

P96000036503

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MERGER OR SHARE EXCHANGE

VIATRONIX INCORPORATED

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merger

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ARTICLES OF MERGER
Merger Sheet

MERGING: _____

ENDOMED CORPORATION, a Delaware corporation not qualified to transact
business in the State of Florida

INTO

VIATRONIX INCORPORATED, a Florida entity, P96000036503.

File date: May 15, 2000

Corporate Specialist: Darlene Connell

May 9, 2000

VIATRONIX INCORPORATED
5971 SW 47TH ST.
MIAMI, FL 33155US

SUBJECT: VIATRONIX INCORPORATED
REF: P96000036503

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If you have any questions concerning the filing of your document, please call (850) 487-6880.

Karen Gibson
Corporate Specialist

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FLORIDA DEPARTMENT OF STATE
Katherine Harris
Secretary of State

April 25, 2000

VIATRONIX INCORPORATED
5971 SW 47TH ST.
MIAMI, FL 33155US

SUBJECT: VIATRONIX INCORPORATED
REF: P96000036503

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Karen Gibson
Corporate Specialist

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TALLAHASSEE, FLORIDA

**ARTICLES OF MERGER
OF
ENDOMED CORPORATION
WITH AND INTO
VIATRONIX INCORPORATED**

Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act, the undersigned corporations adopt and the surviving corporation delivers for filing the following Articles of Merger:

1. The names of the corporations participating in the merger and the States under the laws of which they are respectively organized are as follows:

Name of Corporation
Viatronix Incorporated
EndoMed Corporation

State
Florida
Delaware

2. Viatronix Incorporated, shall be the surviving corporation resulting from the merger and shall continue to be governed by the laws of the State of Florida.
3. The plan of merger is set forth as Exhibit A hereto, and is incorporated herein by reference.
4. The plan of Merger was approved by the Board of Directors of Viatronix Incorporated as of November 24, 1999. The plan of merger was also adopted by a majority of the shareholders of Viatronix Incorporated on November 26, 1999, which was sufficient for shareholder approval.
5. The plan of merger was approved by the Board of Directors of EndoMed Corporation as of November 24, 1999. The plan of merger was also adopted by a majority of the shareholders of EndoMed Corporation on November 24, 1999, which was sufficient for shareholder approval.
6. The effective date of the merger shall be the date on which the Articles of Merger are filed.

Dated: as of April 18, 2000

VIATRONIX INCORPORATED

By: Richard B. Williams

Richard B. Williams, Chief Executive Officer

ENDOMED CORPORATION

By: A. Kaufman

Arie E. Kaufman, President

Exhibit A
AGREEMENT AND PLAN OF MERGER
OF
VIATRONIX INCORPORATED
AND
ENDOMED CORPORATION

AGREEMENT OF MERGER ("Agreement") entered into on November 24, 1999, by VIATRONIX INCORPORATED, a Florida corporation, and ENDOMED CORPORATION, a Delaware corporation, as approved by the Board of Directors of each of said corporations:

RECITALS

WHEREAS, EndoMed Corporation (the "Disappearing Corporation") and Viatronix Incorporated (the "Surviving Corporation") desire to merge into a single corporation (the "Merger");

WHEREAS, Disappearing Corporation filed its Certificate of Incorporation in the office of the Secretary of State of Delaware on September 30, 1999, and has an authorized capital stock consisting of One Thousand (1,000) shares of common stock, each with \$0.01 par value, of which One Thousand (1,000) shares of such common stock are now issued and outstanding; and

WHEREAS, Surviving Corporation filed its Articles of Incorporation in the office of the Secretary of State of Florida on April 22, 1996 and has an authorized capital stock consisting of Five Million (5,000,000) shares of common stock, each with \$0.0001 par value (the "Common Stock") of which Four Hundred Eighty Five Thousand (485,000) shares are now issued and outstanding; and

WHEREAS, the principal office of the Surviving Corporation is located at 8715 SW 57th Street, Cooper City, Florida 33328, and the name and address of its registered agent is Louis Montello, 701 Brickell Avenue, Suite 1200, Miami, Florida, 33121. The principal office of the Disappearing Corporation is c/o Kronish Lieb Weiner & Hellman LLP and the name and address of its registered agent is United Corporate Services, Inc., 15 East North Street, Dover, Delaware; and

WHEREAS, the laws of the jurisdiction of incorporation of the Disappearing Corporation and the Surviving Corporation each permit the merger of a business corporation of said respective jurisdiction with and into a business corporation of another jurisdiction; and

NOW, THEREFORE, the corporations, parties to this Agreement, by and between their respective boards of directors, in consideration of the mutual covenants, agreements and provisions hereinafter contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, have agreed and do hereby agree each with the other that Disappearing Corporation merge with and into Surviving Corporation, and do hereby agree upon and prescribe the

terms and conditions of the Merger and of carrying the same into effect, and the manner and basis of causing the shares of the Disappearing Corporation to constitute or be converted into shares of common stock of the Surviving Corporation, as follows:

ARTICLE 1

THE MERGER

SECTION 1.1 *The Merger.*

(a) EndoMed Corporation, the Disappearing Corporation, hereby merges with and into Viatronix Incorporated, the Surviving Corporation.

(b) The separate existence of the Disappearing Corporation shall cease upon the Effective Date (as hereinafter defined) of the Merger in accordance with the provisions of the laws of the State of Delaware, the jurisdiction of incorporation of said corporation.

(c) The Certificate of Incorporation of the Surviving Corporation is to be and remain the Certificate of Incorporation of the Surviving Corporation, to continue in full force and effect until amended in the manner prescribed by the Florida Business Corporation Act ("FBCA") except that Article FIRST of said Certificate of Incorporation is amended to read as follows: "FIRST: The name of the corporation is "Viatronix Incorporated".

SECTION 1.2 *Effects of the Merger.* The bylaws of the Surviving Corporation upon the Effective Date (as hereinafter defined) of the Merger in the State of Florida, shall be the bylaws of the Surviving Corporation and shall continue in full force and effect until changed, altered or amended as therein provided and in the manner prescribed by the provisions of the FBCA.

SECTION 1.3 *Directors and Officers.* All of the directors and officers of the Surviving Corporation, upon the Effective Date (as hereinafter defined) of the Merger in the State of Florida, shall resign as members of the Board of Directors and officers of the Surviving Corporation and shall be replaced by Ray I. Sheppard, Stephen G. Norton, Richard B. Williams, Thomas P. Stafford, Ann M. Bond and Mark Wax, all of whom shall hold their directorship and offices until the election, choice, and qualification of their respective successors or until their tenure is otherwise terminated in accordance with the Certificate of Incorporation or bylaws, if any, of the Surviving Corporation.

SECTION 1.4 *Corporate Offices.* Upon the Effective Date (as hereinafter defined) the corporate offices shall be the corporate offices of the Surviving Corporation.

ARTICLE 2

CONVERSION OF SECURITIES

SECTION 2.1 *Conversion of Capital Stock.* All outstanding shares of the Disappearing Corporation shall, upon completion of the Merger on the Effective Date (as hereinafter defined) thereof, be converted into 422,000 shares of the Common Stock of the Surviving Corporation. The Common Stock of the Surviving Corporation shall be issued to the individuals and entities in the amounts listed on Exhibit 2.1 hereto.

