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MERGER OR SHARE EXCHANGE

LIVEOPS.COM, INC.

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ARTICLES OF MERGER**OF****CALLCAST, INC.**
(a Delaware corporation)**INTO****LIVEOPS.COM, INC.**
(a Florida corporation)FILED
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Under Sections 607.1105 and 607.1107 of the
Florida Business Corporation Act

The undersigned corporations hereby certify that:

1. CallCast, Inc., a Delaware corporation (the "Disappearing Corporation") and LiveOps.com, Inc., a Florida corporation (the "Surviving Corporation") have agreed to a plan of merger (the "Plan of Merger") pursuant to the Merger Agreement (the "Merger Agreement") dated May 27, 2003 among The Disappearing Corporation, the Surviving Corporation, William J. Trenchard (as Securityholder Representative) (with respect to Articles 9 and 10 only), Stephen Doumar and Douglas Feirstein (with respect to Articles 9 and 10 only), and Cupertino National Bank d/b/a Greater Bay Trust Company (as escrow agent). The Merger Agreement contains all of the terms, conditions and provisions of this proposed merger (the "Merger"), including, without limitation, the manner and basis of converting the shares of the common stock of the Disappearing Corporation into the securities of the Surviving Corporation.

2. The effective date of the Merger shall be the date of the filing of these Articles of Merger with the Florida Department of State and the filing of a Certificate of Merger with the Delaware Secretary of State.

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3. The Plan of Merger was adopted and approved by at least a majority of the stockholders of the Disappearing Corporation on May 27, 2003 and by all of the members of the Board of Directors of the Disappearing Corporation on May 27, 2003. The Plan of Merger was adopted and approved by the Board of Directors of the Surviving Corporation on May 27, 2003. The approval of Plan of Merger by the shareholders of the Surviving Corporation was not required pursuant to Florida Statutes Section 607.1103(7).

4. The Merger is permitted by the laws of the State of Delaware and is in compliance therewith.

[SIGNATURES CONTAINED ON NEXT PAGE]

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IN WITNESS WHEREOF, these Articles of Merger have been executed on behalf of the Surviving Corporation and the Disappearing Corporation by their respective duly authorized officers as of June 25, 2003.

CALLCAST, INC.

By:

William J. Trenchard, President

LIVEOPS.COM, INC.,

By:

Name: DOUGLAS FEINSTEIN
Title: PRESIDENT

MERGER AGREEMENT and PLAN OF MERGER

THIS MERGER AGREEMENT is made and entered into on May 27, 2003 by and between **LIVEOPS.COM, INC.**, a Florida corporation (the "Surviving Corporation"), and **CALLCAST, INC.**, a Delaware corporation (the "Company"), and with respect to Articles 9 and 10 only **WILLIAM J. TRENCHARD** as securityholder representative (the "Securityholder Representative") and **CUPERTINO NATIONAL BANK d/b/a GREATER BAY TRUST COMPANY**, as escrow agent (the "Escrow Agent"). **STEVEN DOUMAR** and **DOUGLAS FEIRSTEIN** (each, a "Surviving Corporation Shareholder") are executing this Agreement for the purposes of Articles 9 and 10 only.

RECITALS:

The Surviving Corporation desires to acquire, through a merger of the Company with and into the Surviving Corporation, with the Surviving Corporation being the Surviving Corporation in the merger, all of the outstanding shares of the capital stock of the Company upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and promises contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

(a) "Affiliate" shall mean, as to any Person (as defined herein), any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

(b) "Aggregate Common Number" shall mean the aggregate number of Company Shares outstanding immediately prior to the Effective Time (including all Company Shares issued or issuable upon exercise of all unvested and vested Company Options outstanding immediately prior to the Effective Time that do not terminate or expire unexercised as of the Effective Time).

(c) "Agreement" shall mean this Merger Agreement together with the Exhibits and Schedules attached hereto, and the certificates and instruments to be executed and delivered by the respective parties at the Closing in connection herewith.

(d) "Assets" shall mean all of the assets of any kind owned by a Party (as defined herein), including, without limitation, tangible and intangible assets, wherever located.

(e) "Business" shall mean (i) all business operations and activities which a Party is presently conducting or pursuing, (ii) the design, development, manufacture and sale of all products or services currently being contemplated or proposed by a Party in connection with its Business.

(f) "Claims Period" shall mean the period beginning on the Closing Date and ending at 11:59 p.m., local Fort Lauderdale, Florida time, on the 365th day following the Closing Date.

(g) "Closing Date" shall mean the date upon which the Effective Time occurs.

(h) "COBRA" shall mean the provisions of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and all regulations thereunder.

(i) "Code" shall mean the Internal Revenue Code of 1986, as amended.

(j) "Common Exchange Ratio" shall mean the quotient, expressed as a decimal carried out to five (5) places, obtained by dividing (i) the Merger Consideration by (ii) the Aggregate Common Number.

(k) "Common Stock" shall mean the \$0.001 par value per share common stock of the Surviving Corporation.

(l) "Company Options" shall mean all options to purchase Company Shares (as defined herein) as listed on Schedule 1.1(f) hereto.

(m) "Company Shares" shall mean shares of the \$0.001 par value per share common stock of the Company.

(n) "Company Stockholders" shall mean all holders of Company Shares.

(o) "Convertible Debt" shall mean the outstanding convertible debt obligations of the Company as listed on Schedule 1.1(o) hereto.

(p) "DGCL" shall mean the General Corporation Law of the State of Delaware.

(q) "Employee Benefit Plan" shall mean any (i) non-qualified deferred compensation or retirement plan or arrangement, (ii) qualified defined contribution retirement plan or arrangement, (iii) qualified defined benefit retirement plan or arrangement (including any

multiemployer plan), (iv) employee welfare benefit plan or fringe benefit plan or program or (v) any similar plan, arrangement or program which is maintained, administered or contributed to by the Company, or which covers any employee or former employee of the Company by reason of such employee's employment by the Company.

(r) "Encumbrance" shall mean any claim, lien, pledge, option, charge, security interest, right-of-way, encroachment, reservation, restriction, encumbrance, or other right of any Person, or any other restriction or limitation of any nature whatsoever, affecting title to the Company Shares or the Common Stock (as applicable), or the Assets, the Tangible Personal Property, the Intellectual Property or any other assets of a Party which exists to that Party's Knowledge (as defined herein).

(s) "Enforceability Limitations" shall mean (i) bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights and (ii) the discretion of the appropriate court with respect to specific performance, injunctive relief or other forms of equitable remedies.

(t) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

(u) "Financial Statements" shall mean the consolidated unaudited financial statements for the fiscal year ended December 31, 2002 for the Surviving Corporation, and for the fiscal year ended September 30, 2002 for the Company, as delivered to the other Party, copies of which are attached hereto as Exhibit I.1(u).

(v) "Founders" shall mean William J. Trenchard and Wendell Brown.

(w) "GAAP" shall mean, with respect to all accounting matters and issues, generally accepted accounting principles as in effect from time to time in the United States.

(x) "Governmental Authority" shall mean any federal, state, local or foreign government, or any political subdivision of any of the foregoing, or any court, agency or other entity, body, organization or group, exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government, or any supranational body.

(y) "Governmental Requirement" shall mean any published law, statute, ordinance, directive or regulation of any Governmental Authority now in effect.

(z) "Income Tax Liability" shall mean liability for any federal, state, local or foreign income, business and occupation or similar Taxes payable by a Party to any Governmental Authority attributable to the operations and activities of, or otherwise incurred or existing with respect to, that Party for any period ending on or prior to the Closing Date, including, without limitation, Taxes computed through the Closing Date with respect to any partial taxable year as if such partial taxable year ended on the close of business on the Closing Date.

(aa) "Insurance" shall mean any fire, product liability, automobile liability, general liability, worker's compensation, medical insurance stop-loss coverage or other form of insurance of a Party's Business, and any tail coverage purchased with respect thereto.

(bb) "Intellectual Property" shall mean all intellectual property used to conduct a Party's Business including, without limitation, (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and re-examinations thereof, (ii) all trademarks, service marks, trade dress, logos, trade names, domain names and corporate names (including, without limitation, the names "CallCast" and "LiveOps", as applicable), together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all copyrightable works, all copyrights, and all applications, registrations and renewals in connection therewith, (iv) all mask works and all applications, registrations, and renewals in connection therewith, (v) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (vi) all computer software (including code and related documentation, but excluding any third party data processed by a Party) other than off-the-shelf computer software subject to shrinkwrap or clickwrap licenses or purchased rather than licensed and (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

(cc) "Interim Financial Statements" shall mean, as applicable, the consolidated unaudited interim financial statements of (i) the Company as of and for the six (6) month period ended March 31, 2003, as delivered to the Surviving Corporation, and (ii) the Surviving Corporation as of and for the three (3) month period ended March 31, 2003, as delivered to the Company. Copies of all Interim Financial Statements are attached hereto as Exhibit 1.1(cc).

(dd) "Letter of Intent" shall mean the Letter of Intent dated February 24, 2003 among the Company, the Surviving Corporation and the Founders, a copy of which is attached hereto as Exhibit 1.1(dd).

(ee) "Knowledge" shall mean, for the Company, the actual knowledge of any of the officers or directors of the Company or any Founder, or for the Surviving Corporation, the actual knowledge of any of the officers or directors of the Surviving Corporation or any Surviving Corporation Shareholder.

(ff) "Losses" shall mean all losses, liabilities, deficiencies, damages, encumbrances, fines, penalties, claims, costs and expenses (including, without limitation, all fines, penalties and other amounts paid pursuant to a judgment, compromise or settlement), court costs and associated legal and accounting fees and disbursements (calculated after deduction for insurance proceeds received or receivable).

(gg) "Material Adverse Effect" shall mean the results of an event or circumstance, or a combination of events or circumstances, that, either alone or in the aggregate, have a material adverse effect on the Business, financial condition, results of operation or Assets of a Party; provided, however, that in no event will any of the following be deemed, in and of itself, to constitute a Material Adverse Effect: (i) an adverse change reasonably attributable to general economic conditions or to other changes affecting companies in the same industry as the applicable Party, and (ii) losses incurred by that Party in the ordinary course of its Business.

(hh) "Material Contracts" shall mean the following contracts and agreements, whether written or oral, to which a Party is a party or by which that Party is bound:

(i) any agreement (or group of related agreements with the same Person or its Affiliates) for the lease of real property or personal property (whether or not capitalized under GAAP) providing for lease payments in excess of \$10,000 per year,

(ii) any agreement (or group of related agreements with the same Person or its Affiliates) not cancelable by the Party without penalty for the purchase or sale of raw materials, commodities, supplies, products or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one (1) year or which involves consideration in excess of \$10,000,

(iii) any agreement concerning the Party's equity ownership in a corporation, limited liability company, partnership or joint venture or any similar business entity,

(iv) any agreement (or group of related agreements with the same Person or its Affiliates) under which the Party created, incurred or assumed any indebtedness,

(v) any agreement under which the Party has imposed an Encumbrance on any of its Assets (or which resulted in the imposition of such an Encumbrance),

(vi) any letter of credit or performance bond,

(vii) any confidentiality or non-competition agreement (including such agreements executed by any party in favor of the Party),

(viii) any agreement with any Affiliate of the Party,

(ix) any profit sharing, deferred compensation, severance or other plan or arrangement for the benefit of the Party's current or former stockholders or shareholders, as applicable, directors, officers or employees or any other direct or indirect beneficial owners (other than any Employee Benefit Plans or agreements),

(x) any collective bargaining agreement,

(xi) any agreement not terminable at will or upon thirty (30) days notice by the Party without penalty (other than severance obligations) for the employment of any individual on a full-time, part-time or other basis,

(xii) any agreement or instrument reflecting outstanding loans or advances from the Party to any of its directors, officers, stockholders or employees, other than travel expenses advanced to any such party in the ordinary course of the Party's Business and in an total amount which does not exceed \$500 for any such party,

(xiii) any agreement for the acquisition or disposition of any business, Assets, or equity securities of the Party or any other Person,

(xiv) any distributor, sales representative or dealer agreement,

(xv) any Intellectual Property license or royalty agreement,

(xvi) any independent contractor agreement,

(xvii) any agreement providing for indemnification by the Party,

(xviii) any contract containing a change of control clause (i.e., any provision triggering termination or a new or different obligation upon the direct or indirect changing of control), or

(xix) any other agreement (or group of related agreements with the same Person or its Affiliates) not cancelable by the Party without penalty the performance of which will extend over a period of more than one (1) year or which involves consideration in excess of \$10,000.

(ii) "Merger Consideration" shall mean the Twelve Million Six Hundred Forty Three Thousand Three Hundred Eighty Eight (12,643,388) shares of Common Stock which will be (i) issued to the Company Stockholders in connection with the Merger (subject to the placement of the Escrow Shares (as defined herein) into escrow), and (ii) reserved by the Surviving Corporation for issuance upon the exercise of Company Options assumed by the Surviving Corporation pursuant to Section 2.2(g).

(jj) "Owned Tangible Personal Property" shall mean all Tangible Personal Property owned by the Party.

(kk) "Party" shall mean (i) as applicable in the context in which it is used in this Agreement (A) the Company, or (B) the Surviving Corporation, and (ii) for purposes of Articles 9 and 10 hereof only, (Y) the Securityholder Representative, and (Z) the Surviving Corporation Shareholders.

(ll) "Permitted Encumbrances" shall mean (i) liens which will be removed by payment of Indebtedness prior to the Closing, (ii) liens which are removed on or prior to the Closing Date, (iii) liens for Taxes or governmental assessments, charges or claims

the payment of which is not yet due, or for Taxes the validity of which is being contested in good faith by appropriate proceedings, (iv) statutory liens of landlords and liens of carriers, warehousemen, mechanics, materialmen, vendors and other similar Persons and other liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, (v) liens relating to deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security or to secure the performance of leases, trade contracts or other similar agreements, (vi) liens securing executory obligations under any lease that constitutes an "operating lease" under GAAP, and (viii) state and federal securities laws restrictions relating to the capital stock of the Company or the Surviving Corporation, as applicable.

(mm) "Preferred Stock" shall mean the Series A Preferred Stock of the Surviving Corporation, par value \$0.001 per share.

(nn) "Permits" shall mean all permits, licenses, consents, franchises, approvals and other authorizations required from any Governmental Authority or other Person in connection with the operation of a Party's Business and necessary to conduct that Party's Business as presently conducted.

(oo) "Person" shall mean any Governmental Authority, individual, association, joint venture, partnership, corporation, limited liability company, trust or other entity.

(pp) "Proceeding" shall mean any claim, demand, action, suit, litigation, dispute, order, writ, injunction, judgment, assessment, decree, grievance, arbitration, action or investigation.

(qq) "Related Person" shall mean any stockholder or shareholder, as applicable, director or officer of a Party, or any other direct or indirect beneficial owner of that Party, any Person related to any such stockholder, director, officer or beneficial owner by blood or marriage, or any limited liability company, corporation, partnership, trust or other entity in which any such person has a substantial interest as a member, shareholder, partner, trustee or otherwise.

(rr) "Reportable Event" shall have the meaning set forth in ERISA Section 4043.

(ss) "Representative" shall mean any officer, director, principal, attorney, accountant, agent or employee of any Person.

(tt) "Tangible Personal Property" shall mean all tangible personal property owned or leased by a Party or in which that Party has any interest including, without limitation, computer hardware, furniture and fixtures, transportation equipment, leasehold improvements, non-expensed supplies and other tangible assets, together with any transferable manufacturer or vendor warranties related thereto.

