

Division of Corporations

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**P97000029985**

Florida Department of State  
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**MERGER OR SHARE EXCHANGE****CAPTIVA SOFTWARE, INC.**

Certificate of Status	0
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(AUDIT NO: H050001114783)

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Captiva Software, Inc.

305-252-9849

P. 02

ARTICLES OF MERGER  
of  
CAPTIVA ACQUISITION CORP.  
a Florida corporation  
into  
CAPTIVA SOFTWARE, INC.  
a Florida corporation

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Pursuant to the provisions of Section 607.1105 of the Florida Business Corporation Act, Captiva Acquisition Corp., a Florida corporation ("Captiva Acquisition"), and Captiva Software, Inc., a Florida corporation ("Captiva Software"), hereby adopt the following Articles of Merger for the purpose of merging Captiva Acquisition into Captiva Software (the "Merger"):

1. Captiva Acquisition shall be merged with and into Captiva Software, and Captiva Software shall be the surviving corporation of the Merger, pursuant to the Agreement and Plan of Merger dated as of December 17, 2004, attached hereto as Exhibit "A" and incorporated herein by this reference (the "Plan of Merger").

2. The effective time and date of the Merger shall be upon filing.

3. The Plan of Merger was approved by unanimous written consent of the shareholders of Captiva Software as of December 17, 2004 and by Captiva's Acquisition's sole shareholder by resolution adopted December 17<sup>th</sup>, 2004.

IN WITNESS WHEREOF, these Articles of Merger have been executed, on behalf of Captiva Software and Captiva Acquisition, by their authorized officers as of April 29, 2005.

CAPTIVA ACQUISITION CORP.

By: 

Name: Jack Donahue

Title: President

CAPTIVA SOFTWARE, INC.

By: 

Name: James R. McCallion

Title: President

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Audit No: (H 050001114783)

## **EXHIBIT "A"**

### **PLAN OF MERGER**

Audit No: (H 050001114783)

(Audit NO: H050001114783)

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AGREEMENT AND PLAN OF MERGER

by and among

ONLINE BENEFITS, INC.  
and its wholly-owned subsidiary,  
CAPTIVA ACQUISITION CORP.,

- AND -

CAPTIVA SOFTWARE, INC.  
and its STOCKHOLDERS

Dated as of December 17, 2004

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(Audit No. H050001114783)

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") is entered into as of December 17, 2004, by and among Online Benefits, Inc., a Delaware corporation ("Parent"); Captiva Acquisition Corp., a Delaware corporation ("Merger Sub"); Captiva Software, Inc., a Florida corporation ("Target"); and James R. McCallion and Eric R. Bechtlinger (jointly and severally, the "Stockholders").

#### RECITALS:

WHEREAS, Stockholders own all of the issued and outstanding capital stock of Target, which consists of 1,000 shares of Target common stock, no par value.

WHEREAS, Parent owns all of the issued and outstanding capital stock of Merger Sub;

WHEREAS, the respective boards of directors of Parent, Merger Sub and Target have approved the Merger of Merger Sub with and into Target in accordance with the provisions of this Agreement; and

WHEREAS, this Agreement contemplates a tax-free reverse subsidiary merger of the Merger Sub with and into the Target in a reorganization pursuant to Section 368(a)(2)(E) of the Internal Revenue Code of 1986, as amended (the "Code"). The Stockholders will receive certain consideration, including without limitation stock in the Parent, exchange for their Target stock, and the Parent will own all of the issued and outstanding shares of capital stock of the Target pursuant to the Merger. The parties expect that the Merger will further certain of their business objectives (including, without limitation, the Parent's expansion of its business to include the software products currently offered by the Target such as AgencyWare and CommissionsDue).

NOW, THEREFORE, intending to be legally bound hereby, the parties agree as follows:

#### ARTICLE I DEFINITIONS

When used herein, the following terms shall have the meanings indicated:

"Affiliate" shall mean with respect to Parent, Merger Sub, Target or Stockholders, as the case may be, any person or entity which directly or indirectly is in control of, is controlled by or is under common control with such corporation or such Stockholders.

