to the appropriate Tax Authority but for the use of such Relief; or
  - 4.5.3 in a case where an excess is carried forward and paid in accordance with paragraph 4.4 of this Schedule 6, the date the Warrantors' payment under this Schedule 6 or the Tax Warranties (against which the excess is set off) is made.
- 5. **Payments under this Schedule**
  - a. Subject to paragraph 6 of this Schedule 6, the amount to be treated as a liability is:
    - 5.1.1 in the case of an Actual Tax Liability, the amount of the payment or increased payment of or in respect of Tax;
    - 5.1.2 in the case of a liability falling within part (a) of the definition of Deemed Tax Liability, the amount of the repayment of Tax which would have been obtained had the Loss of it not occurred;
    - 5.1.3 in the case of a liability falling within part (b) of the definition of Deemed Tax Liability, the amount of Tax, on the basis of the tax rates current at the Accounts Date which would otherwise have been saved by the Company had the Loss of it not occurred, assuming for this purpose that the Company had sufficient profits or was otherwise in a position to use the Relief;
    - 5.1.4 in the case of a liability falling within part (c) of the definition of Deemed Tax Liability (other than the setting off or deduction of an Accounts Relief, which shall be calculated in accordance with paragraph 5.1.3 of this Schedule 6), the amount of Tax, on the basis of the tax rates current at the Accounts Date, which has been saved by the Company as a result of the set off, use or deduction of the Buyer's Relief.
  - 5.2 Subject to paragraph 6 of this Schedule 6, the due date for payment, where any Warrantor is liable to make any payment under paragraph 2 (Covenant by the Warrantors) of this Schedule 6, shall be on or before the later of five Business Days

following the date on which the Buyer notifies the Warrantors of the Warrantors' liability to make payment including the amount of that payment and:

- 5.2.1 in the case of an Actual Tax Liability, five Business Days before the latest date on which the Tax would have to be paid to the relevant Tax Authority without a liability (or further liability) to interest or penalties accruing;
  - 5.2.2 in a case that falls within part (a) of the definition of Deemed Tax Liability, the date on which the Tax would otherwise have been due for repayment by the relevant Tax Authority;
  - 5.2.3 in a case that falls within part (b) of the definition of Deemed Tax Liability, five Business Days before the latest date on which the Tax (which would not otherwise have been payable) becomes payable (or would have become payable assuming, for these purposes, that the Company had sufficient profits against which the Accounts Relief in question could have been set-off or was otherwise able to use the Accounts Relief in question) to the relevant Tax Authority without a liability (or further liability) to interest or penalties accruing;
  - 5.2.4 in the case of a liability falling within part (c) of the definition of Deemed Tax Liability (other than the setting off or deduction of an Accounts Relief, for which payment shall be due in accordance with paragraph 5.2.3 of this Schedule 6), the date on which the Buyer would otherwise have used such Buyer's Relief but for the set off or deduction of the relevant Buyer's Relief as referred to in that part.
- 5.3 Any payments made under this Schedule 6 shall, so far as permitted by law, be treated as an adjustment to the Consideration paid by the Buyer for the Shares under the terms of this Agreement.
- 5.4 If any amount is not paid by any Warrantor to the Buyer on the due date as provided in this Schedule 6, such sum shall carry interest from the due date for payment at the rate of 3 percent per annum above the base lending rate of Barclays Bank Plc for the time being in force on the basis of actual days elapsed from the relevant date specified for payment until and including the date of actual payment (after as well as before judgment). Interest shall be calculated on a daily basis shall be payable on demand.
- 6. Gross up and withholding**
- 6.1 All sums payable by the Warrantors to the Buyer under this Schedule 6 shall be paid free and clear of all deductions or withholdings save only as may be required by law.
- 6.2 If any deductions or withholdings are required by law to be made from any payment by any Warrantor under this Schedule 6 (other than a payment of interest), such Warrantor shall pay the Buyer, at the same time as making the payment in question, such additional amount as will, after such deduction or withholding has been made (and after taking into account any credit in respect of such deduction or withholding), leave the Buyer with the same amount as it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.
- 6.3 If a Tax Authority charges to Tax (including where the sum is brought into any computation of income, profits or gains but is not charged to Tax because of the use



of a Buyer's Relief) any sum paid under paragraph 2 (Covenant by the Warrantors) of this Schedule 6, the relevant Warrantor shall pay the Buyer such additional amount as will ensure that the Buyer shall receive and retain the amount that is equal to the amount it would have received and retained had the payment in question not been charged to Tax.

- 6.4 Any additional amount due pursuant to paragraph 6.3 of this Schedule 6 shall be paid within five Business Days of receiving a written demand from the Buyer.
- 6.5 Paragraphs 6.2 and 6.3 of this Schedule 6 shall not apply to the extent that the deduction, withholding or Tax would not have arisen but for an assignment by the Buyer of any of its rights under this Schedule 6.
- 6.6 To the extent that any additional amount paid under paragraphs 6.2 and 6.3 of this Schedule 6 results in the Buyer obtaining and utilising a Relief (reasonable endeavours having been used to obtain and utilise such Relief), the Buyer shall pay to the relevant Warrantor(s), within ten Business Days of utilising the Relief, an amount equal to the lesser of the value of the Relief obtained and the additional sum paid under paragraph 6.2 or 6.3 of this Schedule 6.
- 6.7 Any payment to be made by the Buyer to the Warrantors under this Schedule 6 shall be subject to paragraphs 6.1 to 6.6 of this Schedule 6 and all references to the Warrantors shall be replaced with the Buyer and vice versa and with all other necessary modifications being made.

## 7. Conduct of tax disputes

### 7.1 Notification

If the Buyer or the Company becomes aware of a Tax Claim, it shall, or shall procure that the Company shall, as soon as reasonably practicable (and in any event within fifteen Business Days):

- 7.1.1 notify the Warrantors of any Tax Assessment (a **Tax Notice**); and
- 7.1.2 include in the Tax Notice:
  - a. reasonable details of the Tax Assessment;
  - b. the due date for any payment to a Tax Authority;
  - c. the time limits for any appeal or required response to a Tax Authority; and
  - d. a reasonable estimate of the amount of any Tax Claim,

in each case, so far as the Buyer is reasonably able to specify without material investigation or enquiry. For the purposes of this paragraph 7.1, if any Warrantor receives any Tax Assessment for any reason, it shall notify the Buyer in writing as soon as is reasonably practicable and in any event within ten Business Days of receiving such Tax Assessment. In such a case, the Buyer shall be deemed to have given the Warrantors notice of such Tax Assessment in accordance with the provisions of this paragraph 7.1 and such notification shall be treated as having been received by the Warrantors when

the relevant Warrantor received the Tax Assessment provided always that the giving of such notice shall not be a condition precedent to the Warrantors' liability under this Schedule 6.

## **7.2 Conduct**

Subject to the remaining provisions of this paragraph 7:

- 7.2.1 the Buyer shall take, or shall procure that the Company takes, at the Warrantors' expense, any action the Warrantors shall, on receiving a Tax Notice in accordance with paragraph 7.1 of this Schedule 6, reasonably and promptly request in writing, to avoid, mitigate, resist, defend, appeal against or contest any Tax Assessment and any determination in respect thereof provided that;
- 7.2.2 the Buyer shall not be obliged to take, or procure the taking, of any action reasonably requested by the Warrantors under this paragraph 7 unless the Warrantors have first indemnified the Company and the Buyer to the Buyer's reasonable satisfaction against all liabilities, costs, damages and expenses and any additional Tax Liability which may be properly incurred or suffered by the Buyer or the Company in relation to or as a result of the Tax Assessment.

## **7.3 Restrictions on conduct**

The Buyer shall not be obliged to take, or procure the taking, of any action reasonably requested by the Warrantors under paragraph 7.2 of this Schedule 6 if:

- 7.3.1 the Buyer has not received written instructions from the Warrantors in accordance with paragraph 7.2 of this Schedule 6 within ten Business Days of the receipt of the Tax Notice by the Warrantors or, in any case where a time limit for the taking of any action, including responding to the Tax Authority or making an appeal against or contesting any Tax Assessment, applies, any shorter period required in order to comply with the time limit specified in the Tax Assessment and included within the Tax Notice;
- 7.3.2 complying with any instruction, combination of instructions, request or notification of the Warrantors is likely, in the opinion of the Buyer and the Company, acting reasonably, to:
  - a. increase the amount involved or the future liability to Tax of the Company or the Buyer; or
  - b. have an adverse effect on the future Tax affairs of the Company; or
  - c. have an adverse effect on the future continuing business affairs of the Company;
- 7.3.3 complying with any instruction, combination of instructions or request would involve sending, transmitting, issuing or submitting any written correspondence or entering in any other communication relating to the Tax Assessment which, in the Buyer's reasonable opinion, is not true and accurate; or

7.3.4 complying with any instruction or combination of instructions, request or notification of the Warrantors would involve:

- a. taking, or procuring the taking of, any actions or steps which the Buyer reasonably considers is or would be unduly onerous or frivolous or vexatious; or
- b. contesting a Tax Assessment to an appellate body unless the Warrantors have, at their sole expense, obtained an opinion on the merits of such a claim, from independent Tax counsel having at least ten years' experience in Tax matters and appointed by agreement between the Buyer and the Warrantors after disclosure of all relevant information and documents and having regard to all circumstances and information available that an appeal or a defence against an appeal has a reasonable chance of success.

#### **7.4 Buyer's obligations**

Subject to the provisions of paragraph 7.5 of this Schedule 6, if the Warrantors have requested that the Buyer takes, or procures that the Company takes, such action as the Warrantors shall reasonably request in writing in relation to a Tax Assessment in accordance with paragraph 7.2 of this Schedule 6 the Buyer shall, or shall procure that the Company shall:

- 7.4.1 keep the Warrantors promptly informed of all material matters known to it relating to the Tax Assessment or negotiations and will provide the Warrantors with copies of all relevant correspondence and documentation relating to such Tax Assessment;
- 7.4.2 provide the Warrantors with copies of all materially relevant documents in the Buyer's or the Company's possession or control in relation to that Tax Assessment; and
- 7.4.3 provide access to the books, accounts and records of the Company and shall give the Warrantors or their agents all such assistance (at the Warrantors cost and expense) as may reasonably be required by the Warrantors in relation to the Tax Assessment including the right to take copies of such books, accounts and records.

#### **7.5 Warrantors losing conduct-related rights**

If:

- 7.5.1 allegations are made by any Tax Authority of any fraudulent act or omission, or of any negligent conduct on the part of the Company before Completion or the Warrantors at any time in relation to the Tax Assessment in question;
- 7.5.2 the Warrantors fail to indemnify the Company to the Buyer's reasonable satisfaction within ten Business Days of receiving notice;
- 7.5.3 the Warrantors do not request in writing that the Buyer or the Company take any action in respect of the Tax Assessment within ten Business Days of receiving the Tax Notice or such shorter time as specified in paragraph 7.3.1 of this Schedule 6;

7.5.4 the Warrantors fail to provide reasonable clarification of any action that they has requested the Buyer to take (following a reasonable request by the Buyer for such clarification);

then the Buyer shall, without prejudice to its rights against the Warrantors under this Schedule 6, be free to take, or procure that the Company take, such action and reach a settlement or compromise as the Buyer in its reasonable discretion thinks fit.

## 8. Management of pre-Completion Tax affairs

### 8.1 Rights and obligations of the Warrantors

The Warrantors, or their duly authorised agents, shall, in respect of all accounting periods ending on or before the Accounts Date, at their own cost:

8.1.1 prepare the corporation tax returns and computations of the Company to the extent that the same shall not have been prepared before Completion (the **Pre-Completion Tax Returns**) and deliver all Pre-Completion Tax Returns to the Buyer at least 30 Business Days prior to the due date for submission;

8.1.2 prepare on behalf of the Company all claims, elections, surrenders, disclaimers, notices and consents to the extent that these have been assumed in the preparation of the Accounts and, subject to paragraph 7 (Conduct of claims) of this Schedule 6, deal with all matters relating to the Pre-Completion Tax Returns, including correspondence (the **Pre-Completion Tax Documents**) and deliver all Pre-Completion Tax Documents to the Buyer at least ten Business Days prior to the date such Pre-Completion Tax Documents are required to be submitted to the relevant Tax Authority.

### 8.2 Rights and obligations of the Buyer

The Buyer shall, or shall procure that the Company shall:

8.2.1 authorise, sign and submit to the relevant Tax Authority any Pre-Completion Tax Return or Pre-Completion Tax Document without amendment or with such amendments as the Buyer may reasonably require and agree with the Warrantors; and

8.2.2 afford such access (on reasonable notice in writing) to its books and records (including the taking of copies at the Warrantors' expense) and give such assistance as is necessary and reasonable to enable the Warrantors or their duly authorised agents to prepare the Pre-Completion Tax Returns and Pre-Completion Tax Documents,

provided that the Buyer is under no obligation to procure the authorisation, signing or submission to any Tax Authority of any Pre-Completion Tax Return or Pre-Completion Tax Document delivered to it in accordance with this paragraph which it considers, in its reasonable opinion, to be false, misleading, incomplete or inaccurate in any respect.

8.3 The Warrantors shall use all reasonable endeavours to agree the Pre-Completion Tax Returns and Pre-Completion Tax Documents as soon as reasonably practicable and shall, subject to paragraph 7 (Conduct of Tax disputes) of this Schedule 6 deal with all such matters promptly and diligently and within applicable time limits and in the

event that the Pre-Completion Tax Returns have not been submitted to HMRC by one month before the relevant filing date (otherwise than due to the failure of the Buyer or the Company to comply with its obligations under paragraph 8.2 of this Schedule 6), the Warrantors shall lose their rights under paragraph 8.1 of this Schedule 6.

#### **8.4 Straddle Period computation**

8.4.1 The Buyer, or its duly authorised agents, shall, in respect of the Straddle Period, at the Company's cost and expense:

- a. prepare the corporation tax returns and computations of the Company;
- b. deliver all such returns to the Warrantors at least 15 Business Days prior to the due date for submission;
- c. prepare on behalf of the Company all claims, elections, surrenders, disclaimers, notices and consents for the purposes of Tax in respect of the Company and deliver such documents to the Warrantors at least 15 Business Days prior to the due date for submission;
- d. submit such returns and other documents to the relevant Tax Authority having incorporated any reasonable comments of the Warrantors received at least five Business Days prior to the submission of such return or document which relate to a matter for which the Warrantors may be liable under this Schedule 6 provided that the Buyer is under no obligation to procure the authorisation, signing or submission to any Tax Authority of any return or document delivered to it in accordance with this paragraph which it considers, in its reasonable opinion, to be false, misleading, incomplete or inaccurate in any respect; and
- e. subject to paragraph 7 (Conduct of Tax disputes) of this Schedule 6 deal with all matters relating to Tax including the conduct of all related negotiations and correspondence with the relevant Tax Authority.