(uu) "Tax" shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, startup, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), health, unemployment, disability, real property, personal property, intangible property, sales, use, transfer, registration, value added, goods and services, alternative or add-on minimum, estimated, or other tax or similar obligation of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

(vv) "Tax Return" shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and any amendment thereof.

(ww) "Wendell Brown Agreements" shall mean the Separation and Release Agreement by and among Wendell Brown ("Mr. Brown"), the Company and the Surviving Corporation in the form attached hereto as Exhibit 1.1(ww)(a), the Stock Repurchase Agreement by and among Mr. Brown, the Company and the Surviving Corporation in the form attached hereto as Exhibit 1.1(ww)(b), and the Voting and Proxy Agreement by and among Mr. Brown, William J. Trenchard and the Surviving Corporation in the form attached hereto as Exhibit 1.1(ww)(c).

1.2 Usage of Terms. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa. Use of the word "including" shall in all cases mean "including, without limitation." All references in this Agreement to Articles, Sections (and other subdivisions), Exhibits and Schedules refer to the corresponding Articles, Sections (and other subdivisions), Exhibits and Schedules of or attached to this Agreement, unless the context expressly otherwise requires.

ARTICLE 2 MERGER

2.1 The Merger. Subject to the terms and conditions contained in this Agreement, on the Closing Date the Company shall merge (the "Merger") with and into the Surviving Corporation, and the Surviving Corporation shall be the entity that survives the Merger.

2.2 Effect of Merger.

(a) General. The Merger shall become effective on the date that the Merger Filings (as defined herein) are filed with the Secretary of State of Delaware and the Department of State of Florida or on such other date as is set forth in the Merger Filings (the "Effective Time"). The Merger shall have the effect set forth in this Article 2. The Surviving Corporation may, at any time after the Effective Time, take any action (including executing and delivering any document) in the name and on behalf of the Company to carry out and effectuate the transactions contemplated by this Agreement.

(b) Merger Consideration. The Merger Consideration shall consist of a total of Twelve Million Six Hundred Forty Three Thousand Three Hundred Eighty Eight (12,643,388) shares of Common Stock. A portion of the Merger Consideration (the "Merger Shares") shall be issued to the Company Stockholders in exchange for all of the outstanding Company Shares, and the remainder of the Merger Consideration (the "Option Shares") shall be reserved for issuance upon the exercise of the Company Options assumed by the Surviving Corporation pursuant to Section 2.2(g). The allocation of the Merger Consideration between the Merger Shares and the Option Shares will be determined based upon Section 4.3 and Schedule 1.1(i) as updated as of the Closing Date.

(c) Articles of Incorporation. The Articles of Incorporation of the Surviving Corporation in effect immediately prior to the Closing Date shall remain the Articles of Incorporation of the Surviving Corporation at and as of the Effective Time.

(d) Bylaws. The Bylaws of the Surviving Corporation in effect immediately prior the Closing Date shall remain the Bylaws of the Surviving Corporation at and as of the Effective Time.

(e) Directors and Officers. At and as of the Effective Time, the directors of the Surviving Corporation shall consist of Steven Doumar, Douglas Feirstein and William J. Trenchard. The officers of the Surviving Corporation immediately prior to the Effective Time shall remain the officers of the Surviving Corporation at and as of the Effective Time.

(f) Conversion of Company Shares. At and as of the Effective Time, each of the outstanding Company Shares (except as provided in Section 3.5 with respect to Company Shares as to which appraisal rights have been properly exercised under Section 262 of the DGCL (or, if the Company is subject to Section 2115 of the California Corporations Code, Chapter 13 of the California Corporations Code)) shall be (automatically and without any action by any Company Stockholder) converted into the right to receive a number of Merger Shares equal to the Common Exchange Ratio; provided, however, that 10.0% of the aggregate number of Merger Shares to which each holder of Company Shares is entitled pursuant to this Agreement as of the Effective Time (the "Common Portion," which, together with the Preferred Portion (as defined in Section 2.2(h)), constitute the "Escrow Shares") shall be deposited with the Escrow Agent at Closing in connection with the applicable indemnification obligations contained in Article 9 hereof. At and as of the Effective Time, all authorized and unissued shares of capital stock of the Company shall be cancelled, terminated and extinguished..

(g) Company Options. All Company Options outstanding at the Effective Time, whether or not exercisable and whether or not vested, shall by virtue of the Merger and without any further action on the part of Company or the holder thereof, be converted into an option to purchase Surviving Corporation Common Stock pursuant to the terms of the Surviving Corporation 2003 Stock Plan ("Surviving Corporation 2003 Stock Plan") in such manner that Surviving Corporation (i) is "assuming a stock option in a transaction to which Section 424(a) applies" within the meaning of Section 424 of the Code, or (ii) to the extent that Section 424 of the Code does not apply to any such Company Options because such

Company Options are not "incentive stock options" as defined under Code Section 422, would be a transaction within Section 424 of the Code. Each Company Option converted by Surviving Corporation shall be exercisable upon the same terms and conditions as under the CallCast, Inc. 2002 Stock Plan and the applicable option agreement issued thereunder, except that (A) each such Company Option shall be exercisable for that whole number of shares of Surviving Corporation Common Stock (rounded down to the nearest whole share) into which the number of shares of Company Common Stock subject to such Company Option immediately prior to the Effective Time would be converted under Section 2.2(f), and (B) the option price per share of Surviving Corporation Common Stock shall be an amount equal to the option price per share of Company Common stock subject to such Company Option in effect immediately prior to the Effective Time divided by the Common Exchange Ratio (the option price per share, as so determined, being rounded downward to the nearest full cent); such conversion terms shall comply with Code Section 422(a)(1) to the extent the Company Options are "incentive stock options" as defined in Code Section 422. Each of the Company Options so converted by the Surviving Corporation shall qualify following the Effective Time as an incentive stock option as defined in Section 422 of the Code (to the extent such Company Option qualified as an incentive stock option prior to the Effective Time). Surviving Corporation shall (i) on or prior to the Effective Time, reserve for issuance the number of shares of Surviving Corporation Common Stock that will become subject to options to purchase shares of Surviving Corporation Common Stock ("Surviving Corporation Options") pursuant to this Section 2.2(g), (ii) from and after the Effective Time, upon exercise of the Surviving Corporation Options in accordance with the terms thereof, make available for issuance all shares of Surviving Corporation Common Stock covered thereby and (iii) as promptly as practicable after the Effective Time, issue to each holder of an outstanding Company Option a document evidencing the foregoing conversion by Surviving Corporation.

(h) Convertible Debt. As of the Effective Time, all of the Convertible Debt shall (automatically and without any action by the holders thereof) be cancelled in exchange for an aggregate of Two Million Seven Hundred Sixty Six Thousand Four Hundred Fifty One (2,766,451) shares of Preferred Stock (the "Aggregate Preferred"). The Aggregate Preferred shall be allocated to the holders of Convertible Debt pro-rata based on the dollars of principal and accrued but unpaid interest underlying the Convertible Debt; provided that the number of dollars of principal and accrued interest underlying each promissory note representing the Convertible Debt shall be aggregated prior to determining the fractional share amount which shall be paid in cash in accordance with Section 3.8 of this Agreement; and further provided, however, that 10.0% of the aggregate number of shares of Preferred Stock to which each holder of Convertible Debt is entitled pursuant to this Agreement as of the Effective Time (the "Preferred Portion") shall be deposited with the Escrow Agent at Closing in connection with the applicable indemnification obligations contained in Article 9 hereof. All references to the holders of Convertible Debt in this Agreement shall also refer to that party as a holder of Preferred Stock when applicable.

2.3 Taxes. The Surviving Corporation shall be responsible for the payment of any sales, use, transfer, excise, stamp or other similar taxes (but excluding any net income taxes imposed against any Company Stockholder, any holder of Options or any holder of Convertible Debt, regardless of when any such Option or Convertible Debt is exercised or converted, as

applicable), imposed by reason of the transfer of the Company Shares pursuant to this Agreement and any deficiency, interest or penalty with respect to such taxes.

ARTICLE 3 CLOSING

3.1 Closing. The closing of the transactions contemplated by this Agreement shall be held at 10:00 a.m. (local Boca Raton, Florida time) on the Closing Date at the offices of Hodgson Russ LLP, 1801 North Military Trail, Suite 200, Boca Raton, Florida 33431, or at any other location upon which the parties hereto agree in writing (the "Closing"). The Closing shall be effective as of 5:00 p.m. (local Boca Raton, Florida time) on the Closing Date.

3.2 Merger Filings. On or prior to the Closing Date, the Company and the Surviving Corporation will file a Certificate of Merger with the Secretary of State of Delaware and Articles of Merger with the Department of State of Florida (collectively, the "Merger Filings") pursuant to Section 607.1105 of the Florida Business Corporation Act and Section 252 of the Delaware General Corporation Law in the forms of Exhibit 3.2(a) and Exhibit 3.2(b).

3.3 Delivery of Merger Consideration.

(a) On the Closing Date, the Surviving Corporation shall (i) deliver and tender the Common Portion of the Escrow Shares to the Escrow Agent, (ii) deliver a letter of transmittal to each Company Stockholder as of the Effective Time for use in the exchange of Company Shares for the Merger Shares, and (iii) reserve the Option Shares.

(b) Company Stockholders whose rights have been converted into rights to receive the Merger Shares, upon surrender to the Surviving Corporation of a certificate or certificates representing Company Shares, together with a properly completed letter of transmittal covering such Company Shares, will be entitled to receive (i) the Merger Shares payable in respect of such Company Shares, less (x) the number of the Common Portion of the Escrow Shares attributable to the pro rata interest of such holder to be deposited in the Escrow Fund on such holders' behalf pursuant to Section 2.2(f) and Article 9 hereof. Until so surrendered, each certificate that has been converted into the right to receive the Merger Shares shall, after the Effective Time, represent for all purposes only the right to receive such Merger Shares.

3.4 Cancellation of Convertible Debt. On the Closing Date, the Surviving Corporation shall (a) deliver the Preferred Portion of the Escrow Shares to the Escrow Agent and (b) upon receipt of each Convertible Debt holder's original executed promissory note(s) constituting such holder's portion of the Convertible Debt, deliver and tender the Aggregate Preferred (less the Preferred Portion) to such holders of Convertible Debt.

3.5 Other Certificates, Agreements and Items. On the Closing Date, the Surviving Corporation, the Company, the Company Stockholders and the Surviving Corporation Shareholders shall deliver the certificates, agreements and other items described in Articles 6, 7 and 8 of this Agreement.

3.6 Dissenting Shares. Notwithstanding any provision of this Agreement to the contrary, Company Shares outstanding immediately prior to the Effective Time and held by a holder who has not voted or consented to the Merger in writing and who has demanded appraisal for such Company Shares in accordance with Section 262 of the DGCL (and, if the Company is subject to Section 2115 of the California Corporations Code, such rights as may be granted to such persons in Chapter 13 of the California Corporations Code) shall not be converted into a right to receive the applicable portion of the Merger Shares. Each such holder shall be entitled to receive payment of the appraised value of such number of Company Shares held by such holder in accordance with the DGCL (and, if the Company is subject to Section 2115 of the California Corporations Code, such rights as may be granted to such persons in Chapter 13 of the California Corporations Code), unless and until such holder fails to perfect or withdraws or otherwise loses such holder's right to appraisal. If after the Effective Time such holder fails to perfect or withdraws or loses such holder's right to appraisal, such Company Shares shall be treated as if they had been converted as of the Effective Time into a right to receive the applicable portion of the Merger Consideration in accordance with the terms of this Agreement.

3.7 Adjustments. If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Surviving Corporation shall occur, including by reason of any reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period, the number of shares of Common Stock constituting the Merger Consideration shall be appropriately adjusted.

3.8 Fractional Shares. No fractional shares of Common Stock or Preferred Stock shall be issued in the Merger. All fractional shares of Common Stock or Preferred Stock that a holder of equity securities of the Company would otherwise be entitled to receive as a result of the Merger as part of the Merger Consideration shall be aggregated and if a fractional share results from such aggregation, such holder shall be entitled to receive, in lieu thereof, an amount in cash determined by multiplying (i) \$0.05 by the fraction of a share of Common Stock and (ii) \$0.50 by the fraction of a share of Preferred Stock to which such holder would otherwise have been entitled. The parties acknowledge that payment of the cash consideration in lieu of issuing fractional shares was not separately bargained for consideration but merely represents a mechanical rounding off for purposes of simplifying the corporate and accounting problems that would otherwise be caused by the issuance of fractional shares.

3.9 Tax Consequences: Plan of Reorganization. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Section 368(a)(1)(A) of the Code. This Agreement is intended to constitute a "plan of reorganization" within the meaning of Section 1.368-2(g) of the income tax regulations promulgated under the Code.

3.10 Exemption from Registration. The Surviving Corporation and the Company intend that the shares of Common Stock to be issued in connection with the Merger will be issued in a transaction exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), and the rules and regulations promulgated by the Securities and Exchange Commission thereunder, by reason of Section 4(2) of the Securities Act.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as specifically set forth in Schedule 4 hereto (the "Company Schedule of Exceptions"), the Company hereby represents and warrants to the Surviving Corporation that:

4.1 Organization and Authority of the Company to Conduct Business. The Company is duly organized, validly existing and in good standing under the laws of the State of Delaware. Schedule 4.1 sets forth all locations where the Company is qualified to do business. The Company is duly qualified and in good standing in each jurisdiction where it is required to be qualified and where the failure to qualify could reasonably be expected to have a Material Adverse Effect on the Company. The Company has the requisite corporate power and authority to conduct its business as it is presently being conducted and to own and lease its properties and Assets. The Company has no equity interest, or the right to acquire any equity interest, in any corporation, firm, partnership, limited liability company or any other Person or business entity. The Company conducts no business other than its Business.

4.2 Power and Authority; Binding Effect. The Company has the requisite power and authority and has taken all corporate action necessary to authorize, execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to perform its obligations under this Agreement. Copies of all resolutions of the board of directors and stockholders of the Company with respect to the transactions contemplated by this Agreement, certified in writing by the Chief Executive Officer of the Company, have been delivered to the Surviving Corporation. This Agreement has been duly executed and delivered on behalf of the Company by a duly authorized officer of the Company and constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as such enforcement may be limited by the Enforceability Limitations.

4.3 The Company's Capitalization. The authorized capital stock of the Company consists solely of Nineteen Million (19,000,000) shares of common stock, par value \$0.001 per share, and Five Million (5,000,000) shares of Series A preferred stock. As of the date of this Agreement, there were Twelve Million Nine Hundred Forty Thousand Three Hundred Thirty Three (12,940,333) Company Shares issued and outstanding, and no shares of preferred stock issued and outstanding. All outstanding Company Shares have been duly authorized and validly issued, and are fully paid, non-assessable and were issued and are currently free of any preemptive rights. Except for the Company Options and the Convertible Debt, there are no subscriptions, options, warrants, calls, rights, agreements or commitments (including any right of conversion or exchange under any outstanding security or other instrument) associated with or relating to the Company Shares. There are no outstanding contractual obligations of the Company to repurchase, redeem or otherwise acquire any outstanding Shares. Schedules 1.1(i) and 1.1(o), respectively, contain complete and accurate lists of (i) the name of the holder of each Company Option; (ii) the total number of Company Shares subject to such Company Option; (iii) the vesting schedule and vesting commencement date for such Company Option; (iv) the exercise price per share of the Company Shares purchasable under such Company Option; (v) whether such Company Option has been designated an "incentive stock option" as defined in

Section 422 of the Code; and (vi) all holders of Convertible Debt together with the principal amount of and accrued but unpaid interest on each Convertible Debt instrument.