SECTION 2.2 *Restrictions on Securities.* No shares of the Surviving Corporation issued to holders of shares of the Disappearing Corporation in connection with the Plan of Merger shall at any time be sold or otherwise disposed of except in compliance with the Securities Act of 1933, as amended (the "Securities Act"), and without first having advised the Surviving Corporation in writing of the circumstances of such proposed sale or other disposition and having received an opinion of counsel for the Surviving Corporation that under the Securities Act a prospectus is not required to be delivered in connection with such sale or disposition. The certificates evidencing such shares shall bear a legend referring to this restriction. Holders of shares of the Disappearing Corporation receiving shares of the Surviving Corporation in connection with this Agreement shall agree in writing to the restrictions set forth in this paragraph, substantially in the form annexed hereto as Exhibit 2.2, which executed agreement shall be furnished to the Surviving Corporation on or before the Effective Date, and each such recipient shall agree that the shares of the Surviving Corporation are not being acquired with a view to distribution thereof.

ARTICLE 3

TERMS AND CONDITIONS OF MERGER

SECTION 3.1 *Viatronix Incorporated Offering.* On or prior to the Effective Date of the Merger the Surviving Corporation must have raised and received no less than Seven Million Five Hundred Thousand Dollars (\$7,500,000.) through the issuance by the Surviving Corporation of shares of its Common Stock for gross proceeds of not less than Twenty-Five Dollars (\$25) per share resulting in net proceeds to the Surviving Corporation of not less than 95% of the gross proceeds and where the use of such proceeds by the Surviving Corporation shall not be restricted (the "Viatronix Offering"). The Viatronix Offering shall comply with the Securities Act and shall be exempt from registration under the Securities Act. The Disappearing Corporation shall have the right to review and approve the disclosure contained in the offering documents relating to the Viatronix Offering and shall assist Viatronix in the preparation of the description of the business contained in such offering documents. The Disappearing Corporation shall be deemed to have approved such offering documents if it fails to provide Viatronix any comments or objections to the disclosure set forth therein within five business days of receipt by the Disappearing Corporation of such offering documents.

SECTION 3.2 Expenses. The Constituent Corporations shall pay their respective expenses in connection with the carrying of this Agreement into effect and accomplishing the Merger. Notwithstanding the foregoing, on the Effective Date the Surviving Corporation shall pay up to Fifty Thousand Dollars (\$50,000) of the Disappearing Corporation's reasonable out-of-pocket expenses in connection with the Merger (out-of-pocket expenses in connection with the Merger shall be deemed to include reasonable expenses in connection with the licensing of the intellectual property referred to in Section 6.13). The Disappearing Corporation shall provide invoices or other backup documentation for the out-of-pocket expenses referenced in this Section 3.2. The Disappearing Corporation shall pay all amounts, if any, to which dissenting shareholders of the Disappearing Corporation may be entitled to by reason of the Merger.

SECTION 3.3 Merger Funding. On or prior to the Effective Date (as hereinafter defined), the Constituent Corporations shall have available funds sufficient to pay each of their respective Merger expenses in cash, excluding, in the case of the Disappearing Corporation, up to \$50,000 of expenses to be paid by the Surviving Corporation pursuant to Section 3.2 including any reasonable expenses and fees of Disappearing Corporation incurred pursuant to the License Agreement (as defined below).

SECTION 3.4 Effect of Merger. Upon the Effective Date, the separate existence of the Disappearing Corporation shall cease, and the Disappearing Corporation shall be merged with and into the Surviving Corporation, in accordance with the provisions of this Agreement (the Surviving Corporation and the Disappearing Corporation may be jointly referred to as the "Constituent Corporations" or individually as a "Constituent Corporation"). Thereafter, the Surviving Corporation shall possess all the rights, privileges, powers and franchises of a public as well as of a private nature and be subject to all the restrictions, disabilities and duties of each of the Constituent Corporations, and all rights, privileges, powers and franchises of each Constituent Corporation, all property, real, personal and mixed (including but not limited to all patents, trademarks, trade names, service marks and copyrights, licenses, any application for the registration of such patents, trademarks, trade names, service marks, copyrights and mask works, and all processes, formulae, methods, schematics, technology, know-how and tangible or intangible proprietary information or material that are necessary to conduct the business of each of said Constituent Corporation), and all debts due to each Constituent Corporation on whatever account, as well for stock subscriptions as all other things in action or belonging to each Constituent Corporation shall be vested in the Surviving Corporation; and all property rights and privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective Constituent Corporations, and the title to any real or personal property, whether by deed or otherwise, vested in any Constituent Corporation shall not revert or be in any way impaired by reason of this Merger, provided that all rights of creditors and all liens upon the property of any Constituent Corporation shall be preserved unimpaired, limited in lien to the property affected by such liens immediately prior to the time of the Merger, and all debts, liabilities and duties of the Disappearing Corporation may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it.

SECTION 3.5 *Further Assurances.* If at any time the Surviving Corporation shall consider or be advised that any further assignments or assurances in law or any things are necessary or desirable to vest in said corporation, according to the terms hereof, the title to any property or rights of the Disappearing Corporation, the Disappearing Corporation shall and will execute and make all such proper assignments and assurances and do all things necessary and proper to vest title in such property or rights in the Surviving Corporation, and otherwise to carry out the purpose of this Agreement.

SECTION 3.6 *Service of Process in Florida.* The Surviving Corporation may be served with process in Florida in any proceeding for enforcement of any obligation of the Disappearing Corporation, as well as for enforcement of any obligations of the Surviving Corporation arising from the Merger, including any suit or other proceeding to enforce the right of any stockholder as determined in appraisal proceedings pursuant to the provisions of Section 607.1107 of the FBCA and it does hereby irrevocably appoint the Secretary of State of Florida as its agent to accept service of process in any such suit or other proceeding.

ARTICLE 4

THE MODE OF CARRYING THIS MERGER INTO EFFECT

SECTION 4.1 *Directors.* This Agreement is signed by all of the directors of the Disappearing Corporation.

SECTION 4.2 *Approval by the Surviving Corporation; Appraisal Rights.* This Agreement is required to be authorized, adopted, or approved, as the case may be, by the shareholders of the Surviving Corporation in accordance with the FBCA. The shareholders of the Surviving Corporation have the right to dissent and seek appraisal for the fair value of their shares.

SECTION 4.3 *Approval by the Disappearing Corporation; Appraisal Rights.* This Agreement is required to be authorized, adopted, or approved, as the case may be, by the shareholders of the Disappearing Corporation in accordance with the Delaware General Corporations Law (the "DGCL"). The shareholders of the Disappearing Corporation have the right to dissent and seek appraisal for the fair value of their shares.

SECTION 4.4 *Approval by the Disappearing Corporation's Shareholders.* This Agreement shall be approved by written consent of the stockholders of Disappearing Corporation or submitted to the shareholders of the Disappearing Corporation at a meeting of the shareholders of the Disappearing Corporation separately called, upon notice to each shareholder of the Disappearing Corporation as required by the DGCL.