8.4.2 The Warrantors shall give all such reasonable assistance as may be reasonably required to prepare the Straddle Period returns and all related documents and agree the same with the relevant Tax Authority.

8.5 For the avoidance of doubt, in respect of any Tax Assessment (whereby it appears that the Warrantors are or may become liable to make a payment to the Buyer) this paragraph 8 shall not apply or shall cease to apply and any such Tax Assessment shall be governed by paragraph 7 (Conduct of Tax disputes) of this Schedule 6.

#### **9. BUYER'S COVENANT**

9.1 Subject to paragraph 9.2 of this Schedule 6, the Buyer hereby covenants to pay to the Warrantors an amount equal to:

9.1.1 any liability or increased liability to Tax of any member of any Warrantor's Group arising as a consequence of any failure by the Company or a member of the Buyer's Group after Completion to pay any Tax which is the primary liability of the Company or the relevant member of the Buyer's Group;

9.1.2 any liability or increased liability to Tax of any member of any Warrantor's Group arising as a consequence of the Company withdrawing in whole or in part, after Completion, any surrender of Group Relief or any Group Reallocation that was submitted to a Tax Authority before Completion in respect of any accounting period ended on or before the Accounts Date and reflected in the Accounts save where the withdrawal in question was made at the request or with the approval of the Warrantors;

9.1.3 any liability to Taxation of any member of any Warrantor's Group arising under Chapter 6 Part 14 CTA 2010 (change in company ownership);

9.1.4 all reasonable costs and expenses properly incurred by the Warrantors in connection with any liability under this paragraph 10 or in connection with any action taken in successfully taking, defending or settling any action under this paragraph 9.

9.2 Paragraph 9.1 of this Schedule 6 shall not apply to the extent that:

9.2.1 the Buyer has validly claimed against the Warrantors under this Schedule 6 in respect of the amount of Tax which the Company or a member of the Buyer's Group has failed to pay under paragraph 9.1.1 of this Schedule 6 and for which no payment has yet been made by the Warrantors; or

9.2.2 the Buyer could validly claim against the Warrantors under this Schedule 6 for payment of the amount of Tax which the Company or a member of the Buyer's Group has failed to pay under paragraph 9.1.1 of this Schedule 6; or

9.2.3 an amount in respect of Tax has been recovered by the Warrantors or any member of any Warrantor's Group under any relevant Tax Statute (and the Warrantors shall procure that no such recovery is sought to the extent that payment is made hereunder).

9.3 The provisions of paragraphs 3.3 (Financial Limitations), 5, 6 and 7 of this Schedule 6 shall apply to the covenant contained in this paragraph 9 as they apply to the covenant in paragraph 2 (Covenant by the Warrantors) of this Schedule 6 with references to the Warrantors being replaced with references to the Buyer and vice versa and with any other necessary modifications.

IN WITNESS WHEREOF, this agreement has been **EXECUTED AND DELIVERED AS A DEED** on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by  
**QUANTUM CORPORATION**, acting by  
J. Michael Dodson \_\_\_\_\_(name),  
who, in accordance with the laws of the state of Delaware and the United States of  
America, is acting under the authority of **QUANTUM CORPORATION**

)  
) /s/ J. Michael Dodson  
Authorised Signatory

**EXECUTED** as a **DEED** by

**ROLF MICHAEL HOWARTH**

in the presence of: /s/ Rolf Howarth

Witness' Signature: /s/ Rosa Dias

Witness' Name: Rosa Dias

Witness' Address:



**EXECUTED** as a **DEED** by

**DAVID CLACK**

in the presence of: /s/ David Clack

Witness' Signature: /s/ Victoria Clack

Witness' Name: Victoria Clack

Witness' Address:

**EXECUTED** as a **DEED** by

**GEORGE JOHN BARRY VAUDIN**

in the presence of: /s/ George John Barry Vaudin

Witness' Signature: /s/ Jennifer Vaudin

Witness' Name: Jennifer Vaudin

Witness' Address:

**EXECUTED** as a **DEED** by

**NEIL BUNDLE**

in the presence of: /s/ Neil Bundle

Witness' Signature: /s/ Teresa Bundle

Witness' Name: Teresa Bundle

Witness' Address:

**EXECUTED** as a **DEED** by

**HANNAH COLCHESTER**

in the presence of: /s/ Hannah Colchester

Witness' Signature: /s/ Jack Colchester

Witness' Name: Jack Colchester

Witness' Address:

**EXECUTED** as a **DEED** by

**MARTIN SVEN HOWARTH-MOORE**

in the presence of: /s/ Martin Sven Howarth-Moore

Witness' Signature: /s/ Heloise Kathryn Howarth-Moore

Witness' Name: Heloise Kathryn Howarth-Moore

Witness' Address:

**EXECUTED** as a **DEED** by

**PAUL DOUGLAS**

in the presence of: /s/ Paul Douglas

Witness' Signature: /s/ Jason Bell

Witness' Name: Jason Bell

Witness' Address:

## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “**Agreement**”) is made and entered into as of December 12, 2020 (the “**Effective Date**”) by and among Quantum Corporation, a Delaware corporation (the “**Company**”), and certain securityholders of Square Box Systems Limited, a company incorporated in England and Wales (“**Square**”) listed on Exhibit A hereto (each such securityholder, as well as any permitted transferee of Registrable Securities (as defined below) hereunder, in each case to the extent holding Registrable Securities, a “**Holder**” and collectively, the “**Holders**”).

### RECITALS

WHEREAS, the Company and certain securityholders of Square will enter into a Share Purchase Agreement dated on or around the date of this Agreement (the “**Share Purchase Agreement**”), pursuant to which and subject to the terms thereof the Company will acquire the entire issued share capital of Square.

WHEREAS, in connection with the Share Purchase Agreement, the Company shall issue to the Holders at the Completion Date (as defined in the Share Purchase Agreement) shares of the Company’s common stock, par value \$0.01 per share, identified on Exhibit A hereto as Completion Share Consideration (as defined in the Share Purchase Agreement), and may issue the Year 1 Share Consideration (as defined in the Share Purchase Agreement), Year 2 Share Consideration (as defined in the Share Purchase Agreement) and Contingent Share Consideration (as defined in the Share Purchase Agreement), each as identified on Exhibit A hereto (the “**Shares**”) pursuant to the Share Purchase Agreement; and

WHEREAS, in connection with the consummation of the transactions contemplated by the Share Purchase Agreement, the Company agreed to grant certain registration rights to the Holders as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.1 Definitions.** For purposes of this Agreement, the following terms and variations thereof have the meanings set forth below:

“**Affiliate**” means, with respect to any person, any other person that, directly or indirectly, controls, or is controlled by, or is under common control with, such person. For this purpose: (a) “control” (including, with its correlative meanings, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise; and (b) “person”

means any natural person, corporation, limited liability company, partnership, association, trust or other entity.

**“Agreement”** has the meaning set forth in the preamble.

**“Business Day”** means any day, other than a Saturday, Sunday or one on which banks are authorized by law to be closed in New York, New York.

**“Company Indemnitee”** has the meaning set forth in Section 4.1(b).

**“Effective Date”** has the meaning set forth in the preamble.

**“Effectiveness Period”** has the meaning set forth in Section 3.1(b).

**“Exchange Act”** means the Securities Exchange Act of 1934.

**“Grace Period”** has the meaning set forth in Section 3.2(h).

**“Holder Indemnitee”** has the meaning set forth in Section 4.1(a).

**“Indemnified Party”** has the meaning set forth in Section 4.1(c).

**“Indemnifying Party”** has the meaning set forth in Section 4.1(c).

**“Registrable Securities”** means the Shares issued to the Holders pursuant to the Share Purchase Agreement and any securities issued or issuable upon any stock split, dividend or other distribution, recapitalization or similar event with respect to such securities; provided, however, that Registrable Securities shall cease to be Registrable Securities with respect to a particular Holder when (i) such securities have been disposed of in accordance with the Registration Statement or pursuant to Rule 144; (ii) such securities may be sold pursuant to Rule 144 without any manner-of-sale restrictions or volume limitations; or (iii) such securities cease to be outstanding.

**“Registration Expenses”** means all expenses incurred by the Company in effecting the registration pursuant to this Agreement, including all registration and filing fees, printing expenses, fees and disbursements of counsel for the Company, “blue sky” fees and expenses, and expenses of the Company’s independent registered public accounting firm in connection with any regular or special reviews or audits incident to or required by any such registration, but shall not include Selling Expenses.

**“Registration Statement”** has the meaning set forth in Section 3.1.



**“Rule 144”** means Rule 144 under the Securities Act or any successor or other similar rule, regulation or interpretation of the SEC that may at any time permit the sale of Registrable Securities to the public without registration.

**“Rule 405”** means Rule 405 under the Securities Act or any successor or other similar rule.

**“Rule 415”** means Rule 415 under the Securities Act or any successor or other similar rule providing for offering securities on a continuous or delayed basis.

**“Rule 424”** means Rule 424 under the Securities Act or any successor or other similar rule.

**“Share Purchase Agreement”** has the meaning set forth in the recitals.

**“Shares”** has the meaning set forth in the recitals.

**“SEC”** means the Securities and Exchange Commission.

**“Securities Act”** means the Securities Act of 1933.

**“Selling Expenses”** means all discounts, selling commissions, fees of selling brokers, dealer managers and similar securities industry professionals and stock transfer taxes applicable to the sale of Registrable Securities and fees and disbursements of counsel for any Holder (other than the fees and disbursements of counsel for the Company included in Registration Expenses).

**“Transfer”** means, directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of (by merger, testamentary disposition, operation of law or otherwise), either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of (by merger, testamentary disposition, operation of law or otherwise) any Shares.

**“Violation”** has the meaning set forth in Section 4.1(a).

## **ARTICLE II TRANSFER RESTRICTIONS**

**Section 2.1 General Transfer Restrictions.** The right of any Holder to Transfer any Shares held by it is subject to the restrictions set forth below.

(a) Each Holder acknowledges that the Shares have not been registered under the Securities Act and may not be Transferred except pursuant to an effective registration statement under the Securities Act or pursuant to an exemption from registration under the

Securities Act. Each Holder covenants that the Shares will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state and foreign securities laws. In connection with any Transfer of the Shares other than a Transfer (i) pursuant to an effective registration statement, (ii) to the Company or (iii) pursuant to Rule 144 the Company may require the Holder to provide to the Company an opinion of counsel selected by the Holder and reasonably acceptable to the Company, the form and substance of which opinion shall be reasonably satisfactory to the Company, to the effect that such Transfer does not require registration under the Securities Act.

(b) Each Holder agrees to the affixing, so long as is required by this Section 2.1, of the following legend on any certificate or book-entry position evidencing any of the Shares:

**THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY STATE SECURITIES LAWS AND MAY NOT BE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER THE ACT AND THE RULES AND REGULATIONS THEREUNDER AND APPLICABLE STATE SECURITIES LAWS.**

Certificates or book-entry positions evidencing the Shares shall not be required to contain such legend or any other legend (i) following any sale of such Shares pursuant to an effective registration statement (including the Registration Statement described in Section 3.1) covering the resale of the Shares, (ii) following any sale of such Shares pursuant to Rule 144 or if the Shares are transferrable by a person who is not an Affiliate of the Company or the applicable Holder pursuant to Rule 144 without any volume or manner of sale restrictions thereunder, (iii) if Holder is not an Affiliate of the Company, six (6) months following the Completion Date, provided, however, that in the case of (i), (ii) and (iii), above, the Holder provides the Company with customary legal representation letters reasonably acceptable to the Company or (iv) if the Holder provides the Company with a legal opinion reasonably acceptable to the Company to the effect that the legend is not required under applicable requirements of the Securities Act. Whenever such restrictions shall cease and terminate as to any Shares, the Holder of such securities shall be entitled to receive from the Company upon a written request in writing, without expense, new securities of like tenor not bearing the legend set forth herein.

(c) Notwithstanding anything herein to the contrary, following registration of the Shares, each Holder agrees not to sell any Shares issued to such Holder if the sales of such shares would, when combined with the sale of any other Shares by such Holder in any one (1) day period, exceed five percent (5%) of the average daily trading volume of the Company's common stock on the Nasdaq Global Market over the five (5) trading days immediately preceding such date of sale; provided, however, that if the aggregate number of Shares represents less than fifty percent (50%) of the average daily trading volume of the Company's common stock on the Nasdaq Global Market over the five (5) trading days preceding the Completion Date (as defined in the Share Purchase Agreement) (the "**Average Volume**"), such resale volume

limitations shall not apply. If the aggregate number of Shares issued to a Holder represents more than the Average Volume, the Company may place such legends or stock transfer restrictions on the Shares as shall be appropriate for enforcing the provisions of this Section 2(c).

### **ARTICLE III REGISTRATION AND PROCEDURES**

#### **Section 3.1 S-3 Registration.**

(a) In compliance with the terms of this Agreement, the Company shall prepare and file with the SEC a registration statement on Form S-3 (or such other form that the Company is then eligible to use if not eligible to use Form S-3) covering the resale as a secondary offering to be made on a continuous basis pursuant to Rule 415 of all Registrable Securities. The registration statement (or new registration statement) required to be filed pursuant to this Section 3.1, together with any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all materials incorporated by reference in such registration statement other than a registration statement on Form S-4 or S-8, is referred to herein as the “**Registration Statement**.”

(b) The Company shall exercise commercially reasonable efforts to prepare and file the Registration Statement with the SEC no later than [8] weeks after the Completion Date; provided, however, that no filing of such Registration Statement shall be required during any period in which the Company's insider trading policy would prohibit executive officers of the Company from trading in the Company's securities. Subject to the terms of this Agreement, the Company shall use commercially reasonable efforts to have the Registration Statement declared effective as soon as practicable after such filing and to keep the Registration Statement continuously effective and in compliance with the Securities Act and usable for resale of Registrable Securities covered thereby from the date of its initial effectiveness until the earlier of (i) three (3) years following the Completion Date (as defined in the Share Purchase Agreement), and (ii) such time as no Registrable Securities remain outstanding (including as a result of the proviso set forth in the definition of Registrable Securities) (such period, the “**Effectiveness Period**”).