"Annual" means the twelve (12) consecutive month period commencing on January 1, 2005, and any subsequent twelve (12) consecutive month period thereafter, during the Earn-Out Period; provided, however, that if AMS Services, Inc., together with its subsidiaries and parent, acquires shares of the Parent's capital stock constituting more than 50% of the combined voting power of all classes of the Company's capital stock on or prior to June 30, 2005 (the "Pre-July 1, 2005 AMS Transaction"), then the initial twelve month period shall re-commence as of the closing date of such transaction and the prior period shall not be considered part of the Earn-Out Period and the Earn-Out

Period shall be for the four (4) Annual periods following the closing date of such transaction.

"Certificate of Merger" means the Certificate of Merger in form attached hereto as Exhibit "A."

"Claim" means any claim, security interest, pledge, mortgage, lien, charge, deed of trust, right of first refusal, option, conditional sale, bailment, lease, encumbrance or other interest in property, real or personal, tangible or intangible.

"Closing" means the taking and completion of all actions required by this Agreement to be taken at Closing or necessary and appropriate to carry out the Merger and other transactions contemplated hereby to be completed at Closing, all of which, except as otherwise provided herein, shall be deemed taken at the same time and effective only upon the completion of all such actions.

"Closing Date" means the date on which the Closing will occur as mutually agreed by the parties in compliance with this Agreement.

"Control Change Closing Date" means the date on which any Control Change Transaction is closed or consummated.

"Control Change Transaction" means any of the following transactions in which (a) one or more persons (other than one or more persons who prior to the Closing beneficially own 20% or more of any class of securities of Parent) become, during the Earn-Out Period, the beneficial owner, directly or indirectly, of securities of Parent representing 50% or more of the combined voting power of Parent's then outstanding securities; (b) there occurs a sale, exchange, transfer or other disposition of 50% or more in value of the assets of Parent to another person, except to an entity controlled directly or indirectly by Parent; (c) there occurs a merger, consolidation or other reorganization of Parent in which Parent is not the surviving entity and in which the historic shareholders of Parent own less than 50% of the outstanding securities of the acquirer immediately following the transaction; or (d) there occurs a plan of liquidation, dissolution or bankruptcy of Parent; provided, however, that "Change-In-Control Transaction" shall not mean or include any initial public offering, or any initial public offering and subsequent public offering(s), after which the historic shareholders of Parent own less than 50% of the then outstanding securities of Parent.

"Earn-Out Period" means the four (4) consecutive Annual periods following the Closing Date unless otherwise adjusted as provided in the definition of "Annual" with respect to the Pre-July 1, 2005 AMS Transaction.

"Constituent Corporations" means Merger Sub and Target.

"Disclosure Schedule" means the Disclosure Schedule attached hereto as Exhibit "B."

"Effective Time" shall have the meaning set forth in Section 2.01(a) below.

"Intangible" means any name, corporate name, fictitious name, trademark, trademark application, service mark, service mark application, trade name, brand name, product name, slogan,

trade secret, know-how, patent, reissues of and reexamined patent application (including continuations, continuations-in-part, substitutes or divisions of such applications, and all priority rights resulting from such application), copyright, copyright application, design, logo, formula, invention, product right, technology, Intellectual Property Rights, Software or other intangible asset of any nature, whether in use, operational, active, under development or design, non-operative, or inactive, arising under statutory or common law in any jurisdiction.

"Intellectual Property Rights" means all intellectual property rights and industrial property rights (throughout the universe, in all media, now existing or created in the future, and for the entire duration of such rights) arising under statutory or common law, contract, or otherwise, and whether or not perfected, including without limitation, all (a) patents, reissues and reexamined patents, and patent applications, whenever filed and wherever issued, including without limitation, continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications; (b) rights associated with works of authorship including, but not limited to, copyrights, moral rights, copyright applications, copyright registrations; (c) rights relating to the protection of trade secrets and confidential information; (d) rights in trademarks, service marks, trade names, logos, symbols, and the like; (e) rights analogous to those set forth in this Section and any and all other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued, or acquired.

"Knowledge" means actual knowledge of such person without independent investigation.

"Liabilities" means, as of any given date as to any given person, any obligation pursuant to which any other person now or with the passage of time or upon the occurrence of any event in the future has or will have a right to assert a claim for money or equitable relief, including, without limiting the generality of the foregoing, taxes, fees, assessments or pension, profit sharing or other employee benefit plan contributions that have or may become due.