SECTION 4.5 *Articles of Merger.* After this Agreement has been duly adopted by the respective shareholders of each Constituent Corporation, that fact shall be set forth in an Articles of Merger attached to the Agreement by the secretary or assistant secretary of each Constituent Corporation, and the Agreement so adopted and certified shall be signed by the president or vice-president of each corporate party hereto and acknowledged by the secretary or assistant secretary of each corporate party hereto to be the respective act, deed and agreement of each such corporation, and the Agreement so certified and acknowledged shall be filed in the office of the respective Secretary of State and a copy thereof duly certified by the Secretary of State, and shall be effective from the date of filing thereof in the office of the Secretary of State of Florida (the "Effective Date"). Notwithstanding the foregoing, the Effective Date shall not be before the contingencies listed in Section 3.1 are satisfied.

SECTION 4.6 *Effectuation of Merger.* In the event that the Merger herein provided for shall have been fully authorized in accordance with the provisions of the laws of the jurisdiction of incorporation of the Disappearing Corporation (Delaware) and the Surviving Corporation (Florida), the Disappearing Corporation and the Surviving Corporation hereby agree that they will cause to be executed and filed and/or recorded any document or documents prescribed by the laws of the State of Florida and the laws of the State of Delaware and that they will cause to be performed all necessary acts therein and elsewhere to effectuate the Merger.

SECTION 4.7 *Termination or Abandonment.* Anything contained herein to the contrary notwithstanding, this Agreement may be terminated and the Merger abandoned at any time prior to the Effective Date, whether before or after approval and adoption by the shareholders of the Disappearing Corporation, without liability on the part of either party to the other (i) by mutual written consent of the Boards of Directors of the Constituent Corporations, (ii) at the option of either of the Constituent Corporations, if there is threatened, instituted or pending any suit, action, investigation, inquiry or other proceeding by or before any court or governmental or regulatory or administrative agency or commission requesting or looking toward an order, injunction, or similar order which prohibits the consummation or the transactions contemplated by this Agreement, or (iii) at the option of the Surviving Corporation if there should be any action, matter or thing which in the opinion of the Board of Directors of the Surviving Corporation would impose any material limitation on the Surviving Corporation effectively succeeding to or exercising full rights of ownership of the Disappearing Corporation or the business or the assets of the Disappearing Corporation.

SECTION 4.8 *Conduct of the Disappearing Corporation.* The Disappearing Corporation agrees to conduct its business in the ordinary and usual course prior to the consummation of the Merger and the Effective Date.

SECTION 4.9 *Actions by Board.* The Board of Directors and the proper officers of the Constituent Corporations are hereby authorized, empowered and directed to do any and all acts and things, and to make, execute, deliver, file and/or record any and all instruments, papers and

documents which shall be or become necessary, proper or convenient to carry out or put into effect any of the provisions of this Agreement.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF SURVIVING CORPORATION

The Surviving Corporation represents and warrants to the Disappearing Corporation and to the Shareholders of the Disappearing Corporation that the statements contained in this Section are correct and complete as of the date of this Agreement and will be correct as of the Effective Date (as though made then and as though the Effective Date were substituted for the date of this Agreement throughout this Section) except as set forth in the disclosure statement prepared by the Surviving Corporation and submitted to the Disappearing Corporation as of the Effective Date (the "SC Disclosure Statement").

SECTION 5.1 Organization. The Surviving Corporation is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has all requisite corporate power to own, lease and operate its property and to carry on its business as now being conducted, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the failure to be so qualified would have a Surviving Corporation Material Adverse Effect (as hereinafter defined).

When used in connection with the Surviving Corporation, the term "Surviving Corporation Material Adverse Effect" means any change, event or effect that is materially adverse to the business, prospects, assets (including intangible assets), liabilities, financial condition, operations or results of operations of the Surviving Corporation.

The Surviving Corporation does not directly or indirectly own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any such entity or similar interest in, any corporation, limited liability company, partnership, joint venture or other business association or entity, excluding securities of any publicly traded company held for investment by the Surviving Corporation and comprising less than five percent (5%) of the outstanding stock of such company.

SECTION 5.2 Authority; No Conflict; Required Filings and Consents.

(a) The Surviving Corporation has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate and stockholder action on the part of the Surviving Corporation, subject only (in the case of this Agreement and certain of the transactions contemplated hereby) to the approval of the Merger by each of the Surviving Corporation and the Disappearing

Corporation's stockholders in accordance with the FBCA and DGCL respectively. This Agreement has been duly executed and delivered by the Surviving Corporation and constitutes the valid and binding obligations of the Surviving Corporation, enforceable in accordance with their respective terms.

(b) The execution and delivery of this Agreement by the Surviving Corporation does not, and the consummation of the transactions contemplated hereby will not (i) conflict with, or result in, any violation or breach of any provision of the Articles of Incorporation or Bylaws of the Surviving Corporation (in each case as heretofore amended), (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Surviving Corporation is a party or by which any of its properties or assets may be bound, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Surviving Corporation on its properties or assets.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency, commission or other governmental authority or instrumentality ("Governmental Entity") is required by or with respect to the Surviving Corporation in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for the filing of the Certificate of Merger with the Secretary of State of the State of Florida in accordance with the FBCA.

SECTION 5.3 *Events Subsequent to Most Recent Fiscal Quarter.* Since the end of the most recent fiscal quarter, there has not been any material adverse change in the assets, liabilities, business, financial condition, operations, results of operations, or future prospects of the Surviving Corporation. Attached hereto as Exhibit 5.3 are unaudited financial statements for the Surviving Corporation as of October 31, 1999 and December 31, 1998 (the "Financial Statements"). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, are complete and correct in all material respects, and present fairly, in all material respects, the financial condition of the Surviving Corporation for the periods, provided, however, that the interim statements are subject to normal year-end adjustments and need not include footnotes which would be included in year-end statements pursuant to GAAP.

SECTION 5.4 *Absence of Undisclosed Liabilities.* Except as otherwise disclosed on Exhibit 5.4 hereto, the Surviving Corporation does not have any liabilities, either accrued or contingent (whether or not required to be reflected in financial statements, including the notes thereto, in accordance with GAAP), and whether due or to become due, other than (i) liabilities reflected in the unaudited consolidated balance sheet of the Surviving Corporation as of October 31, 1999 (the "Surviving Corporation Balance Sheet"), and (ii) normal or recurring liabilities incurred since the October 31 1999 balance sheet, in the ordinary course of business consistent with past practices.

SECTION 5.5 *Absence of Certain Changes or Events.* Since the date of the Surviving Corporation Balance Sheet, the Surviving Corporation has conducted its business only in the ordinary course, in a manner consistent with past practice, and there has not been (i) any Surviving Corporation Material Adverse Effect; (ii) any damage, destruction or loss (whether or not covered by insurance) with respect to the Surviving Corporation having a Surviving Corporation Material Adverse Effect; (iii) any material change by the Surviving Corporation in its accounting methods, principles or practices to which the Disappearing Corporation has not previously consented in writing; (iv) any revaluation by the Surviving Corporation of any of its assets having a Surviving Corporation Material Adverse Effect, including writing off notes or accounts receivable, other than in the ordinary course of business consistent with past practice, unless the Disappearing Corporation has previously consented in writing thereto; or (v) any other action or event that would have required the consent of the Disappearing Corporation had such action or event occurred after the date of this Agreement and that could reasonably be expected to result in a Surviving Corporation Material Adverse Effect.