(c) It shall be a condition precedent to the obligations of the Company to take any action pursuant to Section 3.1 or Section 3.2 with respect to Registrable Securities of a Holder that the Holder shall furnish to the Company such information regarding such Holder as required under Section 3.4(a).

**Section 3.2 Registration Procedures; Company Obligations.** The Company shall use commercially reasonable efforts to effect the registration of the Registrable Securities in accordance with Section 3.1, and in connection therewith shall have the following obligations:

(a) No later than the first Business Day after the Registration Statement becomes effective, the Company shall file with the SEC the final prospectus included therein pursuant to Rule 424. The Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, shall comply as to form and content with the applicable requirements of the Securities Act and shall not contain 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, in light of the circumstances in which they were made (in the case of any prospectus), not misleading.

(b) Subject to Section 3.2(h), the Company shall prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to keep the Registration Statement effective and usable for resale of the Registrable Securities covered thereby at all times during the Effectiveness Period. The Company shall use commercially reasonable efforts to cause any post-effective amendment to the Registration Statement that is not effective upon filing to become effective as soon as practicable after such filing. No later than the first Business Day after a post-effective amendment to the Registration Statement becomes effective, the Company shall file with the SEC the final prospectus or prospectus supplement included therein pursuant to Rule 424.

(c) The Company shall as promptly as practicable notify the Holders of the time when the Registration Statement becomes effective or an amendment or supplement to any prospectus forming a part of such Registration Statement has been filed. The Company shall furnish to the Holders, without charge, such documents, including copies of any preliminary prospectus or final prospectus contained in the Registration Statement or any amendments or supplements thereto, as such Holder may reasonably request from time to time in order to facilitate the disposition of the Registrable Securities covered by the Registration Statement.

(d) The Company shall use commercially reasonable efforts to register or qualify, and cooperate with the Holders of Registrable Securities covered by the Registration Statement in connection with the registration or qualification of such Registrable Securities for offer and sale under the securities or "blue sky" laws of each state and other jurisdiction of the United States as any such Holder reasonably requests in writing, and do any and all other things reasonably necessary or advisable to keep such registration or qualification in effect; provided, however, that the Company shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject.

(e) The Company shall promptly notify (which notice shall be accompanied by an instruction to suspend the use of the prospectus) the Holders 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 any prospectus included in, or relating to, the 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, in light of the circumstances in which they were made, not misleading (provided that in no event shall such notice contain any

material, non-public information), and, subject to Section 3.2(h), promptly prepare and file with the SEC a supplement to the related prospectus or amendment to such Registration Statement or any other required document so that, as thereafter delivered to the Holders, the prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(f) The Company shall use commercially reasonable efforts to prevent the issuance of any stop order or other suspension of effectiveness of the Registration Statement, or the suspension of the qualification of any of the Registrable Securities for sale in any jurisdiction and, if such an order or suspension is issued, to obtain the withdrawal of such order or suspension as soon as reasonably practicable and to notify the Holders of the issuance of such order and the resolution thereof or its receipt of actual notice of the initiation or threat of any proceeding for such purpose.

(g) The Company shall use commercially reasonable efforts to cause the Registrable Securities covered by the Registration Statement to be (i) listed on the Nasdaq Global Market and (ii) reflected in the stock ledger maintained by the Company's transfer agent.

(h) Notwithstanding anything in this Agreement to the contrary, at any time after the Registration Statement becomes effective the Company may delay the disclosure of material, non-public information concerning the Company or any of its subsidiaries if the Board of Directors of the Company has a valid business reason for determining that disclosure of such information is not in the best interests of the Company and such disclosure is not otherwise required (a "**Grace Period**"); provided, however, that the Company shall promptly (i) provide written notice to the Holders of the Grace Period (provided that in no event shall such notice contain any material, non-public information) and the date on which the Grace Period will begin, (ii) use commercially reasonable efforts to terminate a Grace Period as promptly as possible, and (iii) provide written notice to the Holders of the date on which the Grace Period ends; provided, further, that no Grace Period shall exceed thirty (30) consecutive days and during any twelve (12) month period such Grace Periods shall not exceed an aggregate of sixty (60) days; provided, further, the Company shall not register any securities for its own account or that of any other stockholder during such Grace Period. The provisions of Section 3.2(e) shall not be applicable during any Grace Period. Upon expiration of a Grace Period, the Company shall again be bound by the provisions of Section 3.2(e) with respect to the information giving rise thereto unless such material, non-public information is no longer applicable.

**Section 3.3 Current Public Information.** During the Effectiveness Period, the Company shall use commercially reasonable efforts to (i) make and keep public information available, as those terms are defined in Rule 144, until all the Registrable Securities cease to be Registrable Securities, and so long as a Holder owns any Registrable Securities, furnish to such Holder upon request a written statement by the Company as to its satisfaction of the current public information requirements of Rule 144 and (ii) file with the SEC in a timely manner all reports and other documents required to be filed by the Company under the Securities Act and the Exchange Act.

### **Section 3.4 Obligations of the Holders.**

(a) Each Holder shall furnish in writing to the Company such information regarding such Holder, the Registrable Securities held by such Holder and the intended method of disposition of the Registrable Securities held by such Holder as shall be reasonably required to effect the registration of such Registrable Securities and shall execute, or shall cause to be executed, such customary documents in connection with such registration as the Company may reasonably request. In connection therewith, upon the execution of this Agreement, each Holder shall complete, execute and deliver to the Company a selling securityholder notice and questionnaire in the form attached hereto as Exhibit B. At least five (5) Business Days prior to the first anticipated filing date of the Registration Statement, the Company shall notify each Holder of any additional information the Company requires from such Holder, and such Holder shall provide such information to the Company at least three (3) Business Days prior to the first anticipated filing date of the Registration Statement.

(b) Each Holder agrees to cooperate with the Company as reasonably requested by the Company in connection with the preparation and filing of the Registration Statement.

(c) Upon receipt of written notice from the Company of any event of the kind described in Section 3.2(e) or Section 3.2(f) or written notice of any Grace Period, each Holder shall forthwith discontinue disposition of Registrable Securities until such Holder has received copies of a supplemented or amended prospectus or until such Holder is advised in writing by the Company that the use of the prospectus may be resumed or that the Grace Period has ended. If so directed by the Company, such Holder shall use its commercially reasonable efforts to return to the Company (at the Company's expense) all copies of the prospectus covering such Registrable Securities current at the time of receipt of such notice other than permanent file copies then in such Holder's possession.

(d) No Holder shall use any free writing prospectus (as defined in Rule 405) in connection with the sale of Registrable Securities without the prior written consent of the Company.

(e) Each Holder covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it or an exemption therefrom in connection with sales of Registrable Securities pursuant to any Registration Statement.

**Section 3.5 Expenses of Registration.** All Registration Expenses incurred in connection with any registration, qualification or compliance hereunder shall be borne by the Company. All Selling Expenses in connection with the sale of any Registrable Securities shall be borne by the Holder(s) selling such Registrable Securities.

**Section 3.6 Transfer of Registration Rights** The rights contained in Section 3.1 hereof to cause the Company to register the Registrable Securities, and the other rights set forth in this Article III, may be assigned or otherwise conveyed by any Holder to any transferee of the

Registrable Securities if the Transfer was permitted under Article II and the transferee agrees with the Company in writing to be bound by this Agreement.

## ARTICLE IV

### INDEMNIFICATION AND CONTRIBUTION

**Section 4.1 Indemnification.** In the event any Registrable Securities are included in the Registration Statement:

(a) The Company shall indemnify and hold harmless each Holder of Registrable Securities and such Holder's officers, directors, employees, partners, members, agents (including brokers), representatives and Affiliates and each person, if any, who controls such Holder within the meaning of the Securities Act or the Exchange Act (each, a "**Holder Indemnitee**"), against any losses, claims, damages, liabilities or expenses 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 in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively, a "**Violation**"): (i) an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or any documents incorporated therein by reference, (ii) an omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made (in the case of any prospectus), not misleading, and (iii) a violation or alleged violation by the Company or its agents of any rule or regulation promulgated under the Securities Act or the Exchange Act applicable to the Company or its agents and relating to action or inaction required of the Company in connection with the Registration Statement, and the Company will pay to each such Holder Indemnitee, as accrued, any legal or other expenses reasonably incurred by he, she or it in connection with investigating or defending any such loss, claim, damage, liability, action or expense; provided, however, that the indemnification contained in this Section 4.1(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or expense if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld, conditioned or delayed), nor shall the Company be liable for any such loss, claim, damage, liability, action or expense to the extent that it arises out of or is based upon a Violation which occurs (A) in reliance upon and in conformity with written information furnished by a Holder, (B) in connection with any failure of such person to deliver or cause to be delivered a prospectus made available by the Company in a timely manner, (C) in connection with any offers or sales effected by or on behalf of any Holder Indemnitee in violation of Section 3.4(c) of this Agreement, or (D) as a result of offers or sales effected by or on behalf of any Holder Indemnitee by means of a free writing prospectus (as defined in Rule 405) that was not authorized in writing by the Company. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any such Holder Indemnitee, and shall survive the transfer of such securities by such Holder, and any termination of this Agreement.

(b) Each Holder, severally and not jointly, shall indemnify and hold harmless the Company and each of its officers, directors, employees, agents, representatives and Affiliates and persons, if any, who control the Company within the meaning of the Securities Act or the Exchange Act (each, a **"Company Indemnitee"**), against any losses, claims, damages, liabilities or expenses to which any of the Company Indemnitees 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 thereof) arise out of or are based upon any (i) untrue statement or alleged untrue statement of a material fact regarding such Holder and provided in writing by such Holder which is contained in the Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state therein a material fact required to be stated therein, or necessary to make the statements therein, in light of the circumstances in which they were made (in the case of any prospectus), not misleading, in each case to the extent (and only to the extent) that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, preliminary or final prospectus, amendment or supplement thereto, in reliance upon and in conformity with written information furnished by such Holder, (iii) a violation or alleged violation by a Holder of any rule or regulation promulgated under the Securities Act or the Exchange Act applicable to such Holder and relating to action or inaction required of such Holder in connection with the registration of such Holder's Registrable Securities or (iv) in connection with any offer or sales effected by or on behalf of such Holder in violation of Section 3.4(c) of this Agreement, and each Holder will pay, as accrued, any legal or other expenses reasonably incurred by any Company Indemnitee pursuant to this Section 4.1(b), in connection with investigating or defending any such loss, claim, damage, liability, action or expense as a result of a Holder's untrue statement or omission or violation; provided, however, that the indemnification contained in this Section 4.1(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability, action or expense if such settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, the amount any Holder will be obligated to pay pursuant to this Section 4.1(b) and Section 4.2 will be limited to an amount equal to the gross proceeds actually received by such Holder for the sale of the Registrable Securities pursuant to the Registration Statement which gives rise to such obligation to indemnify and/or contribute (less the aggregate amount of any damages which such Holder has otherwise been required to pay in respect of such loss, liability, claim, damage, or expense or any substantially similar loss, liability, claim, damage, or expense arising from the sale of such Registrable Securities). Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of any such Company Indemnitee, and shall survive the transfer of such securities by such Holder, and any termination of this Agreement.

(c) Promptly after receipt by a party to this Agreement entitled to indemnity hereunder (an **"Indemnified Party"**) under this Section 4.1 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 to this Agreement from whom indemnification may be sought under this Section 4.1 (an **"Indemnifying Party"**), 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 reasonably satisfactory to the Indemnifying Party; provided, however, that an Indemnified Party (together with all other Indemnified Parties which may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the reasonable fees and expenses of such counsel to be paid by the Indemnifying Party, if (i) the Indemnifying Party shall have failed to assume the defense of such claim within seven (7) days after receipt of notice of the claim and to employ counsel reasonably satisfactory to such Indemnified Party, as the case may be; or (ii) in the reasonable opinion of counsel retained by the Indemnified Party, representation of such Indemnified Party by such counsel would be inappropriate due to actual or potential differing interests (including the availability of differing legal defenses) between such Indemnified Party and any other party represented by such counsel in such proceeding. It is understood that the Indemnifying Party shall not, in connection with any proceeding in the same jurisdiction, be liable for fees or expenses of more than one separate counsel at any time for all such Indemnified Parties. The Indemnified Party shall cooperate fully with the Indemnifying Party in connection with any negotiation or defense of any such action or claim by the Indemnifying Party and shall furnish to the Indemnifying Party all information reasonably available to the Indemnified Party which relates to such action or claim. The Indemnifying Party shall keep the Indemnified Party reasonably apprised of the status of the defense or any settlement negotiations with respect thereto. No Indemnifying Party will, except with the consent of the Indemnified Party, consent to entry of any judgment or enter into any settlement that 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 of such action or claim. No Indemnifying Party shall be liable for any settlement of any action, claim or proceeding effected without its prior written consent; provided, however, that the Indemnifying Party shall not unreasonably withhold, delay or condition its consent. The failure to deliver written notice to the Indemnifying Party within a reasonable time of the commencement of any such action shall not relieve such Indemnifying Party of any liability to the Indemnified Party under this Section 4.1, except to the extent such failure to give notice has a material adverse effect on the ability of the Indemnifying Party to defend such action.

**Section 4.2 Contribution.** If the indemnification provided for in Section 4.1 is held by a court of competent jurisdiction to be unavailable to an Indemnified Party with respect to any loss, liability, claim, damage, or expense referred to therein, then the Indemnifying Party, in lieu of indemnifying such Indemnified Party hereunder, shall contribute to the amount paid or payable by such Indemnified Party as a result of such loss, liability, claim, damage, or expense 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 statements or omissions that resulted in such loss, liability, claim, damage, or expense as well as any other relevant equitable considerations. The relative fault of the Indemnifying Party and of the Indemnified Party shall be determined 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. Notwithstanding the foregoing, the amount any Holder will be obligated to severally and not jointly contribute pursuant to this Section 4.2, together with Holder's liability under

Section 4.1(b), will be limited to an amount equal to the gross proceeds received by a Holder for the sale of the Registrable Securities pursuant to the Registration Statement which gives rise to such obligation to contribute and/or indemnify (less the aggregate amount of any damages which such Holder has otherwise been required to pay in respect of such loss, liability, claim, damage, or expense or any substantially similar loss, liability, claim, damage, or expense arising from the sale of such Registrable Securities). No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution hereunder from any person who was not guilty of such fraudulent misrepresentation.