4.4 Tangible Personal Property.

(a) The Company owns or leases (pursuant to the leases described on Schedule 4.4(a)) all of its Tangible Personal Property.

(b) The Company has good and marketable title to all owned Tangible Personal Property, free and clear of all Encumbrances other than Permitted Encumbrances.

(c) There is no tangible personal property used in the operation of the Business other than the Tangible Personal Property. The Tangible Personal Property owned by the Company is free and clear of any Encumbrances (other than Permitted Encumbrances). All of the Company's Tangible Personal Property is located at the Company's office and there is no such Tangible Personal Property (excluding employee personal effects not reflected in the Financial Statements) located at the Company's office which is not owned or leased by the Company. Each item of the Company's Tangible Personal Property is in reasonable working order, ordinary wear and tear and normal repairs and replacements excepted. There are no repairs or replacements exceeding \$5,000 in the aggregate for all of the Company's Tangible Personal Property or \$1,000 for any single item of such Tangible Personal Property which are currently contemplated by the Company.

4.5 No Conflict or Violation. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the fulfillment of the terms of this Agreement, do not and will not result in or constitute (i) a violation of or conflict with any provision of the Amended and Restated Certificate of Incorporation or Bylaws of the Company, (ii) a breach of, a loss of rights under, or constitute an event, occurrence, condition or act which is or, with the giving of notice or the lapse of time, would become, a default under, or result in the acceleration of any obligations under, any term or provision of, any Company Material Contract or Permit, (iii) a violation by the Company of any statute, rule, regulation, ordinance, by-law, code, order, judgment, writ, injunction, decree or award, (iv) an imposition of any Encumbrance (other than a Permitted Encumbrance) on the Company Shares or its Assets, or (v) any right of any Governmental Authority to revoke, withdraw, suspend, cancel, terminate or modify any Permits.

4.6 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any Person is required to be made or obtained by the Company in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement.

4.7 No Proceedings. There is no Proceeding pending or, to the Company's Knowledge, threatened against, relating to or affecting in any adverse manner the Company, its Assets (including its Intellectual Property), the Company Shares or the transactions contemplated by this Agreement.

4.8 Financial Statements; Unknown Liabilities.

(a) The Company has delivered to the Surviving Corporation its Financial Statements and Interim Financial Statements. These Financial Statements fairly present in all material respects the financial condition and the results of operations of the Company as of their respective dates and for the periods then ended. These Interim Financial Statements fairly present in all material respects the financial condition and the results of operations of the Company as of their respective dates and for the periods then ended. The books and records of the Company from which these Financial Statements and Interim Financial Statements were prepared fairly reflect in all material respects the Assets, liabilities and operations of the Company, and these Financial Statements and Interim Financial Statements conform in all material respects therewith.

(b) As of the Closing Date there will be no liabilities or obligations, whether absolute, accrued, contingent, known, unknown, matured, unmatured or otherwise, and whether or not required to be disclosed or provided for in financial statements in accordance with GAAP, of the Company except (i) liabilities and obligations reflected or reserved for in its Financial Statements and Interim Financial Statements and (ii) liabilities and obligations incurred between March 31, 2003 and the Closing Date in the ordinary course of business of the Company (none of which results from, arises out of or relates to any breach of contract, breach of contractual warranty, tort, infringement or violation of law), none of which, either individually or taken as a whole, is material to the Company's financial condition or which would cause a Material Adverse Effect on the Company.

4.9 Tax Matters.

(a) Except as set forth on Schedule 4.9(a), (i) all Tax Returns required to be filed by the Company with respect to any period ending on or prior to the Closing have been or will be completed and filed when due (including any extensions of such due date), (ii) all Taxes required to have been withheld by the Company in connection with amounts paid to any employee, independent contractor, creditor, stockholder or other third party have been withheld, (iii) all such Tax Returns were (or will be) correct and complete in all respects when filed, except to the extent that a reserve for Taxes has been established by the Company on its Financial Statements, (iv) all Taxes required to have been paid by the Company (whether or not shown on any Tax Return) have been paid, except to the extent a reserve for Taxes has been established by the Company on its Financial Statements, (v) the Company is not currently the beneficiary of any extension of time within which to file any Tax Return and (vi) no written notice has been received by the Company and no written claim has been made to the Company since the Company's inception by any Governmental Authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances (other than for Taxes not yet due and payable, all of which are described on the Company Schedule of Exceptions) on any of the Company's Assets (including its Intellectual Property) or the Company Shares that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) There is no dispute or claim concerning any Tax liability of the Company either (i) claimed or raised by any Governmental Authority in a written document sent by any such Governmental Authority and received by the Company, or (ii) to the Company's

Knowledge based upon personal contact with any agent of such Governmental Authority. Schedule 4.9(b) lists all federal, state, local and foreign income Tax Returns filed with respect to the Company for all taxable periods since the Company's inception. No Company tax return has been subject to an audit or other examination by any governmental authority, and, to the Company's Knowledge, no such audit or examination is threatened. The Company has made available to the Surviving Corporation true and complete copies of all Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Company for all taxable periods of the Company.

(c) Neither the Company nor any of its affiliates has taken or agreed to take any action that would prevent the Merger from constituting a reorganization within the meaning of Code Section 368(a)(1)(A). Neither the Company, any of its subsidiaries nor any Company Stockholder is aware of any agreement, plan or other circumstance that would prevent the Merger from qualifying as a reorganization within the meaning of Code Section 368(a).

4.10 Real Property. The Company (a) owns no real property, and (b) leases the real property as listed on Schedule 4.10(b).

4.11 Intellectual Property.

(a) There is no intellectual property used in or necessary to the Business other than the Intellectual Property owned by the Company, off-the-shelf computer software and the Intellectual Property identified on Schedule 4.11(d). Each item of Intellectual Property owned or used by the Company immediately prior to the Closing Date will be owned or available for use by the Company on substantially similar terms and conditions immediately subsequent to the Closing Date and the Company has taken reasonable commercial actions to maintain and protect each item of Intellectual Property owned by the Company and used in the Business.

(b) To the Company's Knowledge, the Company has not at any time since its inception interfered with, infringed upon, misappropriated or otherwise come into conflict with any intellectual property rights of third parties, and since its inception the Company has not received any charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation or violation (including, without limitation, any claim that the Company must license or refrain from using any intangible property rights of any third party) which has not been resolved and (ii) to the Company's Knowledge, no third party has interfered with, infringed upon, misappropriated or otherwise come into conflict with any of its Intellectual Property.

(c) Schedule 4.11(c) identifies each patent and each copyright or trademark registration which has been issued to the Company with respect to any of its Intellectual Property, identifies each pending patent application or application for copyright or trademark registration which the Company has made with respect to any of its Intellectual Property, and identifies each license or other agreement under which the Company has granted rights of use or access to any third party with respect to any of its Intellectual Property. The Company has delivered to the Surviving Corporation or made available to the Surviving

Corporation for its review correct and complete copies of all such patents, registrations, applications, licenses and agreements (as amended to date) and has made available to the Surviving Corporation correct and complete copies of all other written documentation evidencing ownership and, in the case of pending applications and registrations, prosecution histories (if applicable) of each such item. Schedule 4.11(c) also identifies each trade name or unregistered trademark used by the Company in connection with its Business. With respect to each item of Intellectual Property required to be identified in Schedule 4.11(c), (i) the Company has no knowledge of any reason why the Company would be unable to register with the patent and trademark office embracing the jurisdiction of their formation each item which is an unregistered trademark, (ii) the Company possesses all right, title and interest in and to the item, free and clear of any Encumbrances or licenses, (iii) to the Company's Knowledge, the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge, (iv) no Proceeding is pending or, to the Company's Knowledge, threatened which challenges the legality, validity, enforceability, use or ownership of the item and (v) other than routine indemnities given to distributors, sales representatives, dealers and customers (as described on Schedule 4.11(c)(v)), the Company has no current obligations to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(d) Schedule 4.11(d) identifies each item of Intellectual Property that any third party owns and that the Company uses pursuant to license, sublicense or agreement. The Company has delivered to the Surviving Corporation or made available to the Surviving Corporation for its review correct and complete copies of all such licenses, sublicenses and other agreements (as amended to date). With respect to each item of Intellectual Property required to be identified on Schedule 4.11(d), (i) the license, sublicense or other agreement covering the item is, to the Company's Knowledge, enforceable, except as may be limited by Enforceability Limitations, (ii) immediately following the Closing, the license, sublicense or other agreement will be enforceable on substantially similar terms and conditions as existed immediately prior to the Closing, except as may be limited by Enforceability Limitations, (iii) to the Company's Knowledge, no other party to any such license, sublicense or other agreement is in breach or default, and to the Company's Knowledge no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit early termination, modification or acceleration thereunder, (iv) neither the Company nor, to the Company's Knowledge, any other party to the license, sublicense or other agreement has repudiated any provision thereof, except to the extent contained in any written amendment to such Intellectual Property, if any, (v) to the Company's Knowledge, the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge, (vi) no Proceeding is pending or, to the Company's Knowledge, threatened which challenges the legality, validity, enforceability or use of the underlying item of Intellectual Property by the Company and (vii) the Company has not granted any sublicense or similar right with respect to the license, sublicense or other agreement.

(e) To the Company's Knowledge, the Surviving Corporation's use of its Intellectual Property will not interfere with, infringe upon, misappropriate or otherwise come into conflict with, any intellectual property rights of third parties as a result of the continued

operation of its Business as presently conducted, or to the Company's Knowledge as such Business is contemplated or proposed to be conducted after the Closing.

(f) To the Company's Knowledge there has been no infringement by the Company on any patent applications of third parties or of any patents, copyrights or trademarks of third parties in countries other than the United States, and the Company has not received written notice of any such alleged infringement from any party.

4.12 Compliance with Laws; Permits. The conduct of the Company's Business is in compliance in all material respects with all applicable Governmental Requirements and Permits. Since its inception the Company has not received any notice stating or alleging that, it is not in compliance in all respects with any applicable Governmental Requirements or Permits, and to the Company's Knowledge there are no presently existing facts, circumstances or events which, with notice or lapse of time, would result in violations of any applicable Governmental Requirements or Permits. Schedule 4.12 identifies all Permits issued to the Company and currently in effect. The Permits listed on Schedule 4.12 constitute all the Permits used by the Company in the operation of and necessary to conduct its Business. All of these Permits are valid and in full force and effect, no violations have been experienced, noted or recorded and no violations are expected and no Proceeding is pending or, to the Company's Knowledge, threatened to revoke or limit any of these Permits.

4.13 Litigation. There is no Proceeding pending or, to the Company's Knowledge, threatened which is (a) a Proceeding against or involving the Company Shares, (b) a Proceeding involving the Company or its properties, Assets (including its Intellectual Property) or Business, or (c) a Proceeding relating to the Company's Business and against or involving any Company Stockholder or any director, officer, employee or, to the Company's Knowledge, any independent contractor of the Company.

4.14 Labor Matters.

(a) Schedule 4.14 identifies each current employee of the Company who had an annual base salary for the fiscal year ended September 30, 2002 in excess of \$50,000, or whose annual base salary for the fiscal year ending September 30, 2003 is expected to be in excess of \$50,000, his or her name, position or job title, his or her base compensation and bonus compensation earned in the fiscal year of the Company ending September 30, 2002, and his or her current base compensation. The Company has no obligations under any written or oral agreement, collective bargaining agreement or other agreement with any labor organization or employee group. The Company is not engaged in any unfair labor practice and there is no unfair labor practice charge or other employee-related or employment-related complaint against the Company pending or, to the Company's Knowledge, threatened before any Governmental Authority. There is currently no labor strike, labor disturbance, slowdown, work stoppage or other material labor dispute or arbitration pending or, to the Company's Knowledge, threatened against the Company and no grievance currently being asserted by any individual or entity. The Company has not experienced a labor strike, labor disturbance, slowdown, work stoppage or other labor dispute at any time since its inception, and there is no organizational campaign being conducted or, to the Company's Knowledge, contemplated. There is no pending or, to the

Company's Knowledge, threatened petition before any Governmental Authority or other dispute as to the representation of any employees of the Company. Each employee of the Company is an employee at will. There are no pending or, to the Company's Knowledge, threatened claims against the Company by employees or former employees for unpaid wages, wrongful termination, accidental injury or death, sexual harassment or discrimination or violation of any employment law, rule, regulation or order. The Company has complied in all respects with, and is currently in compliance in all respects with, all applicable Governmental Requirements relating to any of their employees or consultants (including, without limitation, any Governmental Requirement of the Occupational Safety and Health Administration), and since its inception the Company has not received any notice of failure to comply with any such Governmental Requirement which has not been rectified.

(b) The Company has on file a valid Form I-9 for each current employee of the Company hired or terminated since its inception. To the Company's Knowledge, all employees of the Company are (i) United States citizens, or lawful permanent residents of the United States, (ii) aliens whose right to work in the United States is unrestricted, or (iii) aliens who have valid, unexpired work authorization issued by the Attorney General of the United States (Immigration and Naturalization Service). Since its inception the Company has not been the subject of an immigration compliance or employment visit from, nor has the Company been assessed any fine or penalty by, or been the subject of any order or directive of, the United States Department of Labor or the Attorney General of the United States (Immigration and Naturalization Service).

(c) The Company has not terminated the employment of any employee during the 180 days preceding the Closing Date excluding voluntary resignation and termination for cause.

4.15 Employee Benefit Plans. With respect to the Employee Benefit Plans of the Company:

(a) Schedule 4.15 sets forth a list identifying each Employee Pension Benefit Plan, including any "multiemployer plan", as defined in Section 3(37) of ERISA, (the "Pension Plans") and a list identifying each Employee Welfare Benefit Plan, (the "Welfare Plans"). The Pension Plans and the Welfare Plans are collectively referred to herein as the "Employee Plans." No Employee Plan is maintained, administered or contributed to by any entity other than the Company, and no Employee Plan is maintained under any trust arrangement which covers any employee benefit arrangement which is not an Employee Plan.

(b) The Company has delivered or have caused to be delivered to the Surviving Corporation true and complete copies of the Employee Plans (including related trust agreements, custodial agreements, insurance contracts, investment contracts and other funding arrangements, if any, and adoption agreements, if any), any amendments to the Employee Plans, written interpretations of the Employee Plans, material employee communications by the plan administrator of any Employee Plan (including, but not limited to, summary plan descriptions and summaries of material modifications, as defined under ERISA), the three most recent annual reports (e.g., the complete Form 5500 series) prepared in connection with each Employee Plan

(if any such report was required), including all attachments (including without limitation the audited financial statements, if any) and the three most recent actuarial valuation reports prepared in connection with each Employee Plan (if any such report was required).

(c) There has been no amendment to, interpretation or announcement (whether or not written) by the Company relating to, or change in employee participation or coverage under any Employee Plan that would increase the expense of maintaining such Employee Plan above the level of expense incurred in respect of such Employee Plan for the most recent plan year with respect to Employee Plans. The execution of this Agreement and the consummation of the transactions contemplated hereby do not and will not constitute an event under any Employee Plan, which either alone or upon the occurrence of a subsequent event will or may result in any payment, acceleration, vesting or increase in benefits to any employee or former employee of the Company.