SECTION 5.6 *Taxes.*

(a) For purposes of this Agreement, a "Tax" or, collectively, "Taxes" means any and all material federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts and any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) The Surviving Corporation has accurately prepared and timely filed all material federal, state, local and foreign returns, estimates, information statements and reports required to be filed at or before the Effective Date ("Returns") relating to any and all Taxes concerning or attributable to the Surviving Corporation's operations, and such Returns are true and correct in all material respects.

(c) The Surviving Corporation as of the Effective Date (i) will have paid all Taxes it is required to pay prior to the Effective Date, and (ii) will have withheld with respect to its employees all federal and state income taxes, FICA, FUTA and other Taxes required to be withheld, except where any failure to make such payment or withholding would not be reasonably likely to have a Surviving Corporation Material Adverse Effect.

(d) There is no Tax deficiency outstanding, proposed or assessed against the Surviving Corporation that is not reflected as a liability on the Surviving Corporation Balance Sheet nor has the Surviving Corporation executed any waiver of any statute of limitations on or extending the

period for the assessment or collection of any Tax (other than Taxes in the ordinary course of business in an amount that is not material to the Surviving Corporation taken together as a whole).

(e) The Surviving Corporation has no material liability for unpaid Taxes that has not been accrued for or reserved on the Surviving Corporation Balance Sheet, whether asserted or unasserted, contingent or otherwise.

SECTION 5.7 *Agreements, Contracts and Commitments.* The Surviving Corporation has not breached, or received in writing any claim or threat that it has breached, any of the terms or conditions of any agreement, contract or commitment with respect to agreements, contracts or commitments entered into by the Surviving Corporation ("Surviving Corporation Material Contracts"), in such a manner as would permit any other party to cancel or terminate the same or would permit any other party to collect material damages from the Surviving Corporation under any Surviving Corporation Material Contract. All Surviving Corporation Material Contracts are listed on Exhibit 5.7. Each Surviving Corporation Material Contract that has not expired or been terminated in accordance with its terms is in full force and effect and is not subject to any material default thereunder of which the Surviving Corporation is aware by any party obligated to the Surviving Corporation pursuant to a Surviving Corporation Material Contract. To the knowledge of the Surviving Corporation, none of the parties to the Surviving Corporation Material Contracts have terminated, or in any way expressed an intent to materially reduce or terminate the amount of business with the Surviving Corporation in the future.

SECTION 5.8 *Employment Contracts.* Except as set forth on the SC Disclosure Statement, the Surviving Corporation is not a party or subject to any contract of employment not terminable at will or any profit sharing, incentive compensation, bonus, thrift, savings or other Employee Benefit Plan providing for employer contributions.

SECTION 5.9 *Employee Benefit Plans.* The Surviving Corporation is not a party to and does not maintain any employee benefit plans or any related trust agreements or annuity contracts.

SECTION 5.10 *Litigation.* With the exception of any matters listed in Exhibit 5.10 hereto, there is no action, suit, or proceeding, claim, arbitration or investigation against the Surviving Corporation pending or as to which the Surviving Corporation has received any notice of assertion.

SECTION 5.11 *Compliance with Laws.* The Surviving Corporation has complied in all material respects with all applicable federal, state, local and foreign statutes, laws and regulations, and is not in violation of, and has not received any notices of violation with respect to, any such statute, law or regulation, with respect to the conduct of its business or the ownership or operation of its business, including the federal Foreign Corrupt Practices Act and all United States statutes, laws and regulations as from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States.

SECTION 5.12 Capitalization. The authorized capital stock of the Surviving Corporation consists of Five Million (5,000,000) shares of common stock, \$0.0001 par value, all of one class, of which Four Hundred Eighty Five Thousand (485,000) shares are validly issued and outstanding, fully paid and nonassessable. As of the date hereof, there are no bonds, debentures, notes or other indebtedness issued or outstanding having voting rights under ordinary circumstances. With the exception of the options listed on Exhibit 5.12 "Outstanding Options to Purchase Shares Held By Surviving Corporation Shareholders, Employees and Consultants," and as such Exhibit may be supplemented prior to the Effective Date, (except that the number of options granted to each named recipient on Exhibit 5.12 hereof shall not be increased and the total number of options set forth in Exhibit 5.12 shall not exceed 1,200,000) there are no options, warrants, calls, or other rights, agreements or commitments presently outstanding obligating the Surviving Corporation or any Surviving Corporation shareholder to issue, deliver, or sell shares of its capital stock, or obligating the Surviving Corporation or any Surviving Corporation shareholder to grant, extend or enter into any such option, warrant, call or other such right, agreement or commitment. With the exception of the vesting provisions, all of the terms and conditions of the options granted to any shareholder pursuant to the transactions contemplated by this Agreement shall be identical to other options issued under the Surviving Corporation's incentive stock option plan and listed in Exhibit 5.12 hereto.

SECTION 5.13 Environmental Matters. (i) To the knowledge of the Surviving Corporation, no real property currently or formerly owned or operated by the Company is contaminated with any Hazardous Substances to an extent or in a manner or condition now requiring remediation under any Environmental Law; (ii) no judicial or administrative proceeding is pending or to the knowledge of the Surviving Corporation threatened relating to the liability for any off-site disposal or contamination; and (iii) the Surviving Corporation has not received any claims or notices alleging liability under any Environmental Law, and the Surviving Corporation has no knowledge of any circumstances that could result in such claims. "Environmental Law" means any applicable federal, state or local law, regulation, order, decree, or judicial opinion or other agency requirement having the force and effect of law and relating to noise, odor, Hazardous Substance or the protection of the environment. "Hazardous Substance" means any toxic or hazardous substance that is regulated by or under the authority of any Environmental Law, including, but not limited to, any petroleum products, asbestos or polychlorinated biphenyls.

SECTION 5.14 Intellectual Property. Except as described on Exhibit 5.10, the Surviving Corporation is not currently infringing, nor has it infringed in the past, on any United States or international patent, copyright, trademark, service mark, trade dress, trade name or any other intellectual property right of any third party. Except as disclosed in Section 5.14 of the SC Disclosure Statement, there have been no claims made, and the Surviving Corporation has not received any notice, that the use by the Surviving Corporation of any of the patents, trademarks, trade names, service marks, brand marks, brand names, trade secrets, software, industrial designs and copyrights used by the Surviving Corporation, or any registration thereof or pending application therefor, or license or other contract relating thereto (collectively, the "Intellectual Property") conflicts with, infringes upon, violates or interferes with or constitutes an appropriation of any right, title, interest or goodwill, including, without limitation, any intellectual property right, patent,

trademark, trade name, service mark, brand mark, brand name, computer program, database, industrial design, copyright or any pending application therefor of any other person or entity. Section 5.14 of the SC Disclosure Statement sets forth a complete list and description of all Intellectual Property used by the Surviving Corporation in the conduct of its business. All of such Intellectual Property is owned or licensed by the Surviving Corporation as described in Section 5.14 of the SC Disclosure Statement.

SECTION 5.15 *Year 2000 Compliance.* The Surviving Corporation has undertaken all appropriate remediation efforts to insure that all systems of the Surviving Corporation are capable of calculating dates into the year 2000 and beyond, including any leap years ("Year 2000 Compliance"). Further, to the best of the Surviving Corporation's knowledge after specific inquiry of all of its material suppliers and vendors, the Surviving Corporation will not suffer a loss from interruption or cessation of business operations as a result of such suppliers, vendors or landlords failing to provide materials, labor or supplies for the operation of the Surviving Corporation as a result of such suppliers or vendors not having Year 2000 Capabilities.