"Merger" means the merger of Merger Sub with and into Target, as set forth in Section 2.01(b) below.

"Obligation" means any legal obligation, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, disputed or undisputed.

"Parent Financials" means the consolidated balance sheet of Parent and its subsidiary at December 31, 2003, and December 31, 2002, together with the consolidated statements of income and cash flows of Parent and Subsidiaries for the twelve month period then ended, copies of which have been delivered by Parent to Target and to Stockholders and are attached hereto as Exhibit C.

"Parent Stock" means the capital stock of Parent as set forth on Schedule 4.04 hereto.

"Parent Series D Preferred" means the class and series of Parent's preferred stock, par value \$0.01, created under the Certificate of Designation of Series D Convertible Preferred Stock that was filed with the State of Delaware on October 12, 2001.

"Pro Rata" means, with respect to any payment, issuance or distribution to any of the Stockholders, the same percentage that is derived by the ratio in which: (a) the numerator is the number of shares of Target's capital stock owned by such Stockholder on the Effective Date; and (b) the denominator is the number of shares of Target's capital stock owned by all Stockholders on the Effective Date.

"Quarter" means the three (3) consecutive month period commencing on January 1, 2005, and any subsequent three (3) consecutive month period thereafter, during the Earn-Out Period.

"Target Financials" means the balance sheets of Target at December 31, 2003 and August 31, 2004, together with the statements of income for the twelve-month and eight-month periods then ended, true, correct and complete copies of which are attached hereto as Schedule 3.05.

"Software" means any computer program, operating system, applications, firmware or software of any nature, whether operational, active, under development or design, non-operational, or inactive, including all object code, source code, algorithm, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen design, reports, design and other designs, concepts, and visual expressions, technical manuals, user manuals, test scripts and other documentation therefor, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and any and all data bases necessary or appropriate in the use of the computer program, operating system, application, firmware or software, any and all Intellectual Property Rights therein and thereto.

"Subsidiaries" shall mean the subsidiaries of Parent listed on Exhibit "D" hereto.

"Surviving Corporation" shall mean Target.

"Year" means the Annual period concluding on the first, second, third and fourth anniversaries of January 1, 2005. Year 1, 2, 3 and 4 mean the Annual periods concluding on the first, second, third and fourth anniversaries of January 1, 2005, respectively.

## ARTICLE II THE MERGER

### 2.01. Merger of the Constituent Corporations

(a) Effective Date. The Merger shall be effected as of, and the term "Effective Time" shall mean, the date and time that the Certificate of Merger in form attached hereto as Exhibit "A" is received for filing by the Secretary of State of Florida and the Secretary of the State of Delaware.

(b) Surviving Corporation. At the Effective Time and subject to the terms and conditions of this Agreement, Merger Sub shall be merged with and into Target and the separate existence of Merger Sub shall cease. Target, as the Surviving Corporation, shall continue its



corporate existence and shall thereupon and thereafter possess all rights, privileges, powers and franchises of a public as well as a private nature of the Constituent Corporations, and be subject to all the restrictions, disabilities and duties, and shall assume full responsibility for all Claims, Obligations and Liabilities, of each of the Constituent Corporations. At the Effective Time, all of the property, personal and mixed, tangible or intangible, and all of the franchises of each of the Constituent Corporations, and all debts due to any of the Constituent Corporations, on whatever account, shall be vested in the Surviving Corporation.

(c) Charter. The Articles of Incorporation of the Target shall be amended and restated at and as of the Effective Time to read as did the Certificate of Incorporation of Merger Sub immediately prior to the Effective Time (except that the name of Surviving Corporation will remain unchanged). As a result of the Merger, the Articles of Incorporation of the Target, as in effect immediately prior to the Effective Time shall be immediately after the Effective Time the Articles of Incorporation of the Surviving Corporation, until thereafter amended.

(d) Bylaws. The Bylaws of the Target shall be amended and restated at and as of the Effective Time to read as did the Bylaws of Merger Sub immediately prior to the Effective Time (except that the name of Surviving Corporation will remain unchanged) and shall be immediately after the Effective Time the Bylaws of the Surviving Corporation until thereafter amended.