(d) Each Employee Plan has been maintained in compliance with its terms and the requirements prescribed by any and all statutes, orders, rules and regulations, including but not limited to, ERISA and the Code, which are applicable to such Employee Plan.

(e) Each Pension Plan is "qualified" within the meaning of Section 401(a) of the Code, and has been qualified during the period from the date of its adoption to the date of this Agreement, and each trust created thereunder is tax-exempt under Section 501(a) of the Code. The Company has delivered or caused to be delivered to the Surviving Corporation the latest determination letters of the Internal Revenue Service relating to each Pension Plan. Such determination letters have not been revoked. Furthermore, there are no pending proceedings or, to the Company's Knowledge, threatened proceedings in which the "qualified" status of any Pension Plan is at issue and in which revocation of the determination letter has been threatened. Each Pension Plan has not been amended or operated, since the receipt of the most recent determination letter, in a manner that would adversely affect the "qualified" status of the Plan. No distributions have been made from any of the Pension Plans that would violate in any respect the restrictions under Treas. Reg. Section 1.401(a)(4)-5(b), and none will have been made by the Closing Date. There has been no termination or partial termination, as defined in Section 411(d) of the Code and the regulations thereunder, of any Pension Plan.

(f) There are no pending or, to the Company's Knowledge, threatened claims, suits or other proceedings by any employees, former employees or plan participants or the beneficiaries, spouses or representatives of any of them, other than ordinary and usual claims for benefits by participants or beneficiaries, or suits, investigations or other proceedings by any federal, state, local or other governmental agency or authority, of or against any Employee Plan, the assets held thereunder, the trustee of any such assets, or the Company relating to any of the Employee Plans. If any of the actions described in this subsection are initiated prior to the Closing Date, the Company shall immediately notify the Surviving Corporation of such action prior to the Closing Date.

(g) The Company has not engaged in any transaction or acted or failed to act in a manner that violates the fiduciary requirements of Section 404 of ERISA, or in any "prohibited transaction" within the meaning of Section 406(a) or 406(b) of ERISA, or of Section

4975(c) of the Code, with respect to any Employee Plans, or will so engage, act or fail to act prior to the Closing Date. Furthermore, to the Company's Knowledge, no other "party in interest," as defined in Section 3(14) of ERISA, or "disqualified person," as defined in Section 4975(e)(2) of the Code, has engaged in any such "prohibited transaction."

(h) No liability has been incurred by the Company or by a trade or business, whether or not incorporated, which is an ERISA Affiliate for any tax, penalty or other liability (other than ordinary course contributions) with respect to any Employee Plan and, to the Company's Knowledge, such Plans do not expect to incur any such liability prior to the Closing Date.

(i) The Company has made all required contributions under each Employee Plan on a timely basis or, if not yet due, adequate accruals therefore have been provided for in the financial statements of the Company. No Pension Plan has incurred any "accumulated funding deficiency" within the meaning of Section 302 of ERISA or Section 412 of the Code and no Pension Plan has applied for or received a waiver of the minimum funding standards imposed by Section 412 of the Code. As of the date of this Agreement and in the preceding three years neither the Company nor any ERISA Affiliate maintains or had maintained a Pension Plan which is covered by Title IV of ERISA.

(j) Neither the Company nor any ERISA Affiliate has ever maintained, adopted or established, contributed or been required to contribute to, or otherwise participate or been required to participate in, nor will they become obligated to do so through the Closing Date, any Multiemployer Plan. No amount is due from, or owed by, the Company or any ERISA Affiliate on account of a Multiemployer Plan or on account of any withdrawal therefrom.

(k) No Employee Plan provides benefits, including without limitation, any severance or other post-employment benefit, salary continuation, termination, death, disability, or health or medical benefits (whether or not insured), life insurance or similar benefit with respect to current or former employees (or their spouses or dependents) of the Company beyond their retirement or other termination of service other than coverage mandated by applicable law, death, disability or retirement benefits under any Pension Plan, deferred compensation benefits accrued as liabilities on the financial statements of the Company, or benefits, the full cost of which is borne by the current or former employee (or his or her beneficiary).

(l) The Company has complied with, and satisfied, the requirements of COBRA with respect to each Employee Plan that is subject to the requirements of COBRA. Each Employee Plan which is a group health plan, within the meaning of Section 9832(a) of the Code, has complied with and satisfied the applicable requirements of Sections 9801 and 9802 of the Code.

(m) Schedule 4.15 contains a list identifying each employment, severance or similar contract, arrangement or policy and each plan or arrangement providing for insurance coverage (including, without limitation, any self-insured arrangements), workers'

compensation, disability benefits, supplemental employment benefits, vacation benefits, retirement benefits, deferred compensation, bonuses, profit-sharing, stock options, stock appreciation rights or other forms of incentive compensation or post-retirement compensation or benefit which (i) is not an Employee Plan, (ii) has been entered into or maintained, as the case may be, by the Company and (iii) covers any employee or former employee of the Company. Such contracts, plans and arrangements are hereinafter referred to collectively as the "Benefit Arrangements". True and complete copies or descriptions of the Benefit Arrangements have been delivered to the Surviving Corporation. Each Benefit Arrangement has been maintained in substantial compliance with the requirements prescribed by any and all statutes, orders, rules and regulations which are applicable to such Benefit Arrangements.

4.16 Transactions with Certain Persons.

(a) No Related Person is presently or at any time since the Company's inception has been a party to any transaction with the Company (other than payment to officers for their services as officers or employees of the Company) including, without limitation, any contract, agreement or other arrangement (i) providing for the furnishing of goods or services to or by, (ii) providing for the rental or sale of real or personal property to or from or (iii) otherwise requiring payments to or from, such Related Person.

(b) All transactions with Related Persons since the Company's inception have been and are on an arms' length basis providing for terms and conditions no less favorable to the Company than as would reasonably be expected to be negotiated with an independent party.

(c) There is no outstanding amount (including pursuant to any advance, note or other indebtedness instrument) owed by the Company to any Related Person or from any Related Person to the Company.

4.17 Insurance. Schedule 4.17 contains a complete and accurate list of all current policies or binders of Insurance (showing as to each policy or binder the carrier, policy number, coverage limits, expiration dates, annual premiums, deductibles and a general description of the type of coverage provided and policy exclusions) maintained by the Company and relating to its properties, assets and personnel. This Insurance is in full force and effect and sufficient for compliance in all respects with all requirements of applicable law and of all contracts to which the Company is a party. The Company is not in default under any of this Insurance and has not failed at any time to give any notice or to present any claim under any of this Insurance in a due and timely manner. No notice of cancellation, termination, reduction in or reservation of coverage or increase in premium (other than reductions in coverage or increases in premiums in the ordinary course) has been received with respect to any of this Insurance, and all premiums with respect to any of this Insurance have been timely paid. The Company has not experienced any claims in excess of current coverage of this Insurance. There will be no retrospective insurance premiums or charges or any other similar adjustment on or with respect to any of this Insurance for any period or occurrence through the Closing Date.

4.18 Material Contracts. Schedule 4.18 contains a true and correct list or description of the Company's Material Contracts. True and correct copies of these Material Contracts have been delivered to the Surviving Corporation except as indicated on Schedule 4.18. Each of these Material Contracts is enforceable against the Company and, to the Company's Knowledge, each other party thereto, in accordance with its terms, except as such enforcement may be limited by Enforceability Limitations. Neither the Company nor, to the Company's Knowledge, any other party to any such Material Contract is in default thereunder or in breach thereof, and since its inception the Company has not granted any waiver of or under any provision of any such Material Contract. There exists no event, occurrence, condition or act which constitutes or, with the giving of notice, the lapse of time or the happening of any future event or condition, would become, to the Company's Knowledge, a default by the Company or, to the Company's Knowledge, any other party under any of these Material Contracts. To the Company's Knowledge there are no threatened defaults under any of these Material Contracts. The Company has not taken, or refrained from taking, any action which constitutes, or with the giving of notice or the lapse of time would constitute, a default under any of these Material Contracts.

4.19 Suppliers and Customers. Schedule 4.19 contains a list of (a) the ten (10) largest suppliers of the Company's Business, and (b) the ten (10) largest customers of the Company's Business for the year ending December 31, 2002. None of the suppliers or customers set forth on Schedule 4.19 has informed the Company that it intends to terminate its relationship with the Company, and to the Company's Knowledge no such supplier or customer intends to terminate such relationship because of any problem or dispute with any such supplier or customer. The Company believes that the Company has good business relationships with each such supplier and customer. The Company does not believe that the consummation of the Merger will disrupt the existing relationships with any such supplier or customer.

4.20 Business Records. No material records of accounts, personnel records or other material records or documents relating to the Company or its Business have been destroyed except in the ordinary course and all such records are available upon request, subject to applicable Governmental Requirements and/or contractual prohibitions or limitations.

4.21 Bank Accounts; Powers of Attorney. Schedule 4.21 contains a true, complete and correct list of all bank accounts and safe deposit boxes maintained by the Company and all persons entitled to draw thereon, to withdraw therefrom or with access thereto, a description of all lock box arrangements for the Company and a description of all powers of attorney granted by the Company.

4.22 Environmental Matters. Since its inception the Company has not received any notice, warning or other written or oral communication from any Governmental Authority related to any existing or potential environmental problem or actual or alleged violation or any federal, state, municipal or local environmental law, regulation, statute, ordinance (collectively, "Environmental Laws"), including, without limitation, the release of any hazardous substance. To the Company's Knowledge, the Company has operated since its inception in compliance with all applicable Environmental Laws.

4.23 Absence of Certain Changes. Since March 31, 2003 there has not been:

(a) any change in the Business, financial condition or operations of the Company taken as a whole which would constitute a Material Adverse Effect to the Company;

(b) any increase in the compensation of or granting of bonuses payable or to become payable by the Company to any officer or employee whose compensation (base salary plus bonus) exceeded \$50,000 for the fiscal year ended September 30, 2002, other than annual increases or bonuses consistent with the Company's past practices and not exceeding, for any such officer or employee, \$10,000;

(c) other than sales of inventory and disposition of obsolete assets in the ordinary course of business, any sale or transfer by the Company of any tangible or intangible asset having a value at the time of disposition greater than \$10,000 or \$50,000 in the aggregate for all such assets, any mortgage or pledge or creation of any Encumbrance relating to any such asset, any lease of real property or equipment, or any cancellation of any debt or claim, except in the ordinary course of business;

(d) any other transaction not in the ordinary course of the Company's Business or not otherwise consistent with the Company's past practices involving consideration in excess of \$25,000;

(e) any change in the Company's accounting methods or principles;

(f) any non-seasonal reduction in the backlog or orders of the Company's Business, any acceleration of sales into a current period or any change in pricing or discounts offered to customers of the Company's Business not consistent with past practice; or

(g) any cash or property distributions or payments by the Company to, or for the benefit of, any individual or entity including, without limitation, any Company Stockholder.

4.24 No Brokers. The Company has not entered into any agreement, arrangement or understanding with any Person which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated by this Agreement.

4.25 Absence of Certain Payments. Neither the Company nor any of its directors, officers, employees or agents, or other people acting on behalf of any of them, have with respect to the Company's Business (i) engaged in any activity prohibited by the United States Foreign Corrupt Practices Act of 1977 or any other similar law, regulation or decree, directive or order of any Governmental Authority or (ii) without limiting the generality of the preceding clause (i), used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to officials of any Governmental Authority. Neither the Company nor any of its directors, officers, employees or agents, or other Persons acting on behalf of any of them, have accepted or received any unlawful contributions, payments, gifts or expenditures.

4.26 No Material Misstatements or Omissions. None of the representations and warranties made by the Company in this Agreement contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained therein, in light of the circumstance under which they were made, not misleading.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF THE SURVIVING CORPORATION

Except as specifically set forth on Schedule 5 hereto (the "Surviving Corporation Schedule of Exceptions"), the Surviving Corporation hereby represents and warrants that:

5.1 Organization and Good Standing. The Surviving Corporation is duly organized, validly existing and in good standing under the laws of the state of Florida. The Surviving Corporation has the full power and authority to conduct its business as it is presently being conducted and to own and lease its properties and its Assets. The Surviving Corporation has no equity interest, or the right to acquire any equity interest, in any corporation, firm, partnership, limited liability company or any other Person or business entity.

5.2 Authority; Authorization; Binding Effect. The Surviving Corporation has all necessary power and authority, and has taken all corporate action necessary to authorize, execute and deliver this Agreement, to consummate the transactions contemplated by this Agreement and to perform its obligations under this Agreement. Copies of all resolutions of the board of directors and shareholders of the Surviving Corporation with respect to the transactions contemplated by this Agreement, certified in writing by the Secretary of the Surviving Corporation, have been delivered to the Company. This Agreement has been duly executed and delivered on behalf of the Surviving Corporation by a duly authorized officer of the Surviving Corporation, and constitutes a legal, valid and binding obligation of the Surviving Corporation, enforceable against the Surviving Corporation in accordance with its terms, except as such enforcement may be limited by the Enforceability Limitations.

5.3 The Surviving Corporation's Capitalization. The authorized capital stock of the Surviving Corporation consists solely of Fifty Million (50,000,000) shares of Common Stock, par value \$0.001 per share, and Twenty Million (20,000,000) shares of Preferred Stock, par value \$0.001 per share. As of the date of this Agreement, there were Twenty Three Million One Hundred Fourteen Thousand Seven Hundred Fifty Eight (23,114,758) shares of Common Stock issued and outstanding and no shares of Preferred Stock were issued and outstanding. All outstanding shares of Common Stock have been duly authorized and validly issued, and are fully paid, non-assessable and were issued and are currently free of any preemptive rights. Except as listed on Schedule 5.3, there are no subscriptions, options, warrants, calls, rights, agreements or commitments of any kind (oral or written) (including any right of conversion or exchange under any outstanding security or other instrument) associated with or relating to the Common Stock. There are no outstanding contractual obligations of the Surviving Corporation to repurchase, redeem or otherwise acquire any outstanding Common Stock. Schedule 5.3 contains a complete and accurate list of all holders of options to purchase Common Stock and any other options or rights of any kind to purchase or acquire any Common Stock, together with the number of such options or other rights and the terms of such options or other rights held by each such holder.

5.4 Consents and Approvals. No consent, approval or authorization of, or declaration, filing or registration with, any Person is required to be made or obtained by the Surviving Corporation in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement.

5.5 No Proceedings. There is no Proceeding pending or, to the Surviving Corporation's Knowledge, threatened against, relating to or affecting in any adverse manner the Surviving Corporation, its Assets (including its Intellectual Property), the transactions contemplated by this Agreement or the Common Stock.

5.6 No Conflict or Violation. The execution and delivery of this Agreement, the consummation of the transactions contemplated by this Agreement, and the fulfillment of the terms of this Agreement, do not and will not result in or constitute (i) a violation of or conflict with any provision of the Articles of Incorporation or Bylaws of the Surviving Corporation, (ii) a breach of, a loss of rights under, or constitute an event, occurrence, condition or act which is or, with the giving of notice or the lapse of time, would become, a default under, or result in the acceleration of any obligations under, any term or provision of, any Surviving Corporation Material Contract or Surviving Corporation Permit, (iii) a violation by the Surviving Corporation of any statute, rule, regulation, ordinance, by-law, code, order, judgment, writ, injunction, decree or award, (iv) an imposition of any Encumbrance (other than a Permitted Encumbrance) on the Surviving Corporation's Common Stock or Assets, or (v) any right of any Governmental Authority to revoke, withdraw, suspend, cancel, terminate or modify any Permits.