## ARTICLE V

### GENERAL PROVISIONS

**Section 5.1 Entire Agreement.** This Agreement (including Exhibit A hereto) constitutes the entire understanding and agreement between the parties as to the matters covered herein and supersedes and replaces any prior understanding, agreement or statement of intent, in each case, written or oral, of any and every nature with respect thereto.

**Section 5.2 Notices.** All notices, waivers, consents and other communications to any party hereunder shall be in writing and shall be deemed given (i) when personally delivered, (ii) when receipt is electronically confirmed, if sent by email of a .pdf document, (iii) one (1) Business Day after deposit with a nationally recognized overnight courier, specifying next day delivery, with proof of receipt or (iv) three (3) Business Days after being sent by registered or certified mail, return receipt requested and postage prepaid. The addresses and email addresses for such notices and communications are those set forth on the signature pages hereof, or such other address or email address as may be designated in writing hereafter, in the same manner, by any such person.

**Section 5.3 Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original copy of this Agreement and all of which, when taken together, shall constitute one instrument. The exchange of copies of this Agreement and manually executed signature pages by transmission by email of a .pdf of a handwritten original signature or signatures to the other parties hereto shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes. The signature of a party hereto transmitted by electronic means shall be deemed to be an original signature for any purpose.

**Section 5.4 Amendment; Waiver.** This Agreement may be amended or modified, and any provision hereof may be waived, in whole or in part, at any time pursuant to an agreement in writing executed by the Company and Holders holding a majority of the Registrable Securities at such time. Any failure by any party at any time to enforce any of the provisions of this Agreement shall not be construed a waiver of such provision or any other provisions hereof.

**Section 5.5 Severability.** If a court of competent jurisdiction finds that any term or provision of this Agreement is invalid, illegal or unenforceable under any Law or public policy, the remaining provisions of this Agreement shall remain in full force and effect if the economic

and legal substance of this Agreement and the Transactions shall not be affected in any manner materially adverse to any party hereto. Any such term or provision found to be illegal, invalid or unenforceable only in part or in degree shall remain in full force and effect to the extent not invalid, illegal or unenforceable. Upon the determination that any term or provision is invalid, illegal or unenforceable, the parties hereto intend that such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent possible under applicable Law and compatible with the consummation of the Transactions as originally intended.

**Section 5.6. Governing Law; Venue.** This Agreement and all claims or causes of action (whether sounding in contract or tort) arising under or related to this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware, without regard to any rule or principle that might refer the governance or construction of this Agreement to the Laws of another jurisdiction. In any action or proceeding between any of the parties hereto arising under or related to this Agreement, each of the parties hereto (i) knowingly, voluntarily, irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state or federal courts located in the City and County of Santa Clara, California, (ii) agrees that all claims in respect of any such action or proceeding shall be heard and determined exclusively in accordance with clause (i) of this Section 5.6, (iii) waives any objection to the laying of venue of any such action or proceeding in such courts, including any objection that any such action or proceeding has been brought in an inconvenient forum or that the court does not have jurisdiction over any party hereto and (iv) agrees that service of process upon such party in any such action or proceeding shall be effective if such process is given as a notice in accordance with Section 5.2. The parties hereto agree that any party hereto may commence a proceeding in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

**Section 5.7 Specific Performance.** Each party acknowledges and agrees that the other parties hereto would be irreparably harmed and would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed by such first party in accordance with their specific terms or were otherwise breached by such first party. Accordingly, each party agrees that the other parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which such parties are entitled at law or in equity.

*(Next Page is Signature Page)*

IN WITNESS WHEREOF, each of the parties has executed this Agreement as of the date first written above.

**COMPANY:**

QUANTUM CORPORATION

By: /s/ J. Michael Dodson

Name: J. Michael Dodson  
Title: Chief Financial Officer

Address for Notice:  
224 Airport Parkway, Suite 550, San Jose, California 95110

Attn: General Counsel

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IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the date first written above.

**HOLDER:**

By: /s/ Rolf Howarth

Name: Rolf Howarth  
Title:

Address for Notice:

Telephone No.:

Email Address:

By: /s/ David Clack

Name: David Clack  
Title:

Address for Notice:

Telephone No.:

Email Address:

By: /s/ George John Barry Vaudin

Name: George John Barry Vaudin  
Title:

Address for Notice:

Telephone No.:

Email Address:

By: /s/ Neil Bundle

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Name: Neil Bundle  
Title:

Address for Notice:  
Telephone No.:  
Email Address:

By: /s/ Hannah Colchester

Name: Hannah Colchester  
Title:

Address for Notice:  
Telephone No.:  
Email Address:

By: /s/ M S Howarth-Moore

Name: M S Howarth-Moore  
Title:

Address for Notice:  
Telephone No.:  
Email Address:

By: /s/ Paul Douglas

Name: Paul Douglas  
Title:

Address for Notice:  
Telephone No.:  
Email Address:

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**EXHIBIT A**

<b>Name of Holder</b>	<b>Completion Share Consideration</b>	<b>Year 1 Share Consideration</b>	<b>Year 2 Share Consideration</b>	<b>Contingent Share Consideration</b>
Totals	361,010	361,010	361,010	180,506

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5. The undersigned has reviewed the Plan of Distribution attached as Annex A hereto, and hereby confirms that the information contained therein regarding the undersigned and its plan of distribution is correct and complete. Confirmed Not correct/complete



6. Has the Holder or any Control Person made or is it aware of any arrangements relating to the distribution of the shares of the Company pursuant to the Registration Statement?        Yes    No

If yes, please describe the nature of such arrangements:

7. Financial Regulatory Authority (FINRA) Matters:

(a) State whether the Holder or any Control Person is a member of FINRA.

Yes    No

(b) State whether (i) any associate or affiliate of the Holder or any Control Person is a member of FINRA, a controlling shareholder of a FINRA member, a person associated with a member, a direct or indirect affiliate of a member, or an underwriter or related person with respect to the proposed offering of the Registrable Securities; (ii) the Holder, any Control Person or any associate or affiliate of the Holder or such Control Person owns any stock or other securities of any FINRA member not purchased in the open market; or (iii) the Holder, any Control Person or any associate or affiliate of the Holder or Control Person has made any outstanding subordinated loans to any FINRA member. If the Holder or the Control Person is a general or limited partnership, a no answer asserts that no such relationship exists for the Holder or Control Person, as well as for each of its respective general or limited partners.

Yes    No

If "yes," please identify the FINRA member and describe the Holder's or Control Person's relationship, including, in the case of a general or limited partner, the name of the partner:

(c) If the answer to Item 7(b) is yes, did the Holder or Control Person acquire the Registrable Securities in the ordinary course of business (if not, please explain)?

(d) If the answer to Item 7(b) is yes, did the Holder or Control Person, at the time it acquired the Registrable Securities, have any agreements, plans or understandings, directly or indirectly, with any person to distribute the Registrable Securities (if yes, please explain)?

If the answer to Items 7(a) and 7(b) was "no", you need not respond to Item 7(e).

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*Note that in general the Company will be required to identify any registered broker-dealer as an underwriter in the Registration Statement. Note that if the Holder or any Control Person is an associate or affiliate of a broker-dealer and did not acquire the Registrable Securities in the ordinary course of business or at the time of acquisition had any arrangements or understandings, directly or indirectly, to distribute the securities, the Holder or Control Person may be required to be identified as an underwriter in the Registration Statement.*

(e) State whether the Holder, any Control Person or any associate or affiliate thereof has been an underwriter, or a controlling person or member of any investment banking or brokerage firm which has been or might be an underwriter for securities of the Company or any affiliate thereof including, but not limited to, the common stock now being registered.

Yes    No

If "yes," please identify the FINRA member and describe your relationship, including, in the case of a general or limited partner, the name of the partner.

#### ACKNOWLEDGEMENT

The undersigned hereby agrees to notify the Company promptly of any changes in the foregoing information which should be made as a result of any developments, including the passage of time. The undersigned also agrees to provide the Company and the Company's counsel any and all such further information regarding the undersigned promptly upon request in connection with the preparation, filing, amending, and supplementing of the Registration Statement (or any prospectus or supplement contained therein). The undersigned hereby consents to be named as a selling stockholder in the Registration Statement and to the use of all such information in the Registration Statement.

The undersigned understands and acknowledges that the Company will rely on the information set forth herein for purposes of the preparation and filing of the Registration Statement.

The undersigned represents and warrants that all information it provides to the Company and its counsel is currently accurate and complete and will be accurate and complete at the time the Registration Statement becomes effective and at all times subsequent thereto, and agrees during the Effectiveness Period and any additional period in which the undersigned is making sales of Shares under and pursuant to the Registration Statement, and agrees during such periods to notify the Company immediately of any misstatement of a material fact in the Registration Statement, and of any omission of any material fact necessary to make the statements contained therein not misleading.

Dated:                      , 2020

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Holder Name

Signature

Name and Title of Signatory

**PLEASE EMAIL A COPY OF THE COMPLETED AND EXECUTED QUESTIONNAIRE TO:**

April Lord  
Pillsbury Winthrop Shaw Pittman LLP  
April.lord@pillsburylaw.com

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## **ANNEX A**

### **PLAN OF DISTRIBUTION**

The selling stockholders, which as used herein includes donees, pledgees, transferees or other successors-in-interest selling shares of common stock or interests in shares of common stock received after the date of this prospectus from a selling stockholder as a gift, pledge, partnership distribution or other transfer, may, from time to time, sell, transfer or otherwise dispose of any or all of their shares of common stock or interests in shares of common stock on any stock exchange, market or trading facility on which the shares are traded or in private transactions. These dispositions may be at fixed prices, at prevailing market prices at the time of sale, at prices related to the prevailing market price, at varying prices determined at the time of sale, or at negotiated prices.

The selling stockholders may use any one or more of the following methods when disposing of shares or interests therein:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent, but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales effected after the date of this prospectus;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- through the distribution of the common stock by any selling stockholder to its partners, members or stockholders;
- broker-dealers may agree with the selling stockholder to sell a specified number of such shares at a stipulated price per share;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

In addition, any shares covered by this prospectus that qualify for sale pursuant to Rule 144 under the Securities Act may be sold under Rule 144 rather than under this prospectus.

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The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the shares of common stock owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the shares of common stock, from time to time, under this prospectus, or under an amendment or supplement to this prospectus amending the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer the shares of common stock in other circumstances, in which case the transferees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

In connection with the sale of our common stock or interests therein, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common stock in the course of hedging the positions they assume. The selling stockholders may also sell shares of our common stock short and deliver these securities to close out the short positions, or loan or pledge the common stock to broker-dealers that in turn may sell these securities. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

The aggregate proceeds to the selling stockholders from the sale of the common stock offered by them will be the purchase price of the common stock less discounts or commissions, if any. Each of the selling stockholders reserves the right to accept and, together with their agents from time to time, to reject, in whole or in part, any proposed purchase of common stock to be made directly or through agents. We will not receive any of the proceeds from this offering.

The selling stockholders and any broker-dealers or agents that participate in the sale of the common stock or interests therein may be deemed to be “underwriters” within the meaning of the Securities Act. Any discounts, commissions, concessions or profit they earn on any resale of the shares may be underwriting discounts and commissions under the Securities Act. Selling stockholders who are deemed to be “underwriters” within the meaning of the Securities Act will be subject to the prospectus delivery requirements of the Securities Act. Underwriters and their controlling persons, dealers and agents may be entitled, under agreements entered into with us and the selling stockholder, to indemnification against and contribution toward specific civil liabilities, including liabilities under the Securities Act.

To the extent required, the shares of our common stock to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents or dealers, and any applicable discounts, commissions, concessions or other compensation with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

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We have agreed to indemnify the selling stockholders against certain liabilities, including liabilities under the Securities Act, relating to the registration of the shares offered by this prospectus.

## Amendment NO. 5 TO TERM LOAN CREDIT AND SECURITY AGREEMENT

THIS AMENDMENT NO. 5 TO TERM LOAN CREDIT AND SECURITY AGREEMENT (this "Amendment"), dated as of December 10, 2020 (the "Effective Date"), is entered into by and among QUANTUM CORPORATION, a Delaware corporation ("Quantum") and together with each Person joined to the Credit Agreement (as defined below) as a borrower from time to time, collectively, the "Borrowers" and each a "Borrower", QUANTUM LTO HOLDINGS, LLC, a Delaware limited liability company ("Quantum LTO") and, together with each Person joined to the Credit Agreement as a guarantor from time to time, collectively, the "Guarantors", and each a "Guarantor"; the Guarantors, together with the Borrowers, collectively the "Loan Parties" and each a "Loan Party", and the Lenders (as defined below) party hereto.

### RECITALS

A. U.S. Bank National Association ("U.S. Bank"), in its capacity as disbursing agent and collateral agent for the Lenders (in such capacity, together with its successors and assigns, the "Agent"), the Borrowers, the Guarantors, and the financial institutions party thereto from time to time as lenders (collectively, the "Lenders" and each a "Lender") are parties to that certain Term Loan Credit and Security Agreement, dated as of December 27, 2018 (as amended by that certain Amendment No. 1 to Term Loan Credit and Security Agreement dated as of March 30, 2020, that certain Amendment No. 2 to Term Loan Credit and Security Agreement dated as of March 31, 2020, that certain Amendment No. 3 to Term Loan Credit and Security Agreement dated as of April 13, 2020, and that certain Amendment No. 4 to Term Loan Credit and Security Agreement dated as of June 16, 2020 and as the same may be further amended, modified, supplemented, renewed, restated or replaced from time to time, the "Credit Agreement"), pursuant to which the Lenders have made certain loans to the Borrowers.

B. Quantum intends to acquire (the "Acquisition") all of the shares of Square Box Systems Limited, a company incorporated in England and Wales (registered number 03819556) ("Square Box") pursuant to that certain Share Purchase Agreement, expected to be dated on or after the date hereof among Quantum, Rolf Howarth and the Option Sellers (as defined therein) party thereto (as the same may be amended from time to time, the "Acquisition Agreement").

C. The Loan Parties have requested that Section 2.3(c) of the Credit Agreement be amended to permit Quantum to issue equity securities generating Net Cash Proceeds in an aggregate amount of up to \$3,000,000 without having to repay the Loans.