SECTION 5.16 *Related Party Transactions.* The SC Disclosure Statement lists all agreements, extensions of credit, commitments, tax sharing or allocation agreements or other contractual agreements of any kind between the Surviving Corporation, and any past or present director, officer or five percent (5%) shareholder of the Surviving Corporation or any entity controlled by any combination of the foregoing or, to the knowledge of the Surviving Corporation, their spouses, children, parents or siblings or their affiliates.

SECTION 5.17 *Status of Shares.* All shares to be issued by the Surviving Corporation to the shareholders of the Disappearing Corporation under the terms of this Agreement will be validly issued, fully paid and non-assessable.

SECTION 5.18 *Articles and Bylaws.* The copy of the Surviving Corporation's Certificate of Incorporation and Bylaws provided to the Disappearing Corporation in the Disclosure Statement provided to the Disappearing Corporation are true, correct, and complete and have not been amended.

SECTION 5.19 *Tax Returns.* The Surviving Corporation represents and warrants to Disappearing Corporation that it has filed timely all federal, state and local tax returns.

SECTION 5.20 *Full Disclosure.* The Surviving Corporation is not aware of any facts pertaining to the Surviving Corporation or its business which could have a Surviving Corporation Material Adverse Effect or which are likely in the future to affect adversely the Surviving Corporation or its business and which have not been disclosed in this Agreement, the Disclosure Statement or the Financial Statements. None of the representations or warranties of Surviving Corporation in this Agreement and no certificate furnished or to be furnished by Surviving Corporation to Disappearing Corporation pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact,

or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF DISAPPEARING CORPORATION

SECTION 6.1 Organization. The Disappearing Corporation is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, has all requisite corporate power to own, lease and operate its property and to carry on its business as now being conducted, and is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction in which the failure to be so qualified would have a Disappearing Corporation Material Adverse Effect.

When used in connection with the Disappearing Corporation the term "Disappearing Corporation Material Adverse Effect" means any change, event or effect that is materially adverse to the business, assets (including intangible assets), liabilities, financial condition, operations or results of operations of the Disappearing Corporation; *provided, however*, that the following shall not be deemed to constitute a "Disappearing Corporation Material Adverse Effect": (i) an adverse change in or effect on the financial condition, revenues or gross margins of the Disappearing Corporation (or the direct consequences thereof) following the date of this Agreement to the extent attributable to (A) a delay of, reduction in or cancellation or change in the terms of product licenses by customers of the Disappearing Corporation, (B) a slowdown in the activity of the Disappearing Corporation's sales organization, or (C) the loss of any officer or key employee of the Disappearing Corporation which is directly and primarily attributable to the transactions contemplated by this Agreement.

The Disappearing Corporation does not own any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any such entity or similar interest in, any corporation, limited liability company, partnership, joint venture or other business association or entity, excluding securities of any publicly traded company held for investment by the Disappearing Corporation and comprising less than five percent (5%) of the outstanding stock of such company.

SECTION 6.2 *Authority; No conflict; Required Filings and Consents.*

(a) The Disappearing Corporation has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate and stockholder action on the part of the Disappearing Corporation, subject only (in the case of this Agreement and certain of the transactions contemplated hereby) to the approval of the Merger by each of the Disappearing Corporation and the Surviving Corporation's stockholders in accordance with the FBCA and DGCL, respectively. This Agreement has been duly executed and delivered by the Disappearing Corporation and constitutes the valid and

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binding obligations of the Disappearing Corporation, enforceable in accordance with their respective terms.

(b) The execution and delivery of this Agreement by the Disappearing Corporation does not, and the consummation of the transactions contemplated hereby will not (i) conflict with, or result in any violation or breach of any provision of the Articles of Incorporation or Bylaws of the Disappearing Corporation (in each case as heretofore amended), (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or other agreement, instrument or obligation to which the Disappearing Corporation is a party or by which any of them or any of their respective properties or assets may be bound, or (iii) conflict with or violate any permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Disappearing Corporation or any of its Subsidiaries, if any, or any of their respective properties or assets.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to the Disappearing Corporation in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware in accordance with the FBCA.

SECTION 6.3 *Financial Statements.* The Disappearing Corporation will provide, as soon as practicable, the Surviving Corporation with financial statements for the period ended October 31, 1999. All financial statements delivered to the Surviving Corporation (including the related notes and schedules) have been and shall be prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby and present fairly, in all material respects, the financial condition of the Disappearing Corporation for the periods, provided, however, that the interim statements are subject to normal year-end adjustments and need not include footnotes which would be included in year-end statements pursuant to GAAP.

SECTION 6.4 *Absence of Undisclosed Liabilities.* The Disappearing Corporation does not have any liabilities, either accrued or contingent (whether or not required to be reflected in financial statements, including the notes thereto, in accordance with GAAP), and whether due or to become due, which individually or in the aggregate, are or would be reasonably likely to have a Disappearing Corporation Material Adverse Effect, other than (i) liabilities reflected in the unaudited consolidated balance sheet of the Disappearing Corporation as of October 31, 1999 ("Disappearing Corporation Balance Sheet"), and (ii) normal or recurring liabilities incurred since the October 31, 1999 balance sheet, in the ordinary course of business consistent with past practices.

SECTION 6.5 *Absence of Certain Changes or Events.* Since the date of the Disappearing Corporation Balance Sheet, the Disappearing Corporation has conducted its businesses only in the ordinary course, in a manner consistent with past practice, and there has not been (i) any

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Disappearing Corporation Material Adverse Effect; (ii) any damage, destruction or loss (whether or not covered by insurance) with respect to the Disappearing Corporation having a Disappearing Corporation Material Adverse Effect; (iii) any material change by the Disappearing Corporation in its accounting methods, principles or practices to which the Surviving Corporation has not previously consented in writing; (iv) any revaluation by the Disappearing Corporation of any of its assets having a Disappearing Corporation Material Adverse Effect, including writing off notes or accounts receivable, other than in the ordinary course of business consistent with past practice, unless the Surviving Corporation has previously consented in writing thereto; or (v) any other action or event that would have required the consent of the Surviving Corporation had such action or event occurred after the date of this Agreement and that could reasonably be expected to result in a Disappearing Corporation Material Adverse Effect.

SECTION 6.6 *Taxes.*

(a) The Disappearing Corporation has accurately prepared and timely filed all material federal, state, local and foreign returns, estimates, information statements and reports required to be filed at or before the Effective Date ("Returns") relating to any and all Taxes concerning or attributable to the Disappearing Corporation or any of its Subsidiaries, if any, or to their operations, and such Returns are true and correct in all material respects.

(b) The Disappearing Corporation as of the Effective Date (i) will have paid all Taxes it is required to pay prior to the Effective Date, and (ii) will have withheld with respect to its employees all federal and state income taxes, FICA, FUTA and other Taxes required to be withheld, except where any failure to make such payment or withholding would not be reasonably likely to have a Disappearing Corporation Material Adverse Effect.

(c) There is no Tax deficiency outstanding, proposed or assessed against the Disappearing Corporation that is not reflected as a liability on the Disappearing Corporation Balance Sheet nor has the Disappearing Corporation executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax (other than Taxes in the ordinary course of business in an amount that is not material to the Disappearing Corporation).