5.7 Financial Statements.

(a) The Surviving Corporation has delivered to the Surviving Corporation its Financial Statements and Interim Financial Statements. These Financial Statements fairly present in all material respects the financial condition and the results of operations of the Surviving Corporation as of their respective dates and for the periods then ended. These Interim Financial Statements fairly present in all material respects the financial condition and the results of operations of the Surviving Corporation as of their respective dates and for the periods then ended. The books and records of the Surviving Corporation from which these Financial Statements and Interim Financial Statements were prepared fairly reflect in all material respects the Assets, liabilities and operations of the Surviving Corporation, and these Financial Statements and Interim Financial Statements conform in all material respects therewith.

(b) As of the Closing Date there will be no liabilities or obligations, whether absolute, accrued, contingent, known, unknown, matured, unmatured or otherwise, and whether or not required to be disclosed or provided for in financial statements in accordance with GAAP, of the Surviving Corporation except (i) liabilities and obligations reflected or reserved for in these Financial Statements and Interim Financial Statements and (ii) liabilities and obligations incurred between March 31, 2003 and the Closing Date in the ordinary course of the Surviving Corporation's Business (none of which results from, arises out of or relates to any breach of contract, breach of contractual warranty, tort, infringement or violation of law), none

5.8 Tax Matters.

(a) Except as set forth on Schedule 5.8(a), (i) all Tax Returns required to be filed by the Surviving Corporation with respect to any period ending on or prior to the Closing have been or will be completed and filed when due (including any extensions of such due date), (ii) all Taxes required to have been withheld by the Surviving Corporation in connection with amounts paid to any employee, independent contractor, creditor, stockholder or other third party have been withheld, (iii) all such Tax Returns were correct and complete in all respects when filed, except to the extent that a reserve for Taxes has been established by the Surviving Corporation on the Financial Statements, (iv) all Taxes required to have been paid by the Surviving Corporation (whether or not shown on any Tax Return) have been paid, except to the extent a reserve for Taxes has been established by the Surviving Corporation of the Financial Statements, (v) the Surviving Corporation is not currently the beneficiary of any extension of time within which to file any Tax Return and (vi) no written notice has been received by the Surviving Corporation and no written claim has been made to the Surviving Corporation since the Surviving Corporation's inception by any Governmental Authority in a jurisdiction where the Surviving Corporation does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances (other than for Taxes not yet due and payable, all of which are described on the Surviving Corporation Schedule of Exceptions) on any of the Assets (including the Intellectual Property) or the Surviving Corporation Shares that arose in connection with any failure (or alleged failure) to pay any Tax.

(b) There is no dispute or claim concerning any Tax liability of the Surviving Corporation either (i) claimed or raised by any Governmental Authority in a written document sent by any such Governmental Authority and received by the Surviving Corporation, or (ii) to the Surviving Corporation's Knowledge based upon personal contact with any agent of such Governmental Authority. Schedule 5.8(b) lists all federal, state, local and foreign income Tax Returns filed with respect to the Surviving Corporation for all taxable periods since the Surviving Corporation's inception. No Surviving Corporation Tax Return has been subject to an audit or other examination by any governmental authority, and, to the Surviving Corporation's Knowledge, no such audit or examination is threatened. The Surviving Corporation has made available to the Surviving Corporation true and complete copies of all Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Surviving Corporation for all taxable periods of the Surviving Corporation.

(c) Neither the Surviving Corporation nor any of its affiliates has taken or agreed to take any action that would prevent the Merger from constituting a reorganization within the meaning of Code Section 368(a)(1)(A). Neither the Surviving Corporation, any of its subsidiaries nor any Surviving Corporation Shareholder is aware of any agreement, plan or other circumstance that would prevent the Merger from qualifying as a reorganization within the meaning of Code Section 368(a)(1)(A).

5.9 Real Property. The Surviving Corporation (a) owns no real property, and (b) leases the real property as listed on Schedule 5.9(b).

5.10 Intellectual Property.

(a) There is no intellectual property used in or necessary to the Business other than the Intellectual Property owned by the Surviving Corporation, off-the-shelf computer software and the Intellectual Property identified on Schedule 5.10(d). Each item of Intellectual Property owned or used by the Surviving Corporation immediately prior to the Closing Date will be owned or available for use by the Surviving Corporation on substantially similar terms and conditions immediately subsequent to the Closing Date and the Surviving Corporation has taken reasonable commercial actions to maintain and protect each item of Intellectual Property owned by the Surviving Corporation and used in the Business.

(b) To the Surviving Corporation's Knowledge, the Surviving Corporation has not at any time since its inception interfered with, infringed upon, misappropriated or otherwise come into conflict with any intellectual property rights of third parties, and since its inception the Surviving Corporation has not received any charge, complaint, claim, demand or notice alleging any such interference, infringement, misappropriation or violation (including, without limitation, any claim that the Surviving Corporation must license or refrain from using any intangible property rights of any third party) which has not been resolved and (ii) to the Surviving Corporation's Knowledge, no third party has interfered with, infringed upon, misappropriated or otherwise come into conflict with any of the Intellectual Property.

(c) Schedule 5.10(c) identifies each patent and each copyright or trademark registration which has been issued to the Surviving Corporation with respect to any of the Intellectual Property, identifies each pending patent application or application for copyright or trademark registration which the Surviving Corporation has made with respect to any of the Intellectual Property, and identifies each license or other agreement under which the Surviving Corporation has granted rights of use or access to any third party with respect to any of the Intellectual Property. The Surviving Corporation has delivered to the Surviving Corporation or made available to the Surviving Corporation for its review correct and complete copies of all such patents, registrations, applications, licenses and agreements (as amended to date) and has made available to the Surviving Corporation correct and complete copies of all other written documentation evidencing ownership and, in the case of pending applications and registrations, prosecution histories (if applicable) of each such item. Schedule 5.10(c) also identifies each trade name or unregistered trademark used by the Surviving Corporation in connection with the Business. With respect to each item of Intellectual Property required to be identified in Schedule 5.10(c), (i) the Surviving Corporation has no knowledge of any reason why the Surviving Corporation would be unable to register with the patent and trademark office embracing the jurisdiction of their formation each item which is an unregistered trademark, (ii) the Surviving Corporation possesses all right, title and interest in and to the item, free and clear of any Encumbrances or licenses, (iii) to the Surviving Corporation's Knowledge, the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge, (iv) no Proceeding is pending or, to the Surviving Corporation's Knowledge, threatened which challenges the legality, validity, enforceability, use or ownership of the item and (v) other than customary indemnities given to distributors, sales representatives, dealers and customers (as described on Schedule 5.10(c)(v)), the Surviving Corporation has no current obligations to

indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item.

(d) Schedule 5.10(d) identifies each item of Intellectual Property that any third party owns and that the Surviving Corporation uses pursuant to license, sublicense or agreement. The Surviving Corporation has delivered to the Surviving Corporation or made available to the Surviving Corporation for its review correct and complete copies of all such licenses, sublicenses and other agreements (as amended to date). With respect to each item of Intellectual Property required to be identified in Schedule 5.10(d), (i) the license, sublicense or other agreement covering the item is, to the Surviving Corporation's Knowledge, enforceable, except as may be limited by Enforceability Limitations, (ii) immediately following the Closing, the license, sublicense or other agreement will be enforceable on substantially similar terms and conditions as existed immediately prior to the Closing, except as may be limited by Enforceability Limitations, (iii) to the Surviving Corporation's Knowledge, no other party to any such license, sublicense or other agreement is in breach or default, and to the Surviving Corporation's Knowledge no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit early termination, modification or acceleration thereunder, (iv) neither the Surviving Corporation nor, to the Surviving Corporation's Knowledge, any other party to the license, sublicense or other agreement has repudiated any provision thereof, except to the extent contained in any written amendment to such Intellectual Property, if any, (v) to the Surviving Corporation's Knowledge, the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling or charge, (vi) no Proceeding is pending or, to the Surviving Corporation's Knowledge, threatened which challenges the legality, validity, enforceability or use of the underlying item of Intellectual Property by the Surviving Corporation and (vii) the Surviving Corporation has not granted any sublicense or similar right with respect to the license, sublicense or other agreement.

(e) To the Surviving Corporation's Knowledge, the Surviving Corporation's use of its Intellectual Property will not interfere with, infringe upon, misappropriate or otherwise come into conflict with, any intellectual property rights of third parties as a result of the continued operation of its Business as presently conducted, or to the Surviving Corporation's Knowledge as such Business is contemplated or proposed to be conducted.

(f) To the Surviving Corporation's Knowledge there has been no infringement by the Surviving Corporation on any patent applications of third parties or of any patents, copyrights or trademarks of third parties in countries other than the United States, and the Surviving Corporation has not received written notice of any such alleged infringement from any party.

5.11 Labor Matters.

(a) Schedule 5.11 identifies each current employee of the Surviving Corporation who had an annual base salary for the fiscal year ended December 31, 2002 in excess of \$50,000, or whose annual base salary for the fiscal year ending December 31, 2003 is expected to be in excess of \$50,000, his or her name, position or job title, his or her base

compensation and bonus compensation earned in the fiscal year of the Surviving Corporation ending December 31, 2002, and his or her current base compensation. The Surviving Corporation has no obligations under any written or oral agreement, collective bargaining agreement or other agreement with any labor organization or employee group. The Surviving Corporation is not engaged in any unfair labor practice and there is no unfair labor practice charge or other employee-related or employment-related complaint against the Surviving Corporation pending or, to the Surviving Corporation's Knowledge, threatened before any Governmental Authority. There is currently no labor strike, labor disturbance, slowdown, work stoppage or other material labor dispute or arbitration pending or, to the Surviving Corporation's Knowledge, threatened against the Surviving Corporation and no grievance currently being asserted by any individual or entity. The Surviving Corporation has not experienced a labor strike, labor disturbance, slowdown, work stoppage or other labor dispute at any time since its inception, and there is no organizational campaign being conducted or, to the Surviving Corporation's Knowledge, contemplated. There is no pending or, to the Surviving Corporation's Knowledge, threatened petition before any Governmental Authority or other dispute as to the representation of any employees of the Surviving Corporation. Each employee of the Surviving Corporation is an employee at will. There are no pending or, to the Surviving Corporation's Knowledge, threatened claims against the Surviving Corporation by employees or former employees for unpaid wages, wrongful termination, accidental injury or death, sexual harassment or discrimination or violation of any employment law, rule, regulation or order. The Surviving Corporation has complied in all respects with, and is currently in compliance in all respects with, all applicable Governmental Requirements relating to any of their employees or consultants (including, without limitation, any Governmental Requirement of the Occupational Safety and Health Administration), and since its inception the Surviving Corporation has not received any notice of failure to comply with any such Governmental Requirement which has not been rectified.

(b) The Surviving Corporation has on file a valid Form I-9 for each current employee of the Surviving Corporation hired or terminated since its inception. To the Surviving Corporation's Knowledge, all employees of the Surviving Corporation are (i) United States citizens, or lawful permanent residents of the United States, (ii) aliens whose right to work in the United States is unrestricted, or (iii) aliens who have valid, unexpired work authorization issued by the Attorney General of the United States (Immigration and Naturalization Service). Since its inception the Surviving Corporation has not been the subject of an immigration compliance or employment visit from, nor has the Surviving Corporation been assessed any fine or penalty by, or been the subject of any order or directive of, the United States Department of Labor or the Attorney General of the United States (Immigration and Naturalization Service).

(c) The Surviving Corporation has not terminated the employment of any employee during the 180 days preceding the Closing Date excluding voluntary resignation and termination for cause.

5.12 Transactions with Certain Persons.

(a) No Related Person is presently or at any time since the Surviving Corporation's inception has been a party to any transaction with the Surviving Corporation

(other than payment to officers for their services as officers or employees of the Surviving Corporation) including, without limitation, any contract, agreement or other arrangement (i) providing for the furnishing of goods or services to or by, (ii) providing for the rental or sale of real or personal property to or from or (iii) otherwise requiring payments to or from, such Related Person.

(b) All transactions with Related Persons since the Surviving Corporation's inception have been and are on an arms' length basis providing for terms and conditions no less favorable to the Surviving Corporation than as would reasonably be expected to be negotiated with an independent party.

(c) There is no outstanding amount (including pursuant to any advance, note or other indebtedness instrument) owed by the Surviving Corporation to any Related Person or from any Related Person to the Surviving Corporation.

5.13 Insurance. Schedule 5.13 contains a complete and accurate list of all current policies or binders of Insurance (showing as to each policy or binder the carrier, policy number, coverage limits, expiration dates, annual premiums, deductibles and a general description of the type of coverage provided and policy exclusions) maintained by the Surviving Corporation and relating to its properties, assets and personnel. All of the Insurance is "occurrence" based insurance. The Insurance is in full force and effect and sufficient for compliance in all respects with all requirements of applicable law and of all contracts to which the Surviving Corporation is a party. The Surviving Corporation is not in default under any of the Insurance and has not failed at any time to give any notice or to present any claim under any of this Insurance in a due and timely manner. No notice of cancellation, termination, reduction in or reservation of coverage or increase in premium (other than reductions in coverage or increases in premiums in the ordinary course) has been received with respect to any of this Insurance, and all premiums with respect to any of this Insurance have been timely paid. The Surviving Corporation has not experienced any claims in excess of current coverage of this Insurance. There will be no retrospective insurance premiums or charges or any other similar adjustment on or with respect to any of this Insurance for any period or occurrence through the Closing Date.

5.14 Material Contracts. Schedule 5.14 contains a true and correct list or description of the Material Contracts of the Surviving Corporation. True and correct copies of the Material Contracts have been delivered to the Company except as indicated on Schedule 5.14. Each of these Material Contracts is enforceable against the Surviving Corporation and, to the Surviving Corporation's Knowledge, each other party thereto, in accordance with its terms, except as such enforcement may be limited by Enforceability Limitations. Neither the Surviving Corporation nor, to the Surviving Corporation's Knowledge, any other party to any such Material Contract is in default thereunder or in breach thereof, and since its inception the Surviving Corporation has not granted any waiver of or under any provision of any of these Material Contract. There exists no event, occurrence, condition or act which constitutes or, with the giving of notice, the lapse of time or the happening of any future event or condition, would become, to the Surviving Corporation's Knowledge, a default by the Surviving Corporation or, to the Surviving Corporation's Knowledge, any other party under any of these Material

Contracts. To the Surviving Corporation's Knowledge there are no threatened defaults under any of these Material Contracts. The Surviving Corporation has not taken, or refrained from taking, any action which constitutes, or with the giving of notice or the lapse of time would constitute, a default under any of these Material Contracts.

5.15 Business Records. No material records of accounts, personnel records or other material records or documents relating to the Surviving Corporation or its Business have been destroyed except in the ordinary course and all such records are available upon request, subject to applicable Governmental Requirements and/or contractual prohibitions or limitations.

5.16 Bank Accounts; Powers of Attorney. Schedule 5.16 contains a true, complete and correct list of all bank accounts and safe deposit boxes maintained by the Surviving Corporation and all persons entitled to draw thereon, to withdraw therefrom or with access thereto, a description of all lock box arrangements for the Surviving Corporation and a description of all powers of attorney granted by the Surviving Corporation.