(e) Directors. The directors and officers of Merger Sub immediately prior to the Effective Time shall, after the Effective Time, be the directors of the Surviving Corporation until their successors are elected and qualified in accordance with the Certificate of Incorporation and Bylaws of the Surviving Corporation or until their earlier death, resignation or removal.

## 2.02. Status and Effect of Merger

(a) Conversion of Target Shares. At the Effective Time, without the necessity of any action on the part of the Constituent Corporations, Parent or Stockholders, the shares of outstanding capital stock of Target issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive the consideration provided herein to the Stockholders pursuant to Section 2.03 hereof (the "Merger Consideration")

(b) Conversion of Shares of Merger Sub. At the Effective Time, each share of Merger Sub's common stock, \$.01 par value per share, shall be converted into one share of Surviving Corporation's common stock, no par value.

(c) Additional Undertakings. Each of Parent, the Constituent Corporations and Stockholders respectively agrees to use its, his or her best efforts to take all such action as may be necessary or appropriate to effectuate the Merger in accordance with the terms of this Agreement. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest in the Surviving Corporation full right, title and possession to all assets, property, rights, privileges, powers and franchises of any of the Constituent Corporations, the officers of the Surviving Corporation are hereby fully authorized in the name of any of the Constituent Corporations or Stockholders to take, and shall take, all such lawful and necessary

action.

(d) Support of Target Business. Surviving Corporation and Parent shall reasonably promote and support the software and services offered by Target immediately prior to the Closing Date, including by (i) providing appropriate funding to advertise to existing and prospective licensees, (ii) causing the Parent's sales force to become trained on, promote the sale of, sell and be reasonably compensated in connection with such sales of such software and services, (iii) reasonably introduce such software and services to the existing and prospective customers of Parent, and (iv) maintaining accounting books and records and for such other activities as mutually agreed to by the parties.

2.03. Merger Consideration.

As consideration for the Merger, the Parent shall pay and issue to Stockholders, on a Pro Rata basis, and/or Stockholders shall be entitled to, the following:

(a) Cash. The sum of \$50,000.00 in immediately available funds on the Closing Date.

(b) Accounts Receivable Adjustment. If there is any accounts receivable of Target as of the end of the Closing Date representing goods or services that have been rendered by the Target, then all such accounts receivable shall be paid to Stockholders promptly as and when received by Parent or the Surviving Corporation, as additional merger consideration.

(b) Parent Stock. Parent Stock comprised of 150,000 shares of Parent Series D Preferred and 150,000 shares of Parent Common Stock, which shares, when issued on the Closing Date, shall be fully paid and non-assessable.

(c) Contingent Payments. In the event, but only on one occasion, Surviving Corporation attains annualized Net Revenue of \$500,000 for AgencyWare software licensing fees in any three (3) consecutive month period during the Earn-Out Period, the Parent shall pay and issue to the Stockholders, within 30 days of the end of such three (3) month period, the following: (A) \$50,000 in immediately available funds, and (B) 50,000 shares of Parent Common Stock.

(d) Pre-Closing Cash Distribution. Immediately prior to the Merger, Target shall make an equity distribution of cash to Stockholders in a manner consistent with such periodic distributions made in the past, provided that Target shall continue to satisfy the provisions of Section 6.01 (j) of this Agreement.

(e) Earn-Out Payments. The Quarterly Earn-Out Payment and Annual Earn-Out Payment (collectively, the "Earn-Out Payments") shall be calculated as follows:

(i) Quarterly Payment. The "Quarterly Earn-Out Payment" shall equal, with respect to each Quarter during the Earn-Out Period, the amount derived by multiplying 12.5% by the sum of all Net Revenue generated by the Surviving Corporation in the Quarter from

Consulting Fees, CD License Fees, AW License Fees, less \$500,000 divided by four (or \$125,000 per Quarter). The definitive expression of the Quarterly Earn-Out Payment is as follows:

$$\text{Quarterly Earn-Out Payment in a Quarter} = (A + B + C - \$125,000) \times .125$$

Where: A = all Net Revenue of Surviving Corporation in such Quarter from Consulting Fees  
 B = all Net Revenue of Surviving Corporation in such Quarter from CD License Fees  
 C = all Net Revenue of Surviving Corporation in such Quarter from AW License Fees