(d) The Disappearing Corporation has no material liability for unpaid Taxes that has not been accrued for or reserved on the Disappearing Corporation Balance Sheet, whether asserted or unasserted, contingent or otherwise.

SECTION 6.7 *Agreements, Contracts and Commitments.* The Disappearing Corporation has not breached, or received in writing any claim or threat that it has breached, any of the terms or conditions of any agreement, contract or commitment with respect to agreements, contracts or commitments entered into by the Disappearing Corporation ("Disappearing Corporation Material Contracts"), in such a manner as would permit any other party to cancel or terminate the same or would permit any other party to collect material damages from the Disappearing Corporation under any Disappearing Corporation Material contract. Each Disappearing Corporation Material

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Contract that has not expired or been terminated in accordance with its terms is in full force and effect and is not subject to any material default thereunder of which the Disappearing Corporation is aware by any party obligated to the Disappearing Corporation pursuant to such Disappearing Corporation Material contract. To the knowledge of the Disappearing Corporation, none of the parties to the Disappearing Corporation Material Contracts have terminated, or in any way expressed an intent to materially reduce or terminate the amount of business with the Disappearing Corporation in the future.

SECTION 6.8 *Employment Contracts.* Except as set forth on the Disclosure Statement, the Disappearing Corporation is not a party or subject to any contract of employment not terminable at will or any profit sharing, incentive compensation, bonus, thrift, savings or other Employee Benefit Plan providing for employer contributions.

SECTION 6.9 *Employee Benefit Plans.* The Disappearing Corporation is not a party to and does not maintain any employee benefit plans or any related trust agreements or annuity contracts.

SECTION 6.10 *Litigation.* With the exception of any matters specified in Exhibit 6.10 hereto, there is no action, suit or proceeding, claim, arbitration or investigation against the Disappearing Corporation pending or as to which the Disappearing Corporation has received any notice of assertion.

SECTION 6.11 *Compliance with Laws.* The Disappearing Corporation has complied in all material respects with all applicable federal, state, local and foreign statutes, laws and regulations, and is not in violation of, and has not received any notices of violation with respect to, any such statute, law or regulation, with respect to the conduct of its business or the ownership or operation of its business, including the federal Foreign Corrupt Practices Act and all United States statutes, laws and regulations as from time to time govern the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States.

SECTION 6.12 *Capitalization.* The authorized capital stock of the Disappearing Corporation consists of One Thousand (1,000) shares of common stock, \$0.01 par value, of which One Thousand (1,000) shares are validly issued and outstanding, fully paid and nonassessable. As of the date hereof, there are no bonds, debentures, notes or other indebtedness issued or outstanding having voting rights under ordinary circumstances. With the sole exception of those warrants listed on Exhibit 6.12 hereto, there are no options, warrants, calls, or other rights, agreements or commitments presently outstanding obligating the Disappearing Corporation or any Disappearing Corporation shareholder to issue, deliver, or sell shares of its capital stock, or obligating the Disappearing Corporation or any Disappearing Corporation shareholder to grant, extend or enter into any such option, warrant, call or other such right, agreement or commitment.

SECTION 6.13 *Intellectual Property.* The Disappearing Corporation is not currently infringing, nor has it infringed in the past, on any United States or international patent, copyright,

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trademark, service mark, trade dress, trade name or any other intellectual property right of any third party. The Disappearing Corporation has delivered to Surviving Corporation a true and correct copy of that certain exclusive License Agreement, between Disappearing Corporation and The Research Foundation of the State University of New York, dated as of November 4, 1999 and attached hereto as Exhibit 6.13 (the "License Agreement"). The License Agreement is in full force and effect and is free and clear of any and all liens or encumbrances.

SECTION 6.14 Year 2000 Compliance. The Disappearing Corporation has undertaken all appropriate remediation efforts to insure that all systems of the Disappearing Corporation are capable of calculating dates into the year 2000 and beyond, including any leap years ("Year 2000 Compliance"). Further, to the best of the Disappearing Corporation's knowledge after specific inquiry of all of its material suppliers and vendors, the Disappearing Corporation will not suffer a loss from interruption or cessation of business operations as a result of such suppliers, vendors or landlords failing to provide materials, labor or supplies for the operation of the Disappearing Corporation as a result of such suppliers or vendors not having Year 2000 Capabilities.

SECTION 6.15 Related Party Transactions. The Disclosure Statement lists all agreements, extensions of credit, commitments, tax sharing or allocation agreements or other contractual agreements of any kind between the Disappearing Corporation, and any past or present director, officer or five percent (5%) shareholder of the Disappearing Corporation or, to the knowledge of the Disappearing Corporation, their spouses, children, parents or siblings or their affiliates.

SECTION 6.16 Articles and Bylaws. The copy of the Disappearing Corporation's Certificate of Incorporation and Bylaws provided to the Surviving Corporation in the Disclosure Statement provided to the Surviving Corporation are true, correct, and complete and have not been amended.

SECTION 6.17 Full Disclosure. The Disappearing Corporation is not aware of any facts pertaining to the Disappearing Corporation or its business which could have a Disappearing Corporation Material Adverse Effect or which are likely in the future to affect adversely the Disappearing Corporation or its business and which have not been disclosed in this Agreement, the DC Disclosure Statement or the Financial Statements. None of the representations or warranties of Disappearing Corporation in this Agreement and no certificate furnished or to be furnished by Disappearing Corporation to Disappearing Corporation pursuant to this Agreement or in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

SECTION 6.18 Investment Purposes. (a) Drs. Kaufman, Wax and Liang (the "DC Stockholders") (i) understand that the shares of Common Stock to be issued to the DC Stockholders pursuant to this Agreement have not been registered for sale under any federal or state securities laws and that such shares of Common Stock are being offered and sold to the DC Stockholders pursuant

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to an exemption from registration provided under Section 4(2) of the Securities Act, (ii) agree that the DC Stockholders are acquiring such shares of Common Stock for their own account for investment purposes and without a view to any distribution thereof, (iii) acknowledge that the representations and warranties set forth in this Section 6.18 are given with the intention that Surviving Corporation rely on them for purposes of claiming such exemption, and (iv) understand that they must bear the economic risk of the investment in such shares of Common Stock for an indefinite period of time as such shares of Common Stock cannot be sold unless subsequently registered under such laws or unless an exemption from registration is available.

(b) The DC Stockholders agree that the shares of Common Stock issued to them pursuant to this Agreement may not be sold or otherwise transferred for value unless (i) a registration statement with respect thereto has become effective under the Securities Act or (ii) the Surviving Corporation shall receive an opinion of counsel satisfactory to the Surviving Corporation that such registration is not required, and consent that any transfer agent of Surviving Corporation may be instructed not to transfer any such shares of Common Stock unless it receives satisfactory evidence of compliance with the foregoing provisions, and that there may be endorsed upon any certificate evidencing such shares of Common Stock an appropriate legend calling attention to the foregoing restrictions on transferability of such shares of Common Stock.