5.17 Environmental Matters. Since its inception the Surviving Corporation has not received any notice, warning or other written or oral communication from any Governmental Authority related to any existing or potential environmental problem or actual or alleged violation or any federal, state, municipal or local environmental law, regulation, statute, ordinance (collectively, "Environmental Laws"), including, without limitation, the release of any hazardous substance. To the Surviving Corporation's Knowledge, the Surviving Corporation has operated since its inception in compliance with all applicable Environmental Laws.

5.18 Absence of Certain Changes. Since March 31, 2003 there has not been:

(a) any change in the Business, financial condition or operations of the Surviving Corporation taken as a whole which would constitute a Surviving Corporation Material Adverse Effect;

(b) any increase in the compensation of or granting of bonuses payable or to become payable by the Surviving Corporation to any officer or employee whose compensation (base salary plus bonus) exceeded \$50,000 for the fiscal year ended December 31, 2002, other than annual increases or bonuses consistent with the Surviving Corporation's past practices and not exceeding, for any such officer or employee, \$10,000;

(c) other than sales of inventory and disposition of obsolete assets in the ordinary course of business, any sale or transfer by the Surviving Corporation of any tangible or intangible asset having a value at the time of disposition greater than \$10,000 or \$50,000 in the aggregate for all such assets, any mortgage or pledge or creation of any Encumbrance relating to any such asset, any lease of real property or equipment, or any cancellation of any debt or claim, except in the ordinary course of business;

(d) any other transaction not in the ordinary course of the Surviving Corporation's Business or not otherwise consistent with the Surviving Corporation's past practices involving consideration in excess of \$25,000;

(e) any change in the Surviving Corporation's accounting methods or principles;

(f) any non-seasonal reduction in the backlog or orders of the Surviving Corporation's Business, any acceleration of sales into a current period or any change in pricing or discounts offered to customers of this Business not consistent with past practice; or

(g) any cash or property distributions or payments by the Surviving Corporation to, or for the benefit of, any individual or entity including, without limitation, any Surviving Corporation Stockholder.

5.19 Absence of Certain Payments. Neither the Surviving Corporation nor any of its directors, officers, employees or agents, or other people acting on behalf of any of them, have with respect to its Business (i) engaged in any activity prohibited by the United States Foreign Corrupt Practices Act of 1977 or any other similar law, regulation or decree, directive or order of any Governmental Authority or (ii) without limiting the generality of the preceding clause (i), used any corporate or other funds for unlawful contributions, payments, gifts or entertainment, or made any unlawful expenditures relating to political activity to officials of any Governmental Authority. Neither the Surviving Corporation nor any of its directors, officers, employees or agents, or other Persons acting on behalf of any of them, have accepted or received any unlawful contributions, payments, gifts or expenditures.

5.20 Compliance with Laws: Permits. The conduct of the Surviving Corporation's Business is in compliance in all material respects with all applicable Governmental Requirements and Permits. Since its inception the Surviving Corporation has not received any notice stating or alleging that it is not in compliance in all respects with any applicable Governmental Requirements or Permits, and to the Surviving Corporation's Knowledge, there are no presently existing facts, circumstances or events which, with notice or lapse of time, would result in violations of any applicable Governmental Requirements or Permits. Schedule 5.20 identifies all Permits issued to the Surviving Corporation and currently in effect. The Permits listed on Schedule 5.20 constitute all the Permits used in the operation of and necessary to conduct the Surviving Corporation's Business. All of these Permits are valid and in full force and effect, no violations have been experienced, noted or recorded and no violations are expected and no Proceeding is pending or, to the Surviving Corporation's Knowledge, threatened to revoke or limit any of these Permits.

5.21 No Material Misstatements or Omissions. None of the representations and warranties by the Surviving Corporation in this Agreement contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained therein, in light of the circumstance under which they were made, not misleading.

5.22 Litigation. There is no Proceeding pending or, to the Surviving Corporation's Knowledge, threatened which is (a) a Proceeding against or involving the capital stock of the Surviving Corporation, (b) a Proceeding involving the Surviving Corporation or its properties, Assets (including its Intellectual Property) or Business, or (c) a Proceeding relating to the Surviving Corporation Business and against or involving any Surviving Corporation

Shareholder or any director, officer, employee or, to the Surviving Corporation's Knowledge, any independent contractor of the Surviving Corporation.

5.23 Termination of Arrangements with O'Curran Telecommunications, Inc. Any agreements or arrangements between the Surviving Corporation and O'Curran Telecommunications, Inc. ("O'Curran") have been terminated completely and the Surviving Corporation has no existing or contingent obligation to (a) sell any of its securities or Assets to O'Curran, or (b) purchase any of the securities or assets of O'Curran.

ARTICLE 6

COVENANTS AND CONDUCT OF THE PARTIES PRIOR TO AND AFTER CLOSING

The Company, on the one hand, and the Surviving Corporation, on the other hand, each covenant and agree with the other as follows:

6.1 Notifications, Consents and Approvals. As soon as practicable, the Surviving Corporation and the Company, as applicable, shall commence all reasonable actions to obtain the consents and approvals and to make the filings set forth on Schedule 6.1 (collectively, the "Required Consents and Filings") required to consummate the transactions contemplated by this Agreement.

6.2 Conduct Pending Closing.

(a) From the date of this Agreement to the Closing Date, and except as otherwise specifically provided in this Agreement or consented to or approved by the Surviving Corporation in advance in writing (consent will be deemed to have been given as to matters specifically set forth in the final Company Schedule of Exceptions), such consent or approval not to be unreasonably withheld or delayed, the Company shall not (i) make any special or extraordinary distribution of cash to any Person, including, without limitation, any Company Stockholder; and (ii) voluntarily take any action which would cause, or voluntarily fail to take any action the failure of which would cause, any representation or warranty of the Company contained in this Agreement to be breached or untrue in any respect.

(b) From the date of this Agreement to the Closing Date, and except as otherwise specifically provided in this Agreement or consented to or approved by the Company in advance in writing (consent will be deemed to have been given as to matters specifically set forth in the final Surviving Corporation Schedule of Exceptions), such consent or approval not to be unreasonably withheld or delayed, the Surviving Corporation shall not voluntarily take any action which would cause, or voluntarily fail to take any action the failure of which would cause, any representation or warranty of the Surviving Corporation contained in this Agreement to be breached or untrue in any respect.

6.3 Notification of Certain Matters. Each party hereto (the "Notifying Party") shall give prompt written notice to the other party (the "Receiving Party") of (i) any fact or circumstance, or any occurrence or failure to occur of any event of which the Notifying Party has knowledge, which fact, circumstance, occurrence or failure causes or, with notice or the lapse of

time, would cause any representation or warranty of the Notifying Party contained in this Agreement to be breached or untrue or inaccurate in any respect any time from the date of this Agreement to the Closing Date and (ii) any failure of the Notifying Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by the Notifying Party under this Agreement. Further, prior to the Closing, each party will have the right to furnish to the other party a revised Company Schedule of Exceptions or Surviving Corporation Schedule of Exceptions, as applicable (each, an "Updated Schedule of Exceptions"), that includes appropriate updates thereto in light of matters that have arisen in the course of operating their respective businesses after the date hereof.

6.4 Escrow Agreement. On the Closing Date, the Company, the Surviving Corporation, the Securityholder Representative and the Escrow Agent shall enter into an escrow agreement substantially in the form attached as Exhibit 6.4 (the "Escrow Agreement") pursuant to which the Escrow Shares will be escrowed.

6.5 Company Employees. All employees of the Company shall continue in their existing benefit plans until such time as, in Surviving Corporation's sole discretion, an orderly transition can be accomplished to employee benefit plans and programs maintained by Surviving Corporation for its and its affiliates' employees in the United States. Surviving Corporation shall take such reasonable actions, to the extent permitted by Surviving Corporation's benefits programs, as are necessary to allow eligible employees of the Company to participate in the health, welfare and other benefit programs of Surviving Corporation or alternative benefits programs in the aggregate that are substantially equivalent to those applicable to employees of Surviving Corporation in similar functions and positions on similar terms (it being understood that equity incentive plans are not considered employee benefits) and such Company employees shall be given service credit for their past employment with the Company for eligibility and vesting service credit under such programs of the Surviving Corporation. Pending such action, Surviving Corporation shall maintain the effectiveness of the Company's benefit plans.

6.6 Employment Offer Letters. On the Closing Date, the Surviving Corporation will enter into employment offer letters substantially in the form attached hereto as Exhibit 6.6 (each, an "Offer Letter") with all of the individuals who are employees of the Company as of the Closing Date (collectively, the "Current Employees").

6.7 Employment Agreement. On the Closing Date, the Surviving Corporation and William J. Trenchard shall enter into an employment agreement (the "Trenchard Employment Agreement") mutually agreeable to the parties thereto.

6.8 Repayment of Employee Advances. On or prior to the Closing Date, the Company shall cause all outstanding employee advances and amounts owing from Related Persons to be repaid to the Company in full.

6.9 Termination of Related Person Arrangements. The Related Person agreements set forth on Schedule 6.9 hereto shall, except as otherwise noted on Schedule 6.9, be terminated on or prior to the Closing Date.

6.10 Use of Corporate Name or Trade Name. After the Closing, no Company Stockholder will use or refer to the name "CallCast" or any trade name included within the Intellectual Property, or any derivative or variation thereof or any name substantially or confusingly similar thereto without the Surviving Corporation's prior written consent, which shall not be unreasonably withheld.

6.11 Access to Records. For a period of six (6) years after the Closing Date, the Surviving Corporation and its Representatives shall have reasonable access to all of the books and records, if any, relating to the Business which the Founders or any of their Representatives may retain after the Closing Date. Such access shall be afforded to the Surviving Corporation and its Representatives upon receipt of at least five (5) days written notice and during normal business hours. The Surviving Corporation shall be solely responsible for any costs and expenses incurred by it pursuant to this Section 6.11. If the Founders or their Representatives shall desire to dispose of any of such books and records prior to the expiration of such six (6) year period, the Founders shall, prior to such disposition, give the Surviving Corporation a reasonable opportunity, at the Surviving Corporation's expense, to segregate and remove such books and records as Surviving Corporation may select. The Founders shall perform all reasonable actions required to ensure that their Representatives comply with the requirements of this Section 6.11.

6.12 Confidentiality. Each of the Founders has had access to, and has gained knowledge with respect to, the Business, including, without limitation, trade secrets, financial results and information, processes and techniques, technical production and cost data, methods of doing business and information concerning customers and suppliers, and other valuable and confidential information relating to the Business (collectively, the "Confidential Information"). Each Founder acknowledges that unauthorized disclosure or misuse of any Confidential Information after the Closing will cause irreparable damage to the Surviving Corporation. The parties also agree that covenants by the Founders not to make unauthorized disclosures of the Confidential Information are essential to the growth and stability of the Surviving Corporation's business after the Closing. Accordingly, each Founder covenants and agrees that after the Closing he will not use or disclose any Confidential Information obtained in the course of his past connection with the Business, other than (i) information generally available to the public through sources other than the Founders, (ii) in connection with enforcement of this Agreement, or (iii) as necessary to defend or participate in the defense of actions to which the indemnification provisions of Article 9 apply, or in connection with tax reporting and related tax matters associated with the Company and the Founders. Notwithstanding the foregoing confidentiality provisions, each party (and their respective employees, representatives, or other agents) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Merger and all materials of any kind (including opinions or other tax analyses) that are provided to each such party relating to such tax treatment and tax structure. In addition, no party is subject to any restriction concerning its consulting with its tax advisors regarding the tax treatment or tax structure of the transaction at any time.

6.13 Tax Covenants.

(a) From and after the date of this Agreement and until the Effective Time, each party hereto shall use its reasonable best efforts to cause the Merger to qualify, and will not knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken which action or failure to act could prevent the Merger from qualifying as a reorganization under the provisions of Section 368(a)(1)(A) of the Code. Following the Effective Time, neither the Surviving Corporation nor any of its affiliates shall knowingly take any action, cause any action to be taken, fail to take any action or cause any action to fail to be taken, which action or failure to act could cause the Merger to fail to qualify as a reorganization under Section 368(a)(1)(A) of the Code.

(b) As of the date hereof, the Company does not know of any reason (i) why it would not be able to deliver to Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP ("Gunderson Dettmer") (counsel to the Company), or Hodgson Russ LLP (counsel to Surviving Corporation), at the date of the legal opinions referred to below, certificates substantially in compliance with Internal Revenue Service published advance ruling guidelines, with customary exceptions and modifications thereto, to enable such firms to deliver the legal opinions contemplated by Sections 7.7 and 8.9, and the Company hereby agrees to deliver such certificates effective as of the date of such opinions, or (ii) why Gunderson Dettmer or Hodgson Russ LLP would not be able to deliver the opinions required by Sections 7.7 and 8.9. As of the date hereof, the Surviving Corporation does not know of any reason why it would not be able to deliver to Hodgson Russ LLP or Gunderson Dettmer, at the date of the legal opinions referred to below, certificates substantially in compliance with the Internal Revenue Service published advance ruling guidelines, with customary exceptions and modifications thereto, to enable such firms to deliver the legal opinions contemplated by Sections 7.7 and 8.9, and Surviving Corporation hereby agrees to deliver such certificates effective as of the date of such opinions, or (ii) why Hodgson Russ or Gunderson Dettmer would not be able to deliver the opinions required by Sections 7.7 and 8.9.

(c) Straddle Period Returns. The Surviving Corporation shall prepare and file (or cause to be prepared and filed) all Tax Returns for all periods beginning before the Closing Date and ending after the Closing Date ("Straddle Returns"). The Surviving Corporation shall permit the Founders to review and comment on each such Straddle Return prior to the filing thereof.

(d) Cooperation. After the Closing Date, each Founder will make available to the Surviving Corporation, as reasonably requested, all information, records, or documents relating to the liabilities for Taxes of the Company for all periods prior to or including the Closing Date and will preserve such information, records, or documents until the expiration of any applicable statute of limitations (including extensions thereof). After the Closing Date, the Founders and the Surviving Corporation will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any audit, litigation, or other proceeding with respect to Taxes.

6.14 Indemnification of Officers and Directors. (a) For six years from and after the Closing Date, the Surviving Corporation agrees to indemnify (including advancement of expenses) and hold harmless the past and present officers and directors of the Company specifically listed on Schedule 6.14 hereto to the same extent such persons are indemnified as of the date of this Agreement by the Company pursuant to the Company's Certificate of Incorporation or Bylaws, as amended, employment agreements or indemnification agreements identified on the Company Schedule of Exceptions or under applicable law for acts or omissions which occurred at or prior to the Effective Time. This indemnification shall not apply to any claim by an indemnified party pursuant to the terms of this Agreement or any other agreement contemplated by this Agreement.

ARTICLE 7 CONDITIONS TO COMPANY OBLIGATIONS

The obligation of the Company to consummate the transactions contemplated by this Agreement is subject, in the discretion of the Company, to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any of which, in the Company's sole discretion, may be waived in writing in whole or in part without impairing or affecting any right of indemnification or other right or remedy under this Agreement):

7.1 Representations, Warranties and Covenants. Except as set forth in the Surviving Corporation Schedule of Exceptions, all representations and warranties of the Surviving Corporation contained in this Agreement shall be true and correct in all respects at and as of the Closing Date (except (i) to the extent any such representation or warranty expressly speaks as of an earlier date, which representation or warranty shall be true and correct as of such date (subject to clauses (ii) and (iii)), (ii) to the extent that the facts and conditions upon which such representations and warranties are based are expressly required or permitted to be changed by the terms of this Agreement and (iii) where the failure of the representation or warranty (considered individually and not in conjunction with any other representation or warranty) to be true and correct would not have a Material Adverse Effect on the Surviving Corporation), and the Surviving Corporation shall have performed all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date.