(ii) Annual Earn-Out Payment. The "Annual Earn-Out Payment" shall equal, with respect to each Year during the Earn-Out Period, the amount derived by multiplying twenty percent (20%) by the sum of all Revenue generated by the Surviving Corporation in such Year from Consulting Fees, CD License Fees and AW License Fees less the Expected Net Revenue for such Year. The definitive expression of the Annual Earn-Out Payment is as follows:

$$\text{Annual Earn-Out Payment in a Year} = (A + B + C - \text{Expected Net Revenue in such Year}) \times .20$$

Where: A = all Revenue of Surviving Corporation in such Year from Consulting Fees  
 B = all Revenue of Surviving Corporation in such Year from CD License Fees  
 C = all Net Revenue of Surviving Corporation in such Year from AW License Fees

(f) Acceleration of Earn-Out. If, during the Earn-Out Period, the Parent shall sell all or substantially all of the stock or assets of Surviving Corporation, or consummate a merger, consolidation or other transaction in which Parent, together with its wholly-owned subsidiaries, is not the sole owner of Surviving Corporation's equity, or consummates a Control Change Transaction (collectively, the "Trigger Events"), then Stockholders shall have the following rights:

(i) If (A) the Net Revenue of Surviving Corporation during the Acceleration Period is not less than 75% but not more than 100% of Expected Net Revenue for such period, or (B) the Net Revenue of Surviving Corporation during the Acceleration Period is more than 100% of Expected Net Revenue for such period and the Trigger Event occurs in Year 1, then the Stockholders shall have the right to elect to be paid by Parent an amount that is equal to the sum of the 12.5% Payment and 20% Payment (collectively, the "Accelerated Earn-Out Payments"). The 12.5% Payment and 20% Payment shall be calculated as follows:

(X) 12.5% Payment. The "12.5% Payment" shall equal, with respect to any Acceleration Period, the product of (1) 12.5%, times (2) the ratio of actual Net

Revenue for such period to Expected Net Revenue for such period, times (3) remaining Expected Net Revenue in the Earn-Out Period less \$41,667 for each month remaining in the Earn-Out Period. The definitive expression of the 12.5% Payment is as follows:

$$12.5\% \text{ Payment in an Acceleration Period} = A \times B \times .125$$

Where: A\* = ratio, the numerator of which is the actual Net Revenue of Surviving Corporation in the Acceleration Period, and the denominator of which is the Expected Net Revenue of Surviving Corporation in the Acceleration Period

$$B = C - D$$

C\*\* = \$10,000,000 - Expected Net Revenue in the Acceleration Period

D\*\* = [ Earn-Out Period (in months) - Acceleration Period (in months) ]  $\times$  \$41,667

\* = Expected Net Revenue in any Year shall be pro rated for purposes of determining such amount in the Acceleration Period.

\*\* = Acceleration Period shall be pro rated for any portion of a year, and deemed to include the entire month in which a Control Change Transaction shall be consummated.

(Y) 20% Payment. The "20% Payment" shall equal, with respect to any Acceleration Period, the product of (1) 20%, times (2) the ratio of actual Net Revenue for the Acceleration Period to Expected Net Revenue for the Acceleration Period, times (3) remaining Expected Net Revenue in the Earn-Out Period less \$83,333 for each month remaining in the Earn-Out Period. The definitive expression of the 20% Payment is as follows:

$$20\% \text{ Payment in an Acceleration Period} = A \times B \times .20$$

Where: A\* = ratio, the numerator of which is the actual Net Revenue of Surviving Corporation in the Acceleration Period, and the denominator of which is the Expected Net Revenue of Surviving Corporation in the Acceleration Period

$$B = C - D$$

C\*\* = \$10,000,000 - Expected Net Revenue in the Acceleration Period

D\*\* = [ Earn-Out Period (in months) - Acceleration Period (in months) ]  $\times$  \$83,333

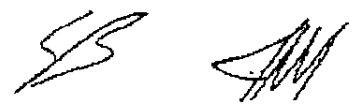
\* = Expected Net Revenue in any Year shall be pro rated for purposes of determining such amount in the Acceleration Period.

\*\* = Acceleration Period shall be deemed to include the entire month in which a Control Change Transaction shall be consummated.