D. The Loan Parties have requested that the undersigned Lenders (which, for the avoidance of doubt, constitute the Required Lenders for purposes of Section 16.2 of the Credit Agreement) consent to the Acquisition and make the requested amendments to the Credit Agreement, and the Lenders have agreed to grant the requested consent and make the requested amendments to the Credit Agreement, subject to the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions. Capitalized terms used herein and not defined shall have the meanings given to such terms in the Credit Agreement.

2. Consent to Acquisition. Subject to the satisfaction of the conditions precedent set forth in Section 4 hereof, (i) the Lenders hereby consent to the Acquisition on the terms set forth in the draft of the Acquisition Agreement provided to the Lenders at 1:23pm (New York time) on the Effective Date, as it may be amended in a manner not materially adverse to the interests of the Lenders and (ii) the Acquisition is deemed to be a Permitted Acquisition for all purposes under the Credit Agreement and the Other Documents.

3. Amendments to Credit Agreement. Subject to satisfaction of the conditions precedent set forth in Section 4 hereof, the Credit Agreement is hereby amended to read as follows:

i. The definition of "Excluded Property" is hereby amended by adding the following sentence to the end of such definition:

"Notwithstanding the foregoing, if Square Box becomes a Loan Party in accordance with Section 6.16(b) hereof, none of its Equity Interests shall constitute Excluded Property pursuant to clauses (d) or (h) of this definition."

ii. The definition of "Permitted Indebtedness" is hereby amended by deleting clause (h) of such definition and replacing it with the following:

"Indebtedness (x) constituting deferred purchase price obligations arising in connection with Permitted Acquisitions, (y) under Permitted Seller Notes and Permitted Earnouts arising in connection with Permitted Acquisitions, and (z) under non-compete payment obligations arising in connection with Permitted Acquisitions, provided that, (i) such Indebtedness shall at all times be unsecured, (ii) such Indebtedness described in clauses (x) and (y) above (other than, with respect to any Permitted Acquisition, deferred purchase price obligations arising in connection therewith, the payment of which are not subject to any condition or contingency other than the passage of time, in an amount (other than with respect to the acquisition of Square Box) not to exceed 15% of the purchase price for such Permitted Acquisition) shall be subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to the Required Lenders and in no event shall the Loan Parties make any payments in respect of such Indebtedness unless, as of the date of any such payment and after giving effect thereto, (A) each of the Payment Conditions shall have been satisfied and (B) Quantum and its Subsidiaries, on a consolidated basis, are projected to be in compliance with each of the financial covenants set forth in Section 6.5 hereof for the four (4) fiscal



quarter period ended one year after the proposed date of such payment; (iii) in the case of the acquisition of Square Box, in no event shall the Loan Parties make any payments in respect of such Indebtedness described in clause (x) above unless, (A) Average Liquidity for the thirty (30) days immediately prior to the date of any such payment shall be at least \$30,000,000 and (B) as of the date of any such payment and after giving effect thereto, (1) each of the Payment Conditions shall have been satisfied and (2) Quantum and its Subsidiaries, on a consolidated basis, are projected to be in compliance with each of the financial covenants set forth in Section 6.5 hereof for the four (4) fiscal quarter period ended one year after the proposed date of such payment; and (iv) the aggregate outstanding principal amount of such Indebtedness shall not exceed \$10,000,000 at any time;"

iii. The following definitions are added to Section 1.2 of the Credit Agreement in the appropriate alphabetical order:

1. "Fifth Amendment" means that certain Amendment No. 5 to Term Loan Credit and Security Agreement, dated as of December 10, 2020, among Quantum, LTO Subsidiary and the Lenders party thereto.
2. "Fifth Amendment Effective Date" means the "Effective Date" as defined in the Fifth Amendment.
3. "HMRC" shall have the meaning set forth in Section 6.16 hereof.
4. "Square Box" means Square Box Systems Limited, a company incorporated in England and Wales (registered number 03819556).
5. "Stamp Office" shall have the meaning set forth in Section 6.16 hereof.

iv. Section 2.3(c) of the Credit Agreement is hereby amended and restated in its entirety as of, from and subsequent to the Effective Date, to read as follows:

"(c) Upon the receipt by any Loan Party of the Net Cash Proceeds from the issuance or sale of any Indebtedness or any equity securities (other than (i) Permitted Indebtedness, (ii) Net Cash Proceeds from the issuance of Qualified Equity Interests to members of the management or employees of any Loan Party, (iii) Net Cash Proceeds of the issuance of Equity Interests to any Loan Party, and (iv) Net Cash Proceeds from the issuance or sale of any Equity Interests after the Fifth Amendment Effective Date in an aggregate amount not to exceed \$3,000,000), Borrowers shall prepay the Loans in an amount equal to one hundred percent (100%) of such Net Cash Proceeds (which, for the avoidance of doubt, with respect to Net Cash Proceeds arising pursuant to clause (iv) above, shall be limited to 100% of the amount in excess of the \$3,000,000 de minimis threshold set forth in such clause (iv)) promptly, but in no event more than three (3) Business Days following the receipt thereof, and until the date of payment, such proceeds shall be held in trust for Agent; provided that, any prepayments

made in connection with the issuance or sale of any Equity Interests after the Fifth Amendment Effective Date shall be in a minimum amount equal to \$500,000. If any Loan Party receives Net Cash Proceeds from the issuance or sale of any Equity Interests after the Fifth Amendment Effective Date in an amount less than \$500,000, such Loan Party shall hold such proceeds in trust for Agent until the aggregate amount of such proceeds equals \$500,000, at which time such Loan Party shall prepay the Loans as set forth above. Such prepayments shall be applied to the Loans in accordance with Section 2.3(f) hereof. The foregoing shall not be deemed to be implied consent to any issuance or sale of any Indebtedness or any equity securities otherwise prohibited by the terms and conditions hereof."

v. Section 4.13(a) of the Credit Agreement is hereby amended and restated in its entirety as of, from and subsequent to the Effective Date, to read as follows:

"(a) Each Loan Party has the right to transfer the Investment Property free of any Liens other than Permitted Encumbrances and will use commercially reasonable efforts to defend its title to the Investment Property against the contrary claims of all Persons. Each Loan Party shall (i) ensure that each operating agreement, limited partnership agreement and any other similar agreement permits Agent's Lien on the Equity Interests of wholly-owned Subsidiaries (other than Foreign Subsidiaries, but excluding Square Box if it becomes a Loan Party in accordance with Section 6.16(b) hereof) arising thereunder, foreclosure of Agent's Lien and admission of any transferee as a member, limited partner or other applicable equity holder thereunder and (ii) use commercially reasonable efforts to provide that each operating agreement, limited partnership agreement and any other similar agreement with respect to any other Person permits Agent's Lien on the Investment Property of such Loan Party arising thereunder, foreclosure of Agent's Lien and admission of any transferee as a member, limited partner or other applicable equity holder thereunder."

vi. Section 4.14 of the Credit Agreement is hereby amended and restated in its entirety as of, from and subsequent to the Effective Date, to read as follows:

"4.14 Provisions Regarding Certain Investment Property Collateral The operating agreement or limited partnership agreement (as applicable) of any Subsidiary (other than a Foreign Subsidiary, but excluding Square Box if it becomes a Loan Party in accordance with Section 6.16(b) hereof) of any Loan Party hereafter formed or acquired that is a limited liability company or a limited partnership, shall contain the following language (or language to the same effect): "Notwithstanding anything to the contrary set forth herein, no restriction upon any transfer of {membership interests} {partnership interests} set forth herein shall apply, in any way, to the pledge by any {member} {partner} of a security interest in and to its {membership interests} {partnership interests} to U.S. Bank National Association, as agent for certain lenders, or its successors and assigns in such capacity (any such person,

"Agent"), or to any foreclosure upon or subsequent disposition of such {membership interests} {partnership interests} by Agent. Any transferee or assignee with respect to such foreclosure or disposition shall automatically be admitted as a {member} {partner} of the Company and shall have all of the rights of the {member} {partner} that previously owned such {membership interests} {partnership interests}."

vii. A new Section 6.16 is hereby added to the Credit Agreement to read as follows:

"6.16 Square Box.

(a) No later than five (5) Business Days following Quantum's receipt of the last of the stock transfer forms signed by the selling shareholders in Square Box (or such later date as the Required Lenders may agree in their sole discretion), Quantum shall submit the same electronically, together with payment of the stamp duty payable on such stock transfer forms, to the stamp office of Her Majesty's Revenue and Customs ("HMRC") in the United Kingdom (the "Stamp Office").

(b) No later than five (5) Business Days following Quantum's receipt of a letter from the Stamp Office confirming that HMRC does not object to the registration of the transfers notified by Quantum and will not seek to impose any penalty under section 17 Stamp Act 1891 (or such later date as the Required Lenders may agree in their sole discretion), Quantum shall update the register of members of Square Box to record Quantum as the holder of the entire issued Equity Interests of Square Box and issue a share certificate in Quantum's name (limited to 65% of the Equity Interests in Square Box unless the determination described in clause (c)(ii) below has been made by Quantum by such time).

(c) No later than the later of the date which is (x) twenty (20) Business Days following the registration of Quantum as the sole holder of Equity Interests in Square Box and (y) ninety (90) days following the Fifth Amendment Effective Date (or such later date as the Required Lenders may agree in their sole discretion), (i) Quantum shall complete a tax analysis in connection with Square Box becoming a Loan Party and (ii) (A) if Quantum reasonably determines in good faith that there are no material adverse tax consequences to the Loan Parties as a result of Square Box becoming a Loan Party, then (1) Square Box shall expressly join in this Agreement and the Other Documents as a Guarantor and become jointly and severally liable for the obligations of the other Loan Parties hereunder and thereunder, (2) Square Box shall execute and deliver to Agent, in form and substance reasonably satisfactory to Agent and the Required Lenders, a joinder to this Agreement and/or a Guaranty and a Guarantor Security Agreement in favor of Agent and such Other Documents governed by the laws of England and Wales and/or the State of New York related thereto as Agent or the Required Lenders shall reasonably request in connection therewith, (3) Quantum shall execute and deliver to Agent, in form and substance reasonably satisfactory to Agent and Required Lenders, a Pledge Agreement governed by the laws of England and

Wales with respect to 100% of the Equity Interests of Square Box owned by Quantum and (4) if requested by the Required Lenders, to the extent it is customary in England and Wales for counsel to the Lenders to provide a legal opinion to creditors, counsel to the Lenders (at the expense of Quantum) shall provide a legal opinion in favor of Agent and Lenders with respect to matters similar to those covered in the legal opinion required under Section 8.1(n) that are applicable to Square Box, and (B) if Quantum reasonably determines in good faith that there would be material adverse tax consequences to the Loan Parties as a result of Square Box becoming a Loan Party hereunder and under the Other Documents, then Quantum shall execute and deliver to Agent, in form and substance reasonably satisfactory to Agent and the Required Lenders, (1) a Pledge Agreement governed by the laws of the State of New York or (2) an addendum to the existing Pledge Agreement, in each case, with respect to 65% of the voting Equity Interests of Square Box and 100% of the non-voting Equity Interests of Square Box owned by Quantum.

(d) Promptly following the closing date of the acquisition by Quantum of the Equity Interests in Square Box, Quantum shall provide the Lenders with copies of the acquisition agreement with respect thereto, together with the other material acquisition documents executed and delivered in connection therewith, in each case duly authorized, executed and delivered by the parties thereto.”

4. Conditions Precedent. This Amendment shall become effective on the date upon which each of the following conditions is satisfied:

(a) the Lenders shall have received this Amendment, duly executed by each Loan Party;

(b) the Lenders shall have received the Fourth Amendment to the Revolving Loan Agreement, duly authorized, executed and delivered by the Loan Parties, the Revolving Loan Agent and the Revolving Loan Lenders;

(c) the Lenders shall have received copies of Square Box’s unaudited balance sheets and statements of income for the trailing twelve (12) month period ending on August 31, 2020 in the format delivered to Quantum by the sellers pursuant to the Acquisition Agreement;

(d) all of the conditions set forth in the definition of “Permitted Acquisition” in the Credit Agreement shall have been satisfied other than (i) the conditions set forth in clauses (a), (f), (g), (h)(2), (i), (j) and (p) of such definition which the Lenders have waived compliance with and (ii) the condition set forth in clause (o) of such definition which the Lenders have waived compliance with to the extent the most recent drafts of the material acquisition documents are available less than five (5) Business Days prior to the anticipated closing date of the Acquisition; and

(e) the Lenders shall have received all costs and expenses described in Section 5 hereof (including the reasonable and invoiced fees and expenses of legal counsel).

The Required Lenders shall notify the Borrower in writing of the effectiveness of this Amendment, which notice shall be conclusive and binding on all parties to the Credit Agreement.

5. Costs, Expenses and Taxes. Each Loan Party, jointly and severally, agrees to pay on demand all costs and expenses of the Lenders incurred in connection with the preparation, execution and delivery of this Amendment and the other instruments and documents to be delivered hereunder (including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Lenders with respect thereto).

6. Representations and Warranties. In addition to the continuing representations and warranties heretofore or hereafter made by the Loan Parties to Agent and Lenders pursuant to the Credit Agreement and the Other Documents, each Loan Party hereby represents and warrants to each Lender as follows:

(a) each Loan Party has full power, authority and legal right to enter into this Amendment and to perform all its respective Obligations hereunder;

(b) this Amendment has been duly executed and delivered by each Loan Party;

(c) this Amendment constitutes the legal, valid and binding obligation of each Loan Party enforceable in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally;

(d) the execution, delivery and performance of this Amendment (i) are within each Loan Party's corporate or company powers, as applicable, (ii) have been duly authorized by all necessary corporate or company action, as applicable, (iii) are not in contravention of law or the terms of such Loan Party's Organizational Documents or to the conduct of such Loan Party's business or the draft of the Acquisition Agreement provided to the Lenders at 1:23pm (New York time) on the Effective Date or any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, including without limitation the Revolving Loan Documents, (iv) will not conflict with or violate any material provisions of any law or regulation, or any judgment, order or decree of any Governmental Body, (v) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except (x) any Consents of any party to a Material Contract or any other Person (other than a Governmental Body) with respect to which the failure to obtain could not reasonably be expected, individually or in the aggregate to have a Material Adverse Effect or (y) any immaterial Consents of any Governmental Body, all of which will have been duly obtained, made or complied with prior to the date hereof and which are in full force and effect, and (vi) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Loan Party under the provisions of any material agreement, instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound, including without limitation the draft of the Acquisition Agreement provided to the Lenders at 1:23pm (New York time) on the Effective Date or the Revolving Loan Documents;

(e) each of the representations and warranties made by any Loan Party in or pursuant to the Credit Agreement and the Other Documents is true and correct in all material respects on and as of the date hereof with the same effect as though made on and as of the date hereof, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties are true and correct in all material respects as of such earlier date); provided that any representation and warranty qualified by "materiality", "Material Adverse Effect" or similar language is true and correct (after giving effect to any qualification therein) in all respects;

(f) as of the date hereof, such Loan Party has no defenses, setoffs, rights of recoupment, counterclaims or claims of any nature whatsoever with respect to the Credit Agreement, the Other Documents or the Obligations due thereunder, and to the extent any such defenses, setoffs, rights of recoupment, counterclaims or claims may exist on or prior to the date hereof, the same are hereby expressly waived, released and discharged; and

(g) after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing.