7.2 Employment Matters. All of the Current Employees shall have entered into Offer Letters with the Surviving Corporation and the Surviving Corporation and William J. Trenchard shall have entered into the Trenchard Employment Agreement.

7.3 No Proceedings. No Proceeding shall be pending, threatened or anticipated against the Surviving Corporation or the Company seeking to enjoin, or adversely affecting, the consummation of the transactions contemplated by this Agreement.

7.4 Closing Certificate. The Surviving Corporation shall have provided to the Company a certificate of an executive officer of the Surviving Corporation, in form and substance reasonably satisfactory to the Company, to evidence compliance with the conditions set forth in Sections 7.1, 7.3 and 7.6.

8.1 Representations, Warranties and Covenants. Except as set forth in the Company Schedule of Exceptions, all representations and warranties of the Company contained in this Agreement shall be true and correct in all respects at and as of the Closing Date (except (i) to the extent any such representation or warranty expressly speaks as of an earlier date, which representation or warranty shall be true and correct as of such date (subject to clauses (ii) and (iii)), (ii) to the extent that the facts and conditions upon which such representations and warranties are based are expressly required or permitted to be changed by the terms of this Agreement and (iii) where the failure of the representation or warranty (considered individually and not in conjunction with any other representation or warranty) to be true and correct would not have a Material Adverse Effect on the Company), and the Company shall have performed all agreements and covenants required by this Agreement to be performed by it prior to or at the Closing Date.

8.2 Required Consents and Filings. All of the Required Consents and Filings shall have been obtained or made.

8.3 No Proceedings. No Proceeding shall be pending, threatened or anticipated against the Surviving Corporation, the Company or the Company Shares seeking to enjoin, or adversely affecting, the transactions contemplated by this Agreement.

8.4 Closing Certificate. The Company shall have furnished or caused to be furnished to the Surviving Corporation a certificate or certificates in form reasonably satisfactory to the Surviving Corporation to evidence compliance with the conditions set forth in Sections 8.1, 8.2 and 8.3.

8.5 Legal Opinion. The Surviving Corporation shall have received an opinion from Gunderson Dettmer, counsel to the Company, which substantially reflects the opinion points listed in Exhibit 8.5.

8.6 Escrow Agreement. The Surviving Corporation, the Stockholder Representative and the Escrow Agent shall have all executed and delivered the Escrow Agreement.

8.7 Employment Matters. All of the Current Employees shall have entered into Offer Letters with the Surviving Corporation and the Surviving Corporation and William J. Trenchard shall have entered into the Trenchard Employment Agreement.

8.8 Wendell Brown Agreements. All of the Wendell Brown Agreements shall have been executed by all of the parties thereto.

8.9 No Other Termination. The Surviving Corporation shall not have elected to terminate this Agreement in accordance with Section 10.2 hereof.

8.10 Tax Opinion of Surviving Corporation's Counsel. The Surviving Corporation shall have received the opinion of Hodgson Russ LLP, counsel to Surviving Corporation, based upon representations of Surviving Corporation and the Company and normal assumptions, to the effect that the Merger will be treated for Federal income tax purposes as a

reorganization qualifying under the provisions of Section 368(a)(1)(A) of the Code, which opinion shall not have been withdrawn or modified in any material respect. The issuance of such opinion shall be conditioned on receipt by Hodgson Russ LLP of representation letters from each of Surviving Corporation and the Company as contemplated in Section 6.13 of this Agreement. Each such representation letter shall be dated on or before the date of such opinion and shall not have been withdrawn or modified in any material respect as of the Effective Time. Notwithstanding the foregoing, if Surviving Corporation's counsel does not render such opinion, this condition shall nevertheless be deemed satisfied with respect to Surviving Corporation if Gunderson Detmer, counsel to the Company, tenders such opinion to Surviving Corporation.

8.11 Shareholder Agreement. Each of William J. Trenchard, Wendell Brown, Patrick McKenna and Jim Everingham shall have entered into the Shareholder Agreement in substantially the form attached hereto as Exhibit 7.10.

ARTICLE 9

COVENANTS AND CONDUCT OF THE PARTIES AFTER CLOSING

9.1 Survival and Indemnifications

(a) Survival of Representations, Warranties, Covenants and Agreements

(i) All representations and warranties of each Party contained in this Agreement shall survive the Closing Date but only for the duration of the Claims Period. Any claim made by a Party hereto with respect to the representations and warranties of the other Party hereto contained in this Agreement must be initiated during the Claims Period, or otherwise will be deemed null and void. All of the representations and warranties of any Party contained in this Agreement shall in no respect be limited or diminished by any past or future inspection, investigation or examination conditioned by the other Party or its Representatives. All covenants and agreements made by a Party contained in this Agreement shall survive the Closing Date until fully performed or discharged.

(b) Indemnification Related to Company and Company Stockholder Representations, Warranties and Covenants. Each Company Stockholder and each holder of Convertible Debt (subject to the limitations contained in this Agreement) covenants and agrees to indemnify and hold harmless the Surviving Corporation, from, against and in respect of such Company Stockholder's and such Convertible Debt holder's pro-rata portion, in accordance with their respective interests in the Escrow Shares immediately prior to Closing of any and all Losses suffered or incurred by the Surviving Corporation by reason of any breached or untrue representation or warranty or the nonfulfillment of any covenant or agreement by the Company contained in this Agreement.

(c) Indemnification by the Surviving Corporation. The Surviving Corporation and the Surviving Corporation Shareholders hereby agree to indemnify and hold harmless the Company Stockholders for any Losses suffered or incurred by any of them resulting from any breached or untrue representation or warranty by the Surviving Corporation contained

in this Agreement or the nonfulfillment of any covenant or agreement by the Surviving Corporation contained in this Agreement.

(d) Notification and Defense of Claims or Actions.

(i) As used in this Section 9.1, any Person seeking indemnification pursuant to this Section 9.1 is referred to as an "indemnified party" and any Person from whom indemnification is sought pursuant to this Section 9.1 is referred to as an "indemnifying party." An indemnified party which proposes to assert the right to be indemnified under this Section 9.1 shall submit a written demand for indemnification within fifteen (15) business days of becoming aware of such potential claim setting forth in summary form the facts as then known which form the basis for the claim for indemnification; provided, however, that the failure to give such notice will not affect such claim of indemnification except to the extent of actual prejudice to the indemnifying party. With respect to claims based on actions by third parties, an indemnified party shall, within fifteen (15) business days after the receipt of notice of the commencement of any Proceeding against it in respect of which a claim for indemnification is to be made against an indemnifying party, notify the indemnifying party in writing of the commencement of such Proceeding, enclosing a copy of all papers served; provided, however, that the failure to so notify the indemnifying party of any such Proceeding shall not relieve the indemnifying party from any liability which it may have to the indemnified party, except to the extent that the indemnifying party is prejudiced thereby. Thereafter, the indemnified party shall deliver to the indemnifying party, within fifteen (15) days after receipt by the indemnified party, copies of all further notices relating to such claim.

(ii) If a third-party claim is made for which the Surviving Corporation is entitled to indemnification pursuant to Section 9.1(b), then the Surviving Corporation shall promptly notify the indemnifying party stating specifically the representation, warranty, covenant or agreement with respect to which such third-party claim is being made, the material facts giving rise to such claim, and the amount of the liability asserted. The Surviving Corporation shall be entitled to assume primary responsibility for the defense of such claim with counsel selected by the Surviving Corporation. If the Surviving Corporation assumes the defense of a third-party claim as set forth in this paragraph, then (A) the Surviving Corporation may defend such claim in a manner as it may deem appropriate (including, but not limited to, settling or otherwise resolving such claim; provided, however, that the indemnifying party will have the right to contest the reasonability of any settlement or resolution), (B) in no event shall the Company admit any liability with respect to, or settle, compromise or discharge, any such claim without the Surviving Corporation's prior written consent not to be unreasonably withheld and (C) the Company Stockholders and the holders of Convertible Debt shall be entitled to participate in, but not control, the defense of such claim with their own counsel at their own expense. If the Surviving Corporation does not assume the defense of any such claim, the Company Stockholders and the holders of Convertible Debt may defend such claim in a manner as they may deem appropriate (including, but not limited to, settling or otherwise resolving such claim, after giving forty five (45) days prior written notice of such settlement or resolution to the Surviving Corporation, on such terms as the Company Stockholders may deem appropriate and are not objected to by the Surviving Corporation within twenty (20) days after receipt of such notice, the Surviving Corporation not to unreasonably withhold consent).

(iii) In the event that any claim for indemnification is made with respect to any third-party claim pursuant to this Section 9.1, (A) the party assuming primary responsibility for the defense of such claim shall at all times keep the other party reasonably informed as to the status of such claim and (B) the party not primarily responsible for the defense of such claim shall cooperate fully with the other party in connection with such defense.

(e) Securityholder Representative.

(i) Bill Trenchard (such person and any successor or successors being the "Securityholder Representative") shall act as the representative of the Company Stockholders and the holders of Convertible Debt, and shall be authorized to act on behalf of the Company Stockholders and the holders of Convertible Debt and to take any and all actions required or permitted to be taken by the Securityholder Representative under this Agreement with respect to any claims (including the settlement thereof) made by an indemnified party for indemnification pursuant to this Article 9 and with respect to any actions to be taken by the Securityholder Representative pursuant to the terms of the Escrow Agreement (including, without limitation, the exercise of the power to (i) authorize the delivery of Escrow Shares to an indemnified party in satisfaction of claims by an indemnified party, (ii) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to any claims for indemnification and (iii) take all actions necessary in the judgment of the Securityholder Representative for the accomplishment of the foregoing). In all matters relating to this Article 9, the Securityholder Representative shall be the only party entitled to assert the rights of the Company Stockholders and the holders of Convertible Debt, and the Securityholder Representative shall perform all of the obligations of the Company Stockholders and the holders of Convertible Debt hereunder. The indemnified parties shall be entitled to rely on all statements, representations and decisions of the Securityholder Representative.

(ii) The Company Stockholders and the holders of Convertible Debt shall be bound by all actions taken by the Securityholder Representative in his capacity thereof, except for any action that conflicts with the limitations set forth in subsection (iv) below. The Securityholder Representative shall promptly, and in any event within five business days, provide written notice to the Company Stockholders and the holders of Convertible Debt of any action taken on behalf of them by the Securityholder Representative pursuant to the authority delegated to the Securityholder Representative under this Section 9.1(e). The Securityholder Representative shall at all times act in his capacity as Securityholder Representative in a manner that the Securityholder Representative believes to be in the best interest of the Company Stockholders and the holders of Convertible Debt. Neither the Securityholder Representative nor any of its directors, officers, agents or employees, if any, shall be liable to any person for any error of judgment, or any action taken, suffered or omitted to be taken under this Agreement or the Escrow Agreement, except in the case of its gross negligence, bad faith or willful misconduct. The Securityholder Representative may consult with legal counsel, independent public accountants and other experts selected by him. The Securityholder Representative shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the Escrow Agreement. As to any matters not expressly provided for in this Agreement or the Escrow Agreement, the Securityholder Representative shall not exercise any discretion or take any action.

(iii) The Securityholder Representative shall be entitled to set off any and all liabilities, losses, damages, claims, costs or expenses suffered or incurred by the Securityholder Representative arising out of or resulting from any action taken or omitted to be taken by the Securityholder Representative under this Agreement or the Escrow Agreement, other than such liabilities, losses, damages, claims, costs or expenses arising out of or resulting from the Securityholder Representative's gross negligence, bad faith or willful misconduct, against the Escrow Shares that would otherwise have been distributed to the Company Stockholders and holders of Convertible Debt pursuant to the terms hereof. Such offset of the Escrow Shares shall be payable only by relinquishment of Escrow Shares, which shall be borne by the Company Stockholders and the holders of Convertible Debt pro-rata in accordance with their respective interests in the Escrow Shares immediately prior to the Closing.

(iv) Notwithstanding anything to the contrary herein or in the Escrow Agreement, the Securityholder Representative is not authorized to, and shall not, accept on behalf of any Company Stockholder and any holder of Convertible Debt any Merger Consideration or Preferred Stock, as applicable, to which such Company Stockholder or holder of Convertible Debt is entitled under this Agreement and the Securityholder Representative shall not in any manner exercise, or seek to exercise, any voting power whatsoever with respect to shares of capital stock of the Company or the Surviving Corporation now or hereafter owned of record or beneficially by any Company Stockholder or holder of Convertible Debt unless the Securityholder Representative is expressly authorized to do so in a writing signed by such Company Stockholder or holder of Convertible Debt.

(f) Protection of Escrow. The Escrow Agent shall hold and safeguard the Escrow Shares during the Claims Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and not as the property of the Surviving Corporation and shall hold and dispose of the Escrow Shares only in accordance with the terms hereof and the Escrow Agreement. Any shares of Common Stock or Preferred Stock distributed by the Surviving Corporation (including shares issued upon a stock split) ("New Shares") in respect of shares of Common Stock or Preferred Stock in the escrow fund at the time of issuance or distribution shall be added to the escrow fund and become a part thereof. Any other property distributed by the Surviving Corporation in respect of shares of Common Stock, Preferred Stock or other equity securities in the escrow fund at the time of issuance or distribution shall not be added to the escrow fund but shall be distributed to the recordholders thereof. Each Company Stockholder and each holder of Convertible Debt shall have voting rights with respect to the Escrow Shares on behalf of such Company Stockholder and such holder of Convertible Debt (and on any voting securities added to the escrow fund in respect of such shares of Common Stock and Preferred Stock).

(g) Claims Upon Escrow; Disposition of Escrow Shares. Upon receipt by the Escrow Agent at any time on or before the termination of the Claims Period of a certificate signed by any officer of the Surviving Corporation (an "Officer's Certificate") (i) stating that the Surviving Corporation has paid or properly accrued in accordance with GAAP or in good faith anticipates that it will have to pay or accrue Losses in accordance with GAAP and (ii) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid or properly accrued in accordance with GAAP, or the good faith basis for

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such anticipated liability, and the nature of the misrepresentation, breach of warranty or covenant to which such item is related and to the extent known a reasonable summary of the facts underlying the claim, and if no objection is received from the Securityholder Representative in accordance with Section 9.1(h), the Escrow Agent will, subject to the provisions of Section 9.1(h), deliver to the Surviving Corporation Escrow Shares in an amount equal to such Losses; *provided, however*, that where the basis for such claim is that the Surviving Corporation in good faith anticipates that it will pay or accrue Losses in accordance with GAAP, no payment of Escrow Shares will be made to the Surviving Corporation for such Losses unless and until such Losses are actually paid or accrued in accordance with GAAP. For the purposes of determining the number of Escrow Shares to be delivered to the Surviving Corporation pursuant to this Section 9.1(g), each share of Common Stock shall be valued at \$0.05, and each share of Preferred Stock shall be valued at \$0.50, which values represent the good faith determination of the Parties regarding the fair market value of such shares as of the Effective Time.