Stockholders shall be paid the Accelerated Earn-Out Payments, and shall only be entitled to receive Earn-Out Payments if, and only to the extent that, the amount of the Earn-Out Payments, as calculated for the period after the Trigger Event under paragraph (e) exceeds the amount of the Accelerated Earn-Out Payments. For example, if the Accelerated Earn-Out Payments equal \$100,000 and the Earn-Out Payments equal \$125,000, then Stockholders shall be paid \$100,000 as the Accelerated Earn-Out Payment and an additional \$25,000 as the Earn-Out Payments.

(ii) If the Net Revenue in the Acceleration Period is less than 75% of Expected Net Revenue for such period, then Parent shall have the option to cause Stockholders to be paid the Accelerated Earn-Out Payments as if the Net Revenue was equal to 75% of the Expected Net Revenue for such period. If Parent does not exercise the option specified in the previous sentence, Stockholders shall have the right to: (X) elect to be paid the Accelerated Earn-Out Payments calculated using the formula described in Section 2.03(f)(i) above; or (Y) rescind (subject to the next sentence) the transactions provided herein and terminate this Agreement, by tendering and surrendering to Parent all Parent Stock issued, and all rights to Parent Stock which is issuable, to Stockholders under this Section 2.03 and Parent shall transfer to Stockholders, on a Pro Rata basis, all of the capital stock of Surviving Corporation then issued and outstanding and cancel all options to issue capital stock in the Surviving Corporation. If Applied Systems, Inc. or BenefitPoint, Inc., or any of their subsidiaries or parents, shall acquire the Surviving Corporation's equity or participates as a purchaser in a Control Change Transaction, Stockholders shall have the right to elect clause (X) or clause (Y) above.

In the event Stockholders elect to rescind under clause (Y) in any case where permitted, the following shall apply: Stockholders shall not be required to repay any cash payment made to them pursuant to this Agreement or any Employment Agreement. Parent shall have no duties or liabilities under any Employment Agreement after the date of rescission, the noncompete provisions set forth in Sections 4 and 5 of the Employment Agreement shall terminate (as to the business and customers of the Surviving Corporation) as of the date of rescission and the Parent and Surviving Corporation grant to the Stockholders a perpetual, royalty-free, worldwide, assignable license with respect to any Developments described in Section 3.3 of the Employment Agreement that relate to the business and/or products of the Surviving Corporation. Following and at all times after the effectiveness of the rescission, the Stockholders shall cause the Surviving Corporation to pay to Parent monthly, within fifteen (15) days after the end of each calendar month, 50% of all net revenues, when collected, arising from customers who are customers of the Surviving Corporation at the time of such rescission. In addition, for 24 months following the effectiveness of such rescission, the Surviving Corporation will authorize Parent to distribute the Surviving Corporation's products, and will pay Parent a commission of 50% of all net revenue, when collected, derived from such sales by Surviving Corporation, monthly, or Parent shall retain 50% of all net revenues from the sale of such products by Parent and remit the remaining 50% of such net revenues to Surviving Corporation. The payments described in the previous two sentences shall be referred to as the "Post-Rescission Payments."



The assets or business of the Surviving Corporation shall not be sold or transferred unless adequate provisions are made to continue the Post-Rescission Payments following such sale or transfer.

From the Closing Date until the expiration of the Earn-Out Period, the parties agree to maintain, in general, the assets and rights of the Surviving Corporation, including without limitation, the Surviving Corporation's ownership of AgencyWare, Commissions Due and other software products, technologies, programming and source code, such that if the Stockholders elect to rescind the transactions provided herein and terminate this Agreement, the Surviving Corporation will have the same or substantially similar assets as of the date of such rescission as it had on the Closing Date.

(iii) If the Net Revenue of Surviving Corporation during the Acceleration Period is greater than 100% of Expected Net Revenue for each period, then the Stockholders shall have the right to receive an amount equal to the Accelerated Earn-Out Payment under Section 2.03(f)(i) plus a 25%, 50% and 75% premium if the Trigger Event occurred in Year 2, 3 or 4, respectively ("Accelerated Premium Payments"). The definitive expression of the Accelerated Premium Payments are as follows:

If Net Revenue > 100% of Expected Net Revenue, and the Trigger Event