7. Reaffirmation.

(i) By its execution hereof, each Loan Party expressly (i) acknowledges and agrees to the terms and conditions of this Amendment, (ii) reaffirms all of its respective covenants and other obligations set forth in the Credit Agreement and the Other Documents to which it is a party, and (iii) acknowledges that its respective covenants and other obligations set forth in the Credit Agreement and the Other Documents to which it is a party remain in full force and effect; and

(ii) Each Loan Party hereby ratifies and reaffirms (i) all of its payment and performance obligations, contingent or otherwise, under the Credit Agreement and each of the Other Documents to which it is a party, and (ii) its grant to Agent of a security interest in the Collateral under the Credit Agreement and each of the Other Documents to which it is a party, which Collateral shall include the Subsidiary Stock of Square Box upon consummation of the Acquisition.

8. Governing Law. This Amendment and all matters relating hereto or arising herefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the laws of the State of New York.

9. Reference to Credit Agreement. Each of the Credit Agreement and the Other Documents, and any and all other agreements, documents or instruments now or hereafter executed and/or delivered pursuant to the terms hereof or pursuant to the terms of the Credit Agreement as modified hereby, are hereby amended so that any reference therein to the Credit Agreement, whether direct or indirect, shall mean a reference to the Credit Agreement as modified hereby. This Amendment shall constitute an Other Document under the Credit Agreement.

10. Effect of this Amendment. This Amendment relates only to the specific matters expressly covered herein, shall not be considered to be a waiver of any rights, claims or remedies that the Agent or any Lender may have under the Credit Agreement or under any Other Document (except as expressly set forth herein) or under applicable law, and shall not be considered to create a course of dealing or to otherwise obligate, in any respect, the Agent or any Lender to grant any consents under the same or similar or other circumstances in the future. To the extent that any provision of the Credit Agreement or any of the Other Documents are inconsistent with the provisions of this Amendment, the provisions of this Amendment shall control.

11. Binding Effect. This Amendment shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties hereto.

12. Further Assurances. The Loan Parties shall execute and deliver such further documents and take such further action as may be reasonably requested by the Required Lenders to effectuate the provisions and purposes of this Amendment.

13. Counterparts; Electronic Signature. This Amendment may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. In proving this Amendment in any judicial proceedings, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom such enforcement is sought. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a .pdf image or DocuSign) shall be deemed to be an original signature hereto.

14. Entire Understanding. This Amendment and the documents executed concurrently herewith contain the entire understanding between each Loan Party and each Lender and supersede all prior agreements and understandings, if any, relating to the subject matter hereof.

15. Severability. If any part of this Amendment is contrary to, prohibited by, or deemed invalid under Applicable Laws, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given effect so far as possible.

16. Captions. The captions at various places in this Amendment are intended for convenience only and do not constitute and shall not be interpreted as part of this Amendment.

17. Jury Waiver. EACH PARTY TO THIS AMENDMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THIS AMENDMENT, ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AMENDMENT,

ANY OTHER DOCUMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE AND EACH PARTY HEREBY CONSENTS THAT ANY SUCH CLAIM, COUNTERCLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AMENDMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENTS OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

18. Release. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Loan Party hereby, for itself and its successors and permitted assigns, fully and without reserve, releases and forever discharges each of the Agent and the Lenders, and their respective successors and assigns, officers, directors, employees, representatives, trustees, attorneys, agents, advisors (including attorneys, accountants and experts) and affiliates (collectively the "Released Parties" and individually a "Released Party") from any and all actions, claims, demands, causes of action, judgments, executions, suits, debts, liabilities, costs, damages, expenses or other obligations of any kind and nature whatsoever, known or unknown, direct and/or indirect, at law or in equity, whether now existing or hereafter asserted (including, without limitation, any offsets, reductions, rebatement, claims of usury or claims with respect to the negligence of any Released Party), for or because of any matters or things occurring, existing or actions done, omitted to be done, or suffered to be done by any of the Released Parties, in each case, on or prior to the Effective Date and are in any way directly or indirectly arising out of or in any way connected to any of this Amendment, the Credit Agreement, any Other Document or any of the transactions contemplated hereby or thereby (collectively, the "Released Matters"). Each Loan Party, by execution hereof, hereby acknowledges and agrees that the agreements in this Section are intended to cover and be in full satisfaction for all or any alleged injuries or damages arising in connection with the Released Matters.

[Signature Pages Follow]



IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

LOAN PARTIES:

QUANTUM CORPORATION, as Borrower

By: /s/ J. Michael Dodson

Name: J. Michael Dodson

Title: Chief Financial Officer

QUANTUM LTO HOLDINGS, LLC, as

Guarantor

By: /s/ J. Michael Dodson

Name: J. Michael Dodson

Title: Chief Financial Officer

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LENDERS:

OC II LVS XVII LP

By: OC II GP LLC, its general partner

By: /s/ Adam Gubner  
Name: Adam Gubner  
Title: Authorized Person

Signature Page to Amendment No. 5 to Term Loan Credit and Security Agreement

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BTC HOLDINGS FUND I, LLC, as a Lender

By: Blue Torch Credit Opportunities Fund I LP, its sole member

By: Blue Torch Credit Opportunities GP LLC, its general partner

By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda

Name: Kevin Genda

Title: Managing Member

BTC HOLDINGS FUND I-B, LLC, as a Lender

By: Blue Torch Credit Opportunities Fund I LP, its sole member

By: Blue Torch Credit Opportunities GP LLC, its general partner

By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda

Name: Kevin Genda

Title: Managing Member

BTC HOLDINGS SC FUND LLC, as a Lender

By: Blue Torch Credit Opportunities SC Master Fund LP, its sole member

By: Blue Torch Credit Opportunities SC GP LLC, its general partner

By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda

Name: Kevin Genda

Title: Managing Member

BLUE TORCH CREDIT OPPORTUNITIES FUND I LP, as a Lender

By: Blue Torch Credit Opportunities GP LLC, its  
general partner

By: KPG BTC Management LLC, its sole member

By: /s/ Kevin Genda  
Name: Kevin Genda  
Title: Managing Member

Signature Page to Amendment No. 5 to Term Loan Credit and Security Agreement

**FOURTH AMENDMENT to  
AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT**

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED REVOLVING CREDIT AND SECURITY AGREEMENT (this "Amendment"), dated as of December 10, 2020, is entered into by and among QUANTUM CORPORATION, a Delaware corporation ("Quantum"), QUANTUM LTO HOLDINGS, LLC, a Delaware limited liability company ("Quantum LTO"); and together with Quantum and each other Person joined to the Credit Agreement as a borrower from time to time, collectively, the "Borrowers" and each a "Borrower"), the financial institutions which are now or which hereafter become a party to the Credit Agreement as lenders (collectively, the "Lenders" and each a "Lender"), and PNC BANK, NATIONAL ASSOCIATION ("PNC"), in its capacity as agent for the Lenders (in such capacity, together with its successors and assigns, "Agent").

RECITALS

A. Agent, the Lenders and the Borrowers are parties to that certain Amended and Restated Revolving Credit and Security Agreement, dated as of December 27, 2018 as amended by the First Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of April 3, 2020, the Second Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of April 11, 2020, and the Third Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of June 16, 2020 (as amended hereby and as the same may be further amended, modified, supplemented, renewed, restated or replaced from time to time, the "Credit Agreement"), pursuant to which the Lenders have made and may hereafter make certain loans and have provided and may hereafter provide certain financial accommodations to the Borrowers.

B. The Borrowers have requested that Agent and the Lenders make certain amendments to the Credit Agreement as set forth herein, and Agent and the Required Lenders have agreed to make such amendments, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Definitions.

(a) Interpretation. Capitalized terms used herein and not defined shall have the meanings given to such terms in the Credit Agreement.

(b) New Definitions. The following defined terms are hereby added to Section 1.2 of the Credit Agreement in their proper alphabetical order:

"Fourth Amendment" shall mean the Fourth Amendment to Amended and Restated Revolving Credit and Security Agreement, dated as of the Fourth Amendment Effective Date, by and among Agent, Lenders and the Borrowers.

"Fourth Amendment Effective Date" shall mean December 10, 2020.

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"HMRC" shall have the meaning set forth in Section 6.14(e) hereof.

"Special Square Box Reserve" shall mean the reserve which may be established by Agent on or after the Fourth Amendment Effective Date in the event that (but only for so long as) the Special Square Box Reserve Condition has not been satisfied and which may be maintained by Agent until the Indebtedness constituting deferred purchase price obligations in respect of the Square Box Acquisition have been paid in full, which reserve shall be in an amount of up to (x) \$2,000,000 during the period from the Fourth Amendment Effective Date through and including the first anniversary of the Fourth Amendment Effective Date, and (y) \$1,000,000 during the period from the first anniversary of the Fourth Amendment Effective Date through and including the second anniversary of the Fourth Amendment Effective Date.

"Special Square Box Reserve Condition" shall mean that, on the last day of each month ending on or after the Fourth Amendment Effective Date and on or prior to the earlier of (i) such time as the Indebtedness constituting deferred purchase price obligations in respect of the Square Box Acquisition have been paid in full and (ii) the second anniversary of the Fourth Amendment Effective Date, Average Liquidity for the immediately preceding thirty (30) days is at least \$30,000,000, as determined by Agent at any time after the last day of such month.

"Square Box" shall mean Square Box Systems Limited, a company incorporated in England and Wales (registered number 03819556).

"Square Box Acquisition" shall mean the acquisition by Quantum of the Equity Interests of Square Box and the other transactions contemplated by the Square Box Acquisition Agreement, provided that:

- i. the board of directors (or other comparable governing body) of Square Box shall have duly approved the acquisition;
- ii. the business of Square Box shall be used or useful in the business of the Borrowers, and Quantum shall have provided Agent all memoranda and presentations delivered to the board of directors of Quantum (or a summary of the same reasonably acceptable to the Agent) describing the rationale for the acquisition;
- iii. no Indebtedness will be incurred, assumed or will exist with respect to Quantum or its Subsidiaries as a result of such acquisition, other than Indebtedness permitted under clauses (e), (f), (g) or (h) of the definition of "Permitted Indebtedness", and no Liens will be incurred, assumed or will exist with respect to the assets of Quantum or any of its Subsidiaries as a result of such acquisition, other than Permitted Encumbrances;
- iv. subject to the Intercreditor Agreement and subject to and to the extent required by Section 6.14(g) hereof, Agent shall receive a first priority Lien in the Equity Interests and other assets of Square Box acquired by Quantum which do not constitute Excluded Property, subject to documentation consistent with the Collateral-related provisions of this Agreement and the Other Documents and otherwise reasonably satisfactory to Agent;

v. the Loan Parties shall have delivered to Agent unaudited balance sheets and statements of income of Square Box for the twelve (12) month period ending on August 31, 2020 in the format delivered to Quantum by the Square Box Sellers pursuant to the Square Box Acquisition Agreement;

vi. Square Box shall (1) have EBITDA, calculated in accordance with GAAP immediately prior to such acquisition, of at least \$1 for the twelve (12) month period ending on August 31, 2020, and (2) subject to and to the extent required by Section 6.14(g) hereof, Square Box shall be added as a Borrower or Guarantor hereunder and be jointly and severally liable for all of the Obligations;

vii. immediately after giving effect to the consummation of the acquisition, Quantum and its Subsidiaries, on a consolidated basis, shall be in compliance on a pro forma basis with the financial covenants set forth in Section 6.5 hereof, recomputed for the most recently ended fiscal quarter for which financial statements are required to be delivered pursuant to Section 9.8 hereof;

viii. Borrowers shall have Average Liquidity for the thirty (30) days immediately preceding the date of such acquisition of not less than \$30,000,000;

ix. on the date of such acquisition and after giving pro forma effect thereto, each of the Payment Conditions shall have been satisfied;

x. on the date of such acquisition, the total consideration, including the purchase price and liabilities assumed (including, without limitation, all Acquired Indebtedness, Indebtedness under Permitted Seller Notes and Permitted Earnouts but excluding consideration in the form of issuance of Equity Interests permitted hereunder or paid with the proceeds of the issuance of Equity Interests permitted hereunder), of all Permitted Acquisitions (including the Square Box Acquisition) shall not exceed \$20,000,000 in the aggregate;

xi. Agent shall have received the Square Box Acquisition Agreement, duly authorized, executed and delivered by the parties thereto, and promptly following the closing date of such acquisition, Quantum shall provide Agent with copies of all of the other Square Box Acquisition Documents, in each case duly authorized, executed and delivered by the parties thereto; and

xii. no assets acquired in such acquisition shall be included in the Formula Amount until Agent has received a field examination and/or appraisal of such assets, in form and substance acceptable to Agent.

"Square Box Acquisition Agreement" shall mean the Share Purchase Agreement, expected to be dated on or shortly after the Fourth Amendment Effective Date (as the same may be amended, modified, supplemented, renewed, restated or replaced from time to time), by and among Quantum, as purchaser, the Square Box Sellers, as sellers, and the other parties thereto.

"Square Box Acquisition Documents" shall mean, collectively, the following (as the same may be amended, modified, supplemented, renewed, restated or replaced from time to time): (a) the Square Box Acquisition Agreement, including all of the schedules and exhibits thereto, and (b) all of the other material agreements, documents and instruments executed and delivered in connection therewith or related thereto.