(c) The DC Stockholders (i) are aware of Surviving Corporation's business and affairs and financial condition and have acquired sufficient information about Surviving Corporation to reach an informed and knowledgeable decision to acquire the shares of Common Stock to be issued to the DC Stockholders pursuant to this Agreement, (ii) have discussed Surviving Corporation and its plans, operations and financial condition with Surviving Corporation's officers, (iii) have received all such information as they have deemed necessary and appropriate to enable them to evaluate the financial risk inherent in making an investment in the shares of Common Stock, (iv) have sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of their investment in the shares of Common Stock, and (v) are capable of bearing the economic risks of such investment, including a complete loss of their investment in the shares of Common Stock.

SECTION 6.19 Tax Returns. Disappearing Corporation represents and warrants to Surviving Corporation that it has filed timely all federal, state and local tax returns.

SECTION 6.20 Events Subsequent to Most Recent Fiscal Quarter. Since the end of the most recent fiscal quarter, there has not been any material adverse change in the assets, liabilities, business, financial condition, operations, results of operations, or future prospects of Disappearing Corporation.

ARTICLE 7

CONDUCT OF BUSINESS

SECTION 7.1 *Covenants of the Constituent Corporations.*

(a) Except as expressly contemplated by this Agreement, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to Section 8.7 or the Effective Date, each Constituent Corporation agrees, except to the extent that the Constituent Corporations' shall otherwise consent in writing (which consent shall not be unreasonably withheld or delayed), to carry on its business in the usual, regular and ordinary course in substantially the same manner as previously conducted, to pay its debts and taxes when due, subject to good faith disputes over such debts or taxes, to pay or perform its other obligations when due, and to use all reasonable efforts consistent with past practices and policies to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees and others having business dealings with each Constituent Corporation.

(b) Without limiting the generality of the foregoing, neither Constituent Corporation shall, without prior written consent of the other Constituent Corporation (which consent shall not be unreasonably withheld or delayed):

(i) transfer or license to any person or entity or otherwise extend, amend or modify any rights to the Constituent Corporations' intellectual property rights other than in the ordinary course of business consistent with past practices;

(ii) declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock, or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or purchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service by such party;

(iii) issue, deliver or sell or authorize or propose the issuance, delivery or sale of, any shares of its capital stock or securities convertible into shares of its capital stock, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue any such shares or other convertible securities;

(iv) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership or other business organization or division, except as set forth in Exhibit 7.1 hereto;

(v) sell, lease, license or otherwise dispose of any of its properties or assets which are material, individually or in the aggregate, to the business of the Constituent Corporations and its Subsidiaries, if any, taken as a whole, except for transactions entered into in the ordinary course of the Constituent Corporations' business consistent with past practice;

(vi) take any action to (1) increase or agree to increase the compensation payable or to become payable to its officers or employees, except for increases in salary or wages of employees in accordance with agreements entered into before the date of this Agreement or otherwise in the ordinary course of the Constituent Corporations' business consistent with past practices, (2) enter into any collective bargaining agreement, or (3) establish, adopt, enter into or amend in any material respect any bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other plan, trust, fund, policy or arrangement for the benefit of any directors, officers or employees;

(vii) amend or propose to amend its Certificate of Incorporation, Articles of Incorporation, or Bylaws, except as contemplated in Article 1 of this Agreement; or

(viii) take, or agree in writing or otherwise to take, any of the actions described in the foregoing clauses (i) through (vii), or any action which is reasonably likely to make any of the Constituent Corporations' representations or warranties contained in this Agreement untrue or incorrect in any material respect on the date made (to the extent so limited) or as of the Effective Date.

ARTICLE 8

ADDITIONAL AGREEMENTS

SECTION 8.1 *Indemnification.*

(a) The Disappearing Corporation and Arie E. Kaufman, Jerome Z. Liang and Mark Wax individually, jointly and severally agree to indemnify and hold harmless the Surviving Corporation from and against liability, damage, cost or expense, including reasonable attorneys' fees incurred as a result of breach by the Disappearing Corporation of any material representation, warranty, agreement or covenant of the Disappearing Corporation hereunder or contained in any agreement executed in connection herewith.

(b) The Surviving Corporation agrees to indemnify and hold harmless the Disappearing Corporation and the stockholders of the Disappearing Corporation from and against any liability, damage, cost or expense, including reasonable attorneys' fees incurred as a result of breach by the Surviving Corporation of any material representation, warranty, agreement or covenant of the Surviving Corporation hereunder or contained in any agreement executed in connection herewith.

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SECTION 8.2 *Stockholders' Meeting.* As promptly as practicable after the date hereof, each Constituent Corporation shall either duly call, give notice of, convene and hold a meeting of its stockholders for the purpose of voting upon the Merger and this Agreement or obtain written consent of the stockholders approving the Merger and this Agreement. The Constituent Corporations shall coordinate and cooperate with respect to the timing of such meetings or written consents and shall use their respective reasonable efforts to hold such meetings or obtain written consents on the same day as soon as practicable after the date hereof.

SECTION 8.3 *Employment Agreements.* The Surviving Corporation shall execute and deliver employment agreements, in substantially the form attached hereto as Exhibit 8.3 to each of Arie E. Kaufman, Jerome Z. Liang and Mark Wax.

SECTION 8.4 *Shareholders Agreement.* Shareholders representing at least 75% of the Surviving Corporation's issued and outstanding shares and each of Drs. Kaufman, Wax and Liang shall execute and deliver, effective as of the Effective Date, a shareholders agreement substantially in the form attached hereto as Exhibit 8.4 (the "Shareholders Agreement").

SECTION 8.5 *Options.* The Surviving Corporation shall issue options under its 1999 Incentive Stock Plan as shown on Exhibit 8.5.

SECTION 8.6 *Reasonable Efforts.* Each Constituent Corporation shall use all reasonable efforts to obtain all necessary consents, waivers and approvals, and to make all necessary notifications or filings under any of the Disappearing Corporation's or the Surviving Corporation's material agreements, licenses or leases as may be necessary or advisable to consummate the Merger and the other transactions contemplated by this Agreement.

SECTION 8.7 *Abandonment of Merger.* Anything herein to the contrary notwithstanding, this Agreement may be terminated and the Merger abandoned at any time prior to the Effective Date of the Merger either before or after submission to or approval by the shareholders of the Constituent Corporations:

(a) By mutual written agreement of the Board of Directors of each Constituent Corporation.

(b) At the election of the Board of Directors of either Constituent Corporation if:

(i) the Merger shall not have been consummated before February 28, 2000 or such later date as shall be mutually agreed upon by the Board of Directors of each Constituent Corporation; or

(ii) the other Constituent Corporation shall fail to perform or satisfy any of the covenants contained in this Agreement and to be performed by such Constituent Corporation as of the Effective Date; or

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(iii) any condition set forth in this Agreement (including in Article 9) hereof to be complied with, performed or met by the other Constituent Corporation or any other person (not a party hereto) or government body or agency shall not have been complied with, performed or met.

(c) In the event of termination of this Agreement as provided in this Section 8.7, this Agreement shall forthwith become null and void and there shall be no liability on the part of any party hereto.

ARTICLE 9

CONDITIONS TO MERGER

The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction prior to the Effective Date of the following conditions:

SECTION 9.1 *Stockholder Approvals.* This Agreement and the Merger shall have been approved and adopted by the requisite vote of holders of the Disappearing Corporation Common Stock pursuant to the DGCL and the Articles of Incorporation of the Disappearing Corporation, and the issuance of the Surviving Corporation Common Stock in connection with the Merger shall have been approved by the requisite vote of the holders of the Surviving Corporation Common Stock pursuant to the FBCA, and the Certificate of Incorporation of the Surviving Corporation.