(h) Objections to Claims. At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such Officer's Certificate shall be delivered to the Securityholder Representative and for a period of thirty (30) days after such delivery, the Escrow Agent shall make no delivery to the Surviving Corporation of any Escrow Shares unless the Escrow Agent shall have received written authorization from the Securityholder Representative to make such delivery. After the expiration of such thirty (30) day period, the Escrow Agent shall make delivery of Escrow Shares in accordance with Section 9.1(g) hereof; *provided, however*, that no such payment or delivery may be made if the Securityholder Representative shall object in a written statement to the claim made in the Officer's Certificate, and such statement shall have been delivered to the Escrow Agent prior to the expiration of such thirty (30) day period.

(i) Resolution of Conflicts: Arbitration. Any Dispute (as defined herein) that arises under this Article 9 shall be resolved in accordance with the provisions of Sections 10.14 and 10.15 of this Agreement.

9.2 Sole Remedy. The sole remedy of the parties for any and all claims against the other parties with respect to the transactions contemplated herein shall be a claim for indemnification under this Article 9 on the terms and subject to the conditions of this Agreement, except for claims of fraud or willful misconduct. The indemnification obligations of the Company Stockholders and the holders of the Convertible Debt shall be borne pro rata in accordance with their respective interests in the Escrow Shares immediately prior to Closing.

9.3 Multiple Claims for Indemnification. It is specifically understood and agreed that a claim for indemnification which exists based on one representation and warranty in Article 4 or Article 5 can be made notwithstanding the fact that such claim involves a subject matter more specifically dealt with elsewhere in Article 4 or Article 5.

9.4 Subrogation. To the extent that an indemnifying party has discharged any claim for indemnification hereunder, the indemnifying party shall be subrogated to all rights of the indemnified party against any third parties.

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9.5 Tax Treatment. Any payment made in connection with this Article 9 shall constitute a purchase price adjustment to the Merger Consideration for tax purposes, and shall be treated as such by all parties on their respective Tax Returns.

9.6 Indemnification Obligations of the Company Stockholders and the Surviving Corporation Stockholders. The respective indemnification obligations of the Surviving Corporation Shareholders and the Company Stockholders and the holders of Convertible Debt (pursuant to Section 9.1(b) and 9.1(c) hereof, respectively) are subject to the following limitations and restrictions: (a) any Surviving Corporation Shareholder shall be liable for indemnification only to the extent the Surviving Corporation is unable to pay such indemnification amount as required by this Agreement, (b) the aggregate liability of the Surviving Corporation Shareholders (as a group) and the Company Stockholders and the holders of Convertible Debt (as a group) shall each be limited to ten percent (10.0%) of the total Merger Consideration, and (c) the only recourse (except in cases of fraud or willful misconduct) that the Surviving Corporation will have against any Company Stockholder or holder of Convertible Debt shall be the relinquishment by such Company Stockholder or holder of Convertible Debt of Escrow Shares as described in this Article 9, and no Company Stockholder or holder of Convertible Debt shall be required to make any cash payment to the Surviving Company in connection with any indemnification obligation hereunder.

ARTICLE 10 MISCELLANEOUS

10.1 Further Assurances; Information. After the Closing Date, each party will cooperate in good faith with each other party and will take all appropriate action and execute any agreement, instrument or other writing of any kind which may be reasonably necessary or advisable to carry out and confirm the transactions contemplated by and the intent of this Agreement.

10.2 Termination. This Agreement may be terminated at any time prior to the Closing Date as follows:

(a) By mutual written agreement of the Surviving Corporation and the Company;

(b) By the Surviving Corporation or the Company by written notice to the other in the event that the Closing Date has not occurred for any reason by the close of business (local Fort Lauderdale, Florida time) on July 31, 2003, but only if the terminating party is not in breach of, or default under, any provision of this Agreement;

(c) By the Surviving Corporation by written notice to the Company if the Surviving Corporation is not in material breach of its representations, warranties or obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of the Company or if any material representation or warranty of the Company shall have become untrue, in either case such that the conditions set forth in Section 8.1 would not be satisfied; *provided, however, if*

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such breach or breaches are capable of being cured prior to the Effective Time, such breaches shall not have been cured within thirty (30) days of delivery to the Company of written notice of such breach or breaches (but no such cure period shall be required if such breach by its nature cannot be cured).

(d) Upon written notice by the Company if the Company is not in material breach of its representations, warranties or obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of the Surviving Corporation or if any material representation or warranty of the Surviving Corporation shall have become untrue, in either case such that the conditions set forth in Section 7.1 would not be satisfied; *provided, however*, if such breach or breaches are capable of being cured prior to the Effective Time, such breaches shall not have been cured within thirty (30) days of delivery to the Surviving Corporation of written notice of such breach or breaches (but no such cure period shall be required if such breach by its nature cannot be cured).

In the event of the termination of this Agreement by any party as provided in this Section 10.2, no party shall have any liability hereunder hereunder provided that, (i) any such termination shall not relieve any party from liability for any willful or intentional breach of this Agreement and (ii) the provisions of Article 10 of this Agreement (except for Section 10.1) shall remain in full force and effect and survive any termination of this Agreement. If a condition precedent to a party's obligations is not satisfied, nothing contained in this Agreement shall be deemed to require any party to terminate this Agreement, and that party may elect, in its sole discretion, to waive compliance with such condition precedent and proceed with the Closing, which waiver shall not impair or affect any right of indemnification or other right or remedy hereunder if such waiver is conditioned in writing on such non-impairment (which condition is accepted in writing by the other party).

10.3 Notices. Unless otherwise provided in this Agreement, any agreement, notice, request, instruction or other communication to be given hereunder by any party to another shall be written and (i) delivered personally (such delivered notice to be effective on the date it is delivered), (ii) mailed by certified mail, postage prepaid (such mailed notice to be effective four (4) business days after the date it is mailed), or (iii) deposited with Federal Express, UPS or DHL (such notice to be effective one (1) business day after the date it is deposited with such courier) addressed as follows:

If to the Company:

CallCast, Inc.
364 University Avenue
Palo Alto, CA 94301
Attention: William J. Trenchard

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With a copy to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP
155 Constitution Drive
Menlo Park, CA 94025
Attention: Anthony J. McCusker, Esq.

If to the Surviving Corporation:

LiveOps.com, Inc.
315 N.E. Third Avenue
Fort Lauderdale, FL 33301
Attn: John Mackle

With a copy to:

Robert C. White, Jr., Esq.
Hodgson Russ LLP
1801 North Military Trail
Suite 200
Boca Raton, FL 33431

If to the Securityholder Representative:

364 University Avenue
Palo Alto, CA 94301
Attention: William J. Trenchard

Any party may designate in a writing to any other party any other address or telecopier number to which, and any other Person to whom or which, a copy of any such notice, request, instruction or other communication should be sent.

10.4 Public Statements. The Surviving Corporation, the Surviving Corporation Shareholders, the Company and the Founders shall cooperate, both prior to and after the Closing, in issuing any press releases or otherwise making public statements with respect to the transactions contemplated by this Agreement (including any statements to employees of the Company) and no press release or other public statements shall be issued without the joint consent of the Surviving Corporation and the Company, which shall not be unreasonably withheld.

10.5 Choice of Law. This Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the laws of the State of Florida without regard to principles of conflicts of law.

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10.6 Expenses. The Company shall pay all of its expenses in connection with this Agreement and the Merger through the Closing Date except that (a) the Surviving Corporation will pay the Company's operating expenses in compliance with Section 13 of the Letter of Intent, and (b) the Surviving Corporation will pay up to a maximum of \$50,000 in legal fees incurred by the Company in connection with this Agreement and the Merger. Except as otherwise specifically provided in this Agreement, nothing contained in this Agreement shall be interpreted or construed to require the Surviving Corporation to directly or indirectly pay, assume or be liable for any of the expenses of any Company Stockholder.

10.7 Titles. The headings of the articles and sections of this Agreement are inserted for convenience of reference only, and shall not affect the meaning or interpretation of this Agreement.

10.8 Waiver. No failure of any party to this Agreement to require, and no delay by any party to this Agreement in requiring, any other party to comply with any provision of this Agreement shall constitute a waiver of the right to require such compliance. No failure of any party to this Agreement to exercise, and no delay by any party to this Agreement in exercising, any right or remedy under this Agreement shall constitute a waiver of such right or remedy. No waiver by any party to this Agreement of any right or remedy under this Agreement shall be effective unless made in writing. Any waiver by any party to this Agreement of any right or remedy under this Agreement shall be limited to the specific instance and shall not constitute a waiver of such right or remedy in the future.

10.9 Effective; Binding. This Agreement shall be effective upon the due execution hereof by each party to this Agreement. Upon becoming effective, this Agreement shall be binding upon each party to this Agreement and upon each successor and assignee of each party to this Agreement and shall inure to the benefit of, and be enforceable by, each party to this Agreement and each successor and assignee of each party to this Agreement; provided, however, that, except as provided for in the immediately following sentence, no party to this Agreement shall assign any right or obligation arising pursuant to this Agreement without first obtaining the written consent of the other parties. The Surviving Corporation may assign all or a portion of its rights and obligations under this Agreement to one or more Affiliates of the Surviving Corporation upon written notice to the Founders, provided that the Surviving Corporation shall remain liable hereunder notwithstanding any such assignment.

10.10 Entire Agreement. This Agreement contains the entire agreement between the parties to this Agreement with respect to the subject matter of this Agreement and supersedes each course of conduct previously pursued, accepted or acquiesced in, and each written or oral agreement and representation previously made, by the parties to this Agreement with respect to the subject matter of this Agreement. The Letter of Intent is hereby superseded and terminated except for Sections 5, 7, 8, 9, 11, 13 and 14 thereof, which shall remain in full force and effect in accordance with their terms.

10.11 Modification. No course of performance or other conduct hereafter pursued, accepted or acquiesced in, and no oral agreement or representation made in the future, by any party to this Agreement, whether or not relied or acted upon, and no usage of trade,

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whether or not relied or acted upon, shall modify or terminate this Agreement, impair or otherwise affect any obligation of any party pursuant to this Agreement or otherwise operate as a waiver of any such right or remedy. No modification of this Agreement or waiver of any such right or remedy shall be effective unless made in writing duly executed by the parties to this Agreement.

10.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. Any party may execute this Agreement by facsimile signature and the other parties shall be entitled to rely on such facsimile signature as evidence that this Agreement has been duly executed by such party. Any party executing this Agreement by facsimile signature shall immediately forward to the other parties an original signature page by overnight mail.

10.13 Severability. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

10.14 Binding Arbitration; Consent to Jurisdiction. Any Proceeding which arises out of or in connection with this Agreement or the Merger (including, without limitation, any Proceeding under Section 9.1) shall be resolved by binding arbitration (each, an "Arbitration Proceeding") in accordance with the provisions of Section 10.15 hereof. Each party to this Agreement accepts, acknowledges and covenants and agrees to the provisions of Sections 10.14 and 10.15 and waives any defense of lack of personal jurisdiction or inconvenient forum or any similar defense, and irrevocably agrees to be bound by any arbitration award given in an Arbitration Proceeding in connection with this Agreement.

10.15 Arbitration Procedures. Each Arbitration Proceeding shall be conducted in accordance with the terms and conditions of this Section 10.15. If any dispute or controversy (a "Dispute") of any kind arises between or among any of the Parties hereto in connection with this Agreement or any of the transactions contemplated herein, one Party (the "Initiating Party") shall give written notice (the "Dispute Notice") to the other Party or Parties (with concurrent notice to the Surviving Corporation, if applicable) stating the basis of the Dispute. The Parties involved in the Dispute shall then attempt in good faith to agree upon the rights of the respective Parties with respect to each claim that is part of the Dispute. If these Parties should so agree, a memorandum setting forth such agreement shall be prepared and signed by all Parties to the Dispute. If the Dispute involves the possible distribution of the Escrow Shares under Section 9.1, a copy of this memorandum shall also be given to the Escrow Agent and the Escrow Agent shall be entitled to rely on this memorandum and distribute Escrow Shares in accordance with the terms thereof.

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(i) If no such agreement can be reached within twenty (20) business days following the date of the delivery of the Dispute Notice to the last Party to receive it in connection with the applicable Dispute, any Party may demand arbitration of the applicable Dispute by providing notice (the "Arbitration Notice") to the other Party or Parties of such demand unless the amount of the damage or loss is at issue in pending litigation with a third party, in which event such arbitration shall not be commenced until such amount is ascertained (provided that the Party involved in the pending litigation acts diligently to resolve such litigation with a third party and allows the other affected Party or Parties to consult and receive status updates in the defense of such matter) or all parties agree to arbitration; and in either such event the Dispute shall be settled by arbitration conducted by three (3) arbitrators. Within twenty (20) days of the date of the delivery of the Arbitration Notice to the last Party to receive it (A) the Initiating Party and (B) the other Party or Parties shall each select one (1) arbitrator, and the two arbitrators so selected shall select a third arbitrator within a further twenty (20) day period. If any Party fails to select an arbitrator within the applicable twenty (20) day period, this arbitrator shall be appointed by the American Arbitration Association. If the two arbitrators fail to appoint a third arbitrator within the applicable twenty (20) day period, the parties shall select the third arbitrator with the assistance of and by the procedure provided by the American Arbitration Association. The third arbitrator shall chair the arbitration. The arbitrators shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the Parties an opportunity, adequate in the sole judgment of the arbitrators, to discover relevant information from the opposing Parties about the subject matter of the Dispute. The arbitrators shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, should the arbitrators determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of a majority of the three (3) arbitrators as to the validity and amount of any claim in such Officer's Certificate shall be binding and conclusive upon all Parties. Notwithstanding anything contained in Section 9.1(h) hereof, the Escrow Agent shall be entitled to act in accordance with such decision and make or withhold payments of Escrow Shares in accordance therewith. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrators. In no event shall the arbitrators award less than any amount of losses conceded by the Securityholder Representative as being properly payable from the Escrow Shares.

(ii) Judgment upon any award rendered by the arbitrators may be entered in any court having jurisdiction. Any such arbitration shall be held in Broward County, Florida, under the commercial arbitration rules of the American Arbitration Association then in effect.

(iii) The substantially prevailing Party or Parties in any arbitration will be entitled to an award of attorneys' fees and costs, and all costs of arbitration, which will be paid by the losing Party or Parties, and the arbitrators will be authorized to make such determinations. Any fees to be paid by Company Stockholders and the holders of Convertible Debt pursuant to this paragraph shall be borne pro-rata in accordance with their respective interests in the Escrow Shares immediately prior to Closing and shall be paid from the Escrow Shares.

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IN WITNESS WHEREOF, this Merger Agreement has been executed on behalf of each party hereto by its duly authorized representatives as of the date indicated at the beginning of this Agreement.

LIVEOPS.COM, INC.

By: 

Print Name: DOUGLAS FEIRSTEIN

Title: PRESIDENT

CALLCAST, INC.

By: 

Print Name: William J. Trenchard

Title: CEO

SECURITYHOLDER REPRESENTATIVE (for the purposes of Articles 9 and 10 of this Agreement only):



WILLIAM J. TRENCHARD

THE SURVIVING CORPORATION
SHAREHOLDERS (for the purposes of Articles 9 and 10 of this Agreement only):



STEVEN DOUMAR



DOUGLAS FEIRSTEIN

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JUN-25-2003 17:30

HODGSON RUSS LLP

561 394 3862 P.58

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ESCROW AGENT:

**CUPERTINO NATIONAL BANK d/b/a GREATER
BAY TRUST COMPANY**

By: _____

Name: _____

Title: _____

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