"Square Box Sellers" shall mean Rolf Howarth and the other parties to the Square Box Acquisition Agreement, as sellers.

"Stamp Office" shall have the meaning set forth in Section 6.16(e) hereof.

i. Amendments to Definitions.

a. Excluded Property. The definition of "Excluded Property" set forth in Section 1.2 of the Credit Agreement is hereby amended by adding the following sentence to the end of such definition:

"Notwithstanding the foregoing, if Square Box becomes a Loan Party in accordance with Sections 6.14(g) hereof, none of its Equity Interests shall constitute Excluded Property pursuant to clauses (d) or (h) of this definition."

b. Permitted Acquisitions.

i. The definition of "Permitted Acquisitions" set forth in Section 1.2 of the Credit Agreement is hereby amended by deleting the reference to "shall mean an acquisition by a Loan Party of the assets, Equity Interests or of any division or line of business of another Person (the "Target"); provided that:" in such definition and replacing it with the following:

"shall mean, collectively, (x) the Square Box Acquisition and (y) any other acquisition by a Loan Party of the assets, Equity Interests or of any division or line of business of another Person (the "Target"); provided that, in the case of this clause (y):"

ii. The definition of "Permitted Acquisitions" set forth in Section 1.2 of the Credit Agreement is hereby further amended by deleting clause (n) of such definition in its entirety and replacing it with the following:

"(n) the total consideration, including the purchase price and liabilities assumed (including, without limitation, all Acquired Indebtedness, Indebtedness under Permitted Seller Notes and Permitted Earnouts but excluding consideration in the form of issuance of Equity Interests permitted hereunder or paid with the proceeds of the issuance of Equity Interests permitted hereunder), of all such acquisitions (including the Square Box Acquisition) shall not exceed \$20,000,000 in the aggregate during the Term;"

c. Permitted Indebtedness. The definition of "Permitted Indebtedness" set forth in Section 1.2 of the Credit Agreement is hereby amended by deleting clause (h) of such definition in its entirety and replacing it with the following:

"(h) Indebtedness (x) constituting deferred purchase price obligations arising in connection with Permitted Acquisitions, (y) under Permitted Seller Notes and Permitted Earnouts arising in connection with Permitted Acquisitions, and (z) under non-compete payment obligations arising in connection with Permitted Acquisitions, provided that,

(i) such Indebtedness shall at all times be unsecured;

(ii) such Indebtedness described in clauses (x) and (y) above (other than, with respect to any Permitted Acquisition, deferred purchase price obligations arising in



connection therewith, the payment of which are not subject to any condition or contingency, other than the passage of time, in an amount (other than with respect to the Square Box Acquisition) not to exceed 15% of the purchase price for such Permitted Acquisition) shall be subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to Agent;

(iii) (A) in no event shall the Loan Parties make any payments in respect of such Indebtedness described in clause (x) above under the Square Box Acquisition Agreement unless (1) Average Liquidity for the thirty (30) days immediately prior to the date of any such payment shall be at least \$30,000,000; and (2) as of the date of any such payment and after giving effect thereto, (x) each of the Payment Conditions shall have been satisfied; and (y) Quantum and its Subsidiaries, on a consolidated basis, are projected to be in compliance with each of the financial covenants set forth in Section 6.5 hereof for the four (4) fiscal quarter period ended one year after the date of any such payment; and

(B) in no event shall the Loan Parties make any payments in respect of all other Indebtedness described in this clause (h) unless, as of the date of any such payment and after giving effect thereto, (1) each of the Payment Conditions shall have been satisfied; and (2) Quantum and its Subsidiaries, on a consolidated basis, are projected to be in compliance with each of the financial covenants set forth in Section 6.5 hereof for the four (4) fiscal quarter period ended one year after the proposed date of such payment; and

(iv) the aggregate outstanding principal amount of all such Indebtedness shall not exceed \$10,000,000 at any time;”.

2. Revolving Advances. Section 2.1(a) of the Credit Agreement is hereby amended by deleting clause (y)(v) of such Section in its entirety and replacing it with the following:

“(v) the Special Square Box Reserve and such other reserves as Agent may reasonably deem proper and necessary from time to time.”

3. Mandatory Prepayments. Section 2.20 of the Credit Agreement is hereby amended by inserting the following new subsection (e) at the end of such Section:

“(e) Upon the receipt by any Loan Party of the Net Cash Proceeds from the issuance or sale of any Equity Interests after the Fourth Amendment Effective Date, Borrowers shall prepay the Advances in an amount equal to one hundred percent (100%) of the first \$3,000,000 of such Net Cash Proceeds, promptly, but in no event more than three (3) Business Days following the receipt thereof, and until the date of payment, such proceeds shall be held in trust for Agent. Such prepayments shall be applied to the Loans in accordance with Section 2.20(a) hereof. The foregoing shall not be deemed to be implied consent to any issuance or sale of any Equity Interests otherwise prohibited by the terms and conditions hereof. It is understood and agreed that in no event shall any amounts in excess of \$3,000,000 be payable pursuant to this subsection (e).”

4. Investment Property Collateral. Section 4.13(a) of the Credit Agreement is hereby amended by deleting such Section in its entirety and replacing it with the following:

“(a) Each Loan Party has the right to transfer the Investment Property free of any Liens (other than Permitted Encumbrances) and will use commercially reasonable efforts to defend its title to the Investment Property against the contrary claims of all Persons. Each Loan Party shall (i) ensure that each operating agreement, limited partnership agreement and any other similar agreement permits Agent’s Lien on the Equity Interests of wholly-owned Subsidiaries (other than Foreign Subsidiaries, but excluding Square Box if it becomes a Loan Party in accordance with Section 6.14(g) hereof) arising thereunder, foreclosure of Agent’s Lien and admission of any transferee as a member, limited partner or other applicable equity holder thereunder and (ii) use commercially reasonable efforts to provide that each operating agreement, limited partnership agreement and any other similar agreement with respect to any other Person permits Agent’s Lien on the Investment Property of such Loan Party arising thereunder, foreclosure of Agent’s Lien and admission of any transferee as a member, limited partner or other applicable equity holder thereunder.”

5. Provisions Regarding Certain Investment Property Collateral. Section 4.14 of the Credit Agreement is hereby amended by deleting such Section in its entirety and replacing it with the following:

“4.14 Provisions Regarding Certain Investment Property Collateral. The operating agreement or limited partnership agreement (as applicable) of any Subsidiary (other than a Foreign Subsidiary, but excluding Square Box if it becomes a Loan Party in accordance with Section 6.14(g) hereof) of any Loan Party hereafter formed or acquired that is a limited liability company or a limited partnership, shall contain the following language (or language to the same effect): “Notwithstanding anything to the contrary set forth herein, no restriction upon any transfer of {membership interests} {partnership interests} set forth herein shall apply, in any way, to the pledge by any {member} {partner} of a security interest in and to its {membership interests} {partnership interests} to PNC Bank, National Association, as agent for certain lenders, or its successors and assigns in such capacity (any such person, “Agent”), or to any foreclosure upon or subsequent disposition of such {membership interests} {partnership interests} by Agent. Any transferee or assignee with respect to such foreclosure or disposition shall automatically be admitted as a {member} {partner} of the Company and shall have all of the rights of the {member} {partner} that previously owned such {membership interests} {partnership interests}.”

6. Representations and Warranties - Authority. Section 5.1 of the Credit Agreement is hereby amended by deleting such Section in its entirety and replacing it with the following:

“5.1 Authority. Each Loan Party has full power, authority and legal right to enter into this Agreement and the Other Documents to which it is a party and to perform all its respective Obligations hereunder and thereunder. This Agreement and the Other Documents to which it is a party have been duly executed and delivered by each Loan Party, and this Agreement and the Other Documents to which it is a party constitute the legal, valid and binding obligation of such Loan Party enforceable in accordance with their terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar laws affecting creditors’ rights generally. The execution, delivery and performance of this Agreement and the Other Documents to which it is a party (i) are within such Loan Party’s corporate or limited liability company powers, as applicable, (ii) have been duly authorized by all necessary corporate or limited liability company action, as applicable, (iii) are not in contravention of law or the terms of such Loan Party’s Organizational Documents or to the conduct of such Loan Party’s

business or of any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, including without limitation the Term Loan Documents and, once executed and delivered, the Square Box Acquisition Documents, (iv) will not conflict with or violate any material provisions of any law or regulation, or any judgment, order or decree of any Governmental Body, (v) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, including without limitation, the Term Loan Lenders or the Square Box Sellers, except (x) any Consents of any party to a Material Contract or any other Person (other than a Governmental Body) with respect to which the failure to obtain could not reasonably be expected, individually or in the aggregate to have a Material Adverse Effect, (y) any immaterial Consents of any Governmental Body, or (z) those Consents set forth on Schedule 5.1 hereto, all of which will have been duly obtained, made or complied with prior to the Fourth Amendment Effective Date and which are in full force and effect on the Fourth Amendment Effective Date, and (vi) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien (except Permitted Encumbrances) upon any asset of such Loan Party under the provisions of any material agreement, instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound, including without limitation any of the Term Loan Documents, and once executed and delivered, any of the Square Box Acquisition Documents.”

7. Post-Closing Covenants – Square Box Acquisition. Section 6.14 of the Credit Agreement is hereby amended by inserting the following new clauses (e) through (g) at the end of such Section:

“(e) No later than five (5) Business Days following Quantum’s receipt of the last of the stock transfer forms signed by the applicable Square Box Sellers (or such later date as Agent shall agree in its sole discretion), Quantum shall submit the same electronically, together with payment of the stamp duty payable on such stock transfer forms, to the stamp office of Her Majesty’s Revenue and Customs (“HMRC”) in the United Kingdom (the “Stamp Office”).

(f) No later than five (5) Business Days following Quantum’s receipt of a letter from the Stamp Office confirming that HMRC does not object to the registration of the transfers notified by Quantum and will not seek to impose any penalty under section 17 Stamp Act 1891 (or such later date as Agent shall agree in its sole discretion), Quantum shall update the register of members of Square Box to record Quantum as the holder of the entire issued Equity Interests of Square Box and issue a share certificate in Quantum’s name (limited to 65% of the Equity Interests in Square Box, unless the determination described in clause (g)(ii) below has been made by Quantum by such time).

(g) No later than the later of the date which is (x) twenty (20) Business Days following the registration of Quantum as the sole holder of Equity Interests in Square Box and (y) ninety (90) days following the Fourth Amendment Effective Date (or such later date as Agent shall agree in its sole discretion), (i) Quantum shall complete a tax analysis in connection with Square Box becoming a Borrower or Guarantor under this Agreement and the Other Documents, and (ii) (A) if Quantum reasonably determines in good faith that there are no material adverse tax consequences to the Loan Parties as a result of Square Box becoming a Borrower or Guarantor under this Agreement and the Other Documents, then (1) Square Box shall expressly join in this Agreement and the Other Documents as a Borrower or Guarantor and become jointly and severally liable for

the obligations of the other Loan Parties hereunder and thereunder, (2) Square Box shall execute and deliver to Agent, in form and substance reasonably satisfactory to Agent, a joinder to this Agreement, and/or a Guaranty and a Guarantor Security Agreement in favor of Agent and such Other Documents governed by the laws of England and Wales and/or the State of New York related thereto as Agent shall reasonably request in connection therewith, (3) Quantum shall execute and deliver to Agent, in form and substance reasonably satisfactory to Agent, a Pledge Agreement governed by the laws of England and Wales with respect to 100% of the Equity Interests of Square Box owned by Quantum, and (4) if requested by Agent, to the extent it is customary in England and Wales for counsel to the Agent to provide a legal opinion to creditors, counsel to the Agent shall provide (at the expense of the Borrowers) a legal opinion in favor of Agent and Lenders with respect to matters similar to those covered in the legal opinion delivered under Section 8.1(m) hereof that are applicable to Square Box, and (B) if Quantum reasonably determines in good faith that there would be material adverse tax consequences to the Loan Parties as a result of Square Box becoming a Borrower or Guarantor hereunder and under the Other Documents, then Quantum shall execute and deliver to Agent, in form and substance reasonably satisfactory to Agent, (1) a Pledge Agreement governed by the laws of the State of New York or (2) an addendum to the existing Pledge Agreement, in each case, with respect to 65% of the voting Equity Interests of Square Box and 100% of the non-voting Equity Interests of Square Box owned by Quantum.

(h) No later than the later of the date which is fifteen (15) Business Days following the Fourth Amendment Effective Date (or such later date as Agent shall agree in its sole discretion), Quantum shall cause Square Box to transfer all of the funds of Square Box on deposit with National Westminster Bank in excess of \$500,000 to a deposit account of Quantum maintained with PNC."

8. Exhibits to Credit Agreement. Exhibit 1.2 to the Credit Agreement (Form of Compliance Certificate) is hereby amended by deleting such Exhibit and replacing it with Exhibit 1.2 to this Amendment.

9. Amendment Fee. In consideration of the agreements set forth herein, Borrowers hereby agree to pay to Agent, for the benefit of the Lenders, an amendment fee in the amount of \$75,000 (the "Fourth Amendment Fee"), which fee shall be fully earned as of and due and due and payable on the Fourth Amendment Effective Date. Borrowers hereby agree that Agent may, in its sole discretion, charge Borrowers' Account with the amount of the Fourth Amendment Fee in satisfaction thereof.

10. Conditions Precedent. The effectiveness of this Amendment is expressly conditioned upon the satisfaction of each of the following conditions precedent:

- a. Agent shall have received this Amendment, duly authorized, executed and delivered by each Loan Party;
- b. Agent shall have received the Fifth Amendment to the Term Loan Agreement, duly authorized, executed and delivered by the Loan Parties and the Term Loan Lenders;
- c. Agent shall have received payment from Borrowers of all fees, charges and disbursements of Agent, including the Amendment Fee, and its counsel required to be paid pursuant to the Credit Agreement in connection with the preparation, execution and delivery of this Amendment and the Other Documents executed and delivered in connection herewith or related hereto;

d. all proceedings taken in connection with the transactions contemplated by this Amendment and all documents, instruments and other legal matters incident thereto shall be reasonably satisfactory to Agent and its counsel; and

e. on the date of this Amendment and after giving effect to the provisions of this Amendment and the transactions contemplated hereby, no Default or Event of Default shall exist or have occurred and be continuing.

Agent shall notify the Borrowers in writing of the effectiveness of this Amendment, which notice shall be conclusive and binding on all parties to the Credit Agreement.