SECTION 9.2 *Approvals.* Receipt of all authorizations, consents, orders or approvals of any Governmental Entity required to consummate the transactions contemplated by this Agreement.

SECTION 9.3 *No Injunctions or Restraints; Illegality.* No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger or limiting or restricting the Disappearing Corporation's conduct or operation of the business of the Disappearing Corporation or the Surviving Corporation after the Merger shall have been issued and be in effect, nor shall any proceeding brought by a domestic administrative agency or commission or other domestic Governmental entity, seeking any of the foregoing be pending; nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger which makes the consummation of the Merger illegal or prevents or prohibits the Merger.

SECTION 9.4 *Additional Conditions to Obligations of the Disappearing Corporation.* The obligations of the Disappearing Corporation to effect the Merger are subject to the satisfaction of each of the following conditions, any of which may be waived, in writing, exclusively by the Disappearing Corporation:

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(a) The representations and warranties of the Surviving Corporation set forth in this Agreement which are qualified as to materiality shall be true and correct and any such representation or warranty which is not so qualified shall be true and correct in all material respects as of the date of this Agreement and (except to the extent such representation speak as of an earlier date) as of the Effective Date as though made on and as of the Effective Date, except for changes contemplated by this Agreement.

(b) The Surviving Corporation shall have performed all obligations required to be performed by them under this Agreement at or prior to the Effective Date; and the Disappearing Corporation shall have received a certificate signed on behalf of the chief executive officer and chief financial officer or treasurer of the Surviving Corporation to such effect.

(c) Drs. Kaufman, Wax and Liang shall be employed by Surviving Corporation pursuant to their respective employment agreements.

(d) No Surviving Corporation Material Adverse Effect shall have occurred between the date of execution of this Agreement and the Effective Date.

(e) The representations and warranties with respect to Surviving Corporation's capital structure shall be true and correct as of the Effective Date.

(f) Surviving Corporation shall deliver to Disappearing Corporation an opinion of Surviving Corporation's counsel that the Viatronix Offering was made in accordance with the Securities Act or an exemption therefrom.

(g) The conditions of Section 3.1 of this Agreement shall have been met by the Surviving Corporation.

SECTION 9.5 *Additional Conditions to Obligations of the Surviving Corporation.* The obligations of the Surviving Corporation to the Merger are subject to the satisfaction of each of the following conditions, any of which may be waived, in writing, exclusively by the Surviving Corporation:

(a) The representations and warranties of the Disappearing Corporation set forth in this Agreement which are qualified as to materiality shall be true and correct and any such representation or warranty which is not so qualified shall be true and correct in all material respects as of the date of this Agreement and (except to the extent such representation speak as of an earlier date) as of the Effective Date as though made on and as of the Effective Date, except (i) for changes contemplated by this Agreement, or (ii) where the failure to be true and correct would not be reasonably likely to have a Material Adverse Effect, and the Surviving Corporation shall have received a certificate

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signed on behalf of the Disappearing Corporation by the chief executive officer of the Disappearing Corporation to such effect.

(b) The Disappearing Corporation shall have performed all obligations required to be performed by them under this Agreement at or prior to the Effective Date; and the Surviving Corporation shall have received a certificate signed on behalf of the Disappearing Corporation by the chief executive officer of the Disappearing Corporation to such effect.

(c) The Shareholders Agreement shall have been duly executed and delivered by the shareholders of the Disappearing Corporation.

ARTICLE 10

MISCELLANEOUS

SECTION 10.1 *Further Assurances.* The Constituent Corporations agree from time to time to execute and deliver such further and other transfers, assignments and do all matters and things which may be necessary to effectively and completely carry out the intentions of this Agreement.

SECTION 10.2 *Survival of Representations, Warranties and Agreements.* All of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Date for a period of two (2) years.

SECTION 10.3 *Notices.* All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed), sent by nationally recognized overnight courier or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) If to Viatronix Incorporated to: Richard B. Williams, Director
257 Toll Gate Boulevard
Islamorada, FL 33036
Telephone: 305-664-4054
Facsimile:

With a copy to:

Charles J. Duffy, III, Esq.
Gunster, Yoakley, Valdes-Fauli
& Stewart, P.A.
Broward Financial Centre, Suite 1400
500 East Broward Boulevard
Fort Lauderdale, FL 33394

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Telephone: (954) 462-2000

Facsimile: (954) 523-1722

(b) If to EndoMed, to:

c/o Kronish Lieb Weiner & Hellman LLP
1114 Avenue of the Americas
New York, New York 10036-7798
Telephone: (212) 479-6000
Facsimile: (212) 479-6275

With a copy to:

Russell S. Berman, Esq.
Kronish Lieb Weiner & Hellman LLP
1114 Avenue of the Americas
New York, New York 10036-7798
Telephone: (212) 479-6000
Facsimile: (212) 479-6275

SECTION 10.4 *Press Releases and Announcements.* No Constituent Corporation shall issue any press release or announcement relating to the subject matter of this Agreement without the prior written approval of the other Constituent Corporation.

SECTION 10.5 *No Third-Party Beneficiaries.* This Agreement shall not confer any rights or remedies upon any person other than the Constituent Corporations and their respective successors and permitted assigns.

SECTION 10.6 *Entire Agreement.* This Agreement (including the documents referred to herein) constitutes the entire Agreement among the Constituent Corporations and supersedes any prior understandings, agreements, or representations by or among the Constituent Corporations, written or oral, that may have related in any way to the subject matter hereof including, the letter of intent dated October 15, 1999.

SECTION 10.7 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Constituent Corporations named herein and their respective successors and permitted assigns. No Constituent Corporation may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Constituent Corporation.

SECTION 10.8 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

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SECTION 10.9 Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 10.10 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Florida without regard to principles of conflict of laws.

SECTION 10.11 Amendments and Waivers. The Constituent Corporations may mutually amend any provision of this Agreement at any time prior to the Effective Date with the prior authorization of each respective Board of Directors. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by both Constituent Corporations. No waiver by either Constituent Corporation of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

SECTION 10.12 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the Parties agree that the court making the termination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

SECTION 10.13 Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Broward County, Florida, and that, therefore, without limiting the jurisdiction or venue of any other federal or state courts, each of the parties irrevocably and unconditionally (a) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Broward County or the court of the United States, Southern District of Florida; (b) consents to the jurisdiction of each such court in any suit, action or proceeding; (c) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (d) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

SECTION 10.14 Remedies Cumulative. Except as otherwise expressly provided herein, no remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each

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and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

[SIGNATURES APPEAR ON NEXT PAGE]

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IN WITNESS WHEREOF, the parties to this agreement, pursuant to authority duly given by their respective boards of directors, have caused these presents to be executed by the chief executive officer, secretary and certain directors of each party hereto, and the corporate seal affixed.

VIATRONIX INCORPORATED

By: Richard B. Williams
Richard B. Williams, Director

ENDOMED CORPORATION

By: A. Kaufman
President

A. Kaufman
Arie E. Kaufman

Jerome Z. Liang
Jerome Z. Liang

Mark R. Wax
Mark R. Wax