11. Representations and Warranties. In addition to the continuing representations and warranties heretofore or hereafter made by the Loan Parties to Agent and Lenders pursuant to the Credit Agreement and the Other Documents, each Loan Party hereby represents and warrants to Agent and each Lender as follows:

f. each Loan Party has full power, authority and legal right to enter into this Amendment and to perform all its respective Obligations hereunder;

g. this Amendment has been duly executed and delivered by each Loan Party;

h. this Amendment constitutes the legal, valid and binding obligation of each Loan Party enforceable in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, moratorium or similar Laws affecting creditors' rights generally;

i. the execution, delivery and performance of this Amendment (i) are within each Loan Party's corporate or limited liability company powers, as applicable, (ii) have been duly authorized by all necessary corporate or limited liability company action, as applicable, (iii) are not in contravention of law or the terms of such Loan Party's Organizational Documents or to the conduct of such Loan Party's business or any Material Contract or undertaking to which such Loan Party is a party or by which such Loan Party is bound, including without limitation the Term Loan Documents, (iv) will not conflict with or violate any material provisions of any law or regulation, or any judgment, order or decree of any Governmental Body, (v) will not require the Consent of any Governmental Body, any party to a Material Contract or any other Person, except (x) any Consents of any party to a Material Contract or any other Person (other than a Governmental Body) with respect to which the failure to obtain could not reasonably be expected, individually or in the aggregate to have a Material Adverse Effect, (y) any immaterial Consents of any Governmental Body, or (z) those Consents set forth on Schedule 5.1 to the Credit Agreement, all of which will have been duly obtained, made or complied with prior to the Fourth Amendment Effective Date and which are in full force and effect on the Fourth Amendment Effective Date, and (vi) will not conflict with, nor result in any breach in any of the provisions of or constitute a default under or result in the creation of any Lien except Permitted Encumbrances upon any asset of such Loan Party under the provisions of any material agreement, instrument, or other document to which such Loan Party is a party or by which it or its property is a party or by which it may be bound, including without limitation any of the Term Loan Documents;

j. each Loan Party is duly formed or incorporated, as applicable, and in good standing under the laws of the state of its incorporation or formation, as applicable, and is good standing in such state and is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Effect;

k. each of the representations and warranties made by any Loan Party in the Credit Agreement and the Other Documents, each as amended hereby, are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that are qualified or modified by materiality in the text thereof) as if made on the date of this Amendment and after giving effect to this Amendment and the transactions contemplated hereby, except to the extent that any such representation or warranty is made as of an earlier and/or specified date, in which case such representation or warranty shall have been true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that are qualified or modified by materiality in the text thereof) as of such earlier or specified date; and

l. after giving effect to the transactions contemplated by this Amendment, on the date of this Amendment, no Default or Event of Default exists or has occurred and is continuing.

12. Reaffirmation. Each Loan Party hereby ratifies and reaffirms (a) all of its payment and performance obligations, contingent or otherwise, under the Credit Agreement and each of the Other Documents to which it is a party, and (b) its grant to Agent of a security interest in the Collateral under the Credit Agreement and each of the Other Documents to which it is a party.

13. Acknowledgments. To induce Agent and Lenders to enter into this Amendment, Borrowers and each other Loan Party acknowledge that:

m. as of the Fourth Amendment Effective Date, (i) Agent and Lenders have performed without default all obligations required of Agent and Lenders under the Credit Agreement and each of the Other Documents; and (ii) there are no disputes with or claims against Agent or Lenders, or any knowledge of any facts giving rise to any disputes or claims, related to the Credit Agreement or any of the Other Documents, including, without limitation, any disputes or claims or knowledge of facts giving rise thereto, that involve a breach or violation on the part of Agent or any Lender of the terms and conditions of the Credit Agreement or any of the Other Documents; and

n. no Loan Party has any valid defense to the enforcement of their respective obligations set forth in the Credit Agreement, the Other Documents or this Amendment, as applicable, by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment.

14. Governing Law. This Amendment and all matters relating hereto or arising herefrom (whether arising under contract law, tort law or otherwise) shall, in accordance with Section 5-1401 of the General Obligations Law of the State of New York, be governed by and construed in accordance with the Laws of the State of New York.

15. Effect of this Agreement. Except as expressly amended pursuant hereto, no other changes or modifications to the Credit Agreement or any of the Other Documents are intended or implied, and in all other respects, the Credit Agreement and each of the Other Documents is hereby specifically ratified, restated and confirmed by all parties hereto as of the date of this Amendment. To the extent that any provision of the Credit Agreement or any of the Other Documents are inconsistent with the provisions of this Amendment, the provisions of this Amendment shall control.

16. Binding Effect. This Amendment shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties hereto.

17. Further Assurances. The Loan Parties shall execute and deliver such further documents and take such further action as may be reasonably requested by Agent to effectuate the provisions and purposes of this Amendment.

18. Counterparts; Electronic Signature. This Amendment may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement. Any signature delivered by a party by facsimile or electronic transmission (including email transmission of a .pdf image) shall be deemed to be an original signature hereto.

19. Release. In consideration of the agreements of Agent and Lenders contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Loan Party, on behalf of itself and its respective successors, assigns, and other legal representatives, hereby absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and Lenders, their respective successors and assigns, and their respective present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, each Lender and all such other Persons being hereinafter referred to collectively as the "Releasees" and individually as a "Releasee"), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of setoff, demands and liabilities whatsoever (individually, a "Claim" and collectively, "Claims") of every name and nature, known or unknown, suspected or unsuspected, as of the date of this Amendment, both at law and in equity, which such Loan Party, or any of its respective successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, in each case for or on account of, or in relation to, or in any way in connection with any of the Credit Agreement, any of the Other Documents or transactions thereunder or related thereto; provided that nothing contained herein shall release any Releasee from any Claims resulting from the gross negligence, willful misconduct or material breach of the Credit Agreement or any of the Other Documents by any Releasee as determined by a court of competent jurisdiction in a final non-appealable judgment or order or for any Claim arising with respect to obligations arising under this Amendment or the documents entered into as of the Fourth Amendment Effective Date.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have entered into this Amendment as of the date first above written.

BORROWERS:

QUANTUM CORPORATION

By: /s/ J. Michael Dodson  
Name: J. Michael Dodson  
Title: Chief Financial Officer

QUANTUM LTO HOLDINGS, LLC

By: /s/ J. Michael Dodson  
Name: J. Michael Dodson  
Title: Chief Financial Officer

AGENT AND LENDERS:

PNC BANK, NATIONAL ASSOCIATION,  
as Agent and Lender

By: /s/ Daniela Piemonte  
Name: Daniela Piemonte  
Title: Vice President

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Exhibit 1.2(b)

Form of Compliance Certificate

COMPLIANCE CERTIFICATE

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SCHEDULE A TO COMPLIANCE CERTIFICATE

Calculations of Financial Covenants

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SCHEDULE B TO COMPLIANCE CERTIFICATE

Calculation of Special Square Box Reserve Condition

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EXHIBIT I TO COMPLIANCE CERTIFICATE

Updates to Schedules



For release:  
Dec 14, 2020  
5:00 a.m. PDT

## **Quantum Acquires Square Box Systems Ltd, Maker of CatDV, to Help Businesses Get More Value from Unstructured Data**

*Acquisition Adds Data Cataloging, AI Analytics and Automation Software for Data Enrichment and Orchestration*

**SAN JOSE, Calif. — Dec. 14, 2020 — [Quantum Corp.](#)** (NASDAQ: QMCO) today announced it has acquired Square Box Systems Ltd, a specialist in data cataloging, user collaboration, and digital asset management software. The acquisition builds on Quantum's recently expanded portfolio that classifies, manages, and protects data across its lifecycle by adding technology advancements to further enrich video, digital images and other forms of unstructured data. This acquisition will strengthen Quantum's ability to provide software solutions to help companies unlock the business value contained in their data, both on-premises and in the cloud.

Square Box Systems' flagship product is CatDV, an agile media management and workflow automation software platform that helps organizations with large volumes of media and metadata to organize, communicate and collaborate more effectively. CatDV leverages artificial intelligence and machine learning technology to make it easier for businesses of any size to catalog and analyze digital assets such as video, images, audio files, PDFs, and more; enable advanced search across local and cloud repositories; and provide access control across the full data lifecycle for secure sharing and data governance.

"There is huge untapped value contained in video, digital images, and other valuable file data," says Jamie Lerner, President and CEO at Quantum. "This acquisition will not only help our customers make better business decisions based on their data, but it represents another key step in Quantum's transformation by adding data enrichment technology to our portfolio. We are also adding a growing, profitable software business unit with strong gross margins that is in the late stages of transitioning to a cloud-based SaaS business."

### **Expanding into new markets**

Headquartered in the United Kingdom, Square Box Systems grew by more than 20% in the last year and has over 1,500 commercial software deployments and tens of thousands of individual users worldwide, including many customers that use CatDV with Quantum StorNext™. CatDV is used today in post-production, corporate video, sports, government and education markets, and has potential to expand to other markets using specifically designed plug-ins for expanded use cases such as genomics research, autonomous vehicle design, geospatial exploration, and any use case dealing with large unstructured data. CatDV is integrated with a broad ecosystem of storage vendors and other technology providers, and Quantum is committed to maintaining this open ecosystem and multi-vendor support.

"As CatDV grows and becomes a bigger player across the industry, there's more we want to do, building on CatDV's success and taking it to a new level," says Rolf Howarth, founder and CTO at Square Box Systems, now Principal Architect at Quantum. "I am very excited at the prospect of working with Quantum, taking CatDV into new markets and solving new business problems, at the same time as continuing to work with our existing customers and partners."

Dave Clack, former CEO of Square Box Systems and General Manager, Cloud Software and Analytics at Quantum, adds: "Joining forces with Quantum makes CatDV much stronger: becoming part of a larger organization with its visionary leadership team, whilst gaining access to an amazing pool of talent, gives CatDV more opportunity to better serve our existing and future customers. The direction of both firms is already aligned;

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a clear focus on data management, orchestration at scale, cloud, and automation of service delivery, all unlocking amazing returns for our clients.”

#### **Opportunity to Provide Turnkey Solution to Small Media Workgroups**

Many of the world’s largest studios, broadcasters, and content producers have complex workflows, and have the budget and infrastructure to deploy customized and integrated media asset management (MAM) systems to manage their workflows end to end. In these larger environments, Quantum has deep integration and will continue to partner with these MAM vendors to provide the best solutions to these customers.

However, smaller workgroups such as those in corporate video, education, and houses of worship have a need for a more simple, turnkey solution that provides basic functionality to be able to index, search, and manage their content on a shared storage platform. Quantum intends to combine the CatDV software with StorNext to provide an all-in-one workgroup appliance and better serve the needs of this market with a differentiated offering.

#### **Transaction Information**

Quantum expects the initial financial impact of the transaction to be accretive to current business operations and additional guidance will be provided with Quantum’s release of its fiscal Q3 FY2021 financial results. The Entrepreneurs Hub played a key role in advising Square Box Systems in this transaction.

“Square Box Systems realized that with a solution applicable across the globe, they needed to be part of a bigger family and find an organization with leadership that shared a vision as big as theirs,” says Andrew Shepperd, Director & Co Founder of the Entrepreneurs Hub. “We felt Quantum with its pedigree for innovation and new vision would be an excellent home for Square Box Systems. Entrepreneurs Hub has worked with both leadership teams to secure the completion of this exciting deal that will see a paradigm shift in the commercial impact that CatDV brings and the wider audience it will now be able to serve as part of Quantum’s solution stack and technology leadership.”

#### **About Quantum**

Quantum technology and services help customers capture, create, and share digital content—and preserve and protect it for decades. With solutions built for every stage of the data lifecycle, Quantum’s platforms provide the fastest performance for high-resolution video, images, and industrial IoT. That’s why the world’s leading entertainment companies, sports franchises, researchers, government agencies, enterprises, and cloud providers are making the world happier, safer, and smarter on Quantum. Quantum is listed on Nasdaq (QMCO) and was added to the Russell 2000® Index in 2020. For more information visit [www.quantum.com](http://www.quantum.com).

Quantum and the Quantum logo are registered trademarks of Quantum Corporation and its affiliates in the United States and/or other countries. All other trademarks are the property of their respective owners.

#### **Forward-Looking Statements**

The information provided herein may include forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934 (“Exchange Act”). These forward-looking statements are largely based on our current expectations and projections about future events and financial trends affecting our business. Such forward-looking statements include, in particular, statements about the anticipated benefits of our acquisition of Square Box Systems, the future prospects of Square Box Systems’ products and technology, market trends related to Square Box Systems products and technology, our business prospects, changes and trends in our business and the markets in which we operate.

These forward-looking statements may be identified by the use of terms and phrases such as “anticipates”, “believes”, “can”, “could”, “estimates”, “expects”, “forecasts”, “intends”, “may”, “plans”, “projects”, “targets”, “will”, and similar expressions or variations of these terms and similar phrases. Additionally, statements concerning future matters such as projected benefits of the acquisition, the development of new products, enhancements or technologies, sales levels, expense levels and other statements regarding matters that are not historical are forward-looking statements. We caution that these forward-looking statements relate to future events or our future

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performance and are subject to business, economic, and other risks and uncertainties, both known and unknown, that may cause actual results, levels of activity, performance or achievements of our business or our industry to be materially different from those expressed or implied by any forward-looking statements.

These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those projected, including without limitation, the following: risks related to the integration of the business, products, employees and other aspects of Square Box Systems into Quantum, the competitive pressures faced by our businesses; risks associated with executing Quantum's strategy and the strategy related to this acquisition; the distribution of Quantum's and Square Box Systems' products and the delivery of Quantum's services effectively; the development and transition of new products and services and the enhancement of existing products and services to meet customer needs and respond to emerging technological trends; the impact of Covid-19 on our business and our ability to integrate the business of Square Box Systems; and other risks that are described in the section entitled "Risk Factors" in Quantum's filings with the Securities and Exchange Commission, including its Form 10-K filed with the Securities and Exchange Committee on June 24, 2020, a copy of which can be found at [www.sec.gov](http://www.sec.gov). All forward-looking statements in this press release are made as of the date hereof, based on information available to us as of the date hereof, and subsequent facts or circumstances may contradict, obviate, undermine, or otherwise fail to support or substantiate such statements. Quantum does not intend to update or alter its forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law or regulation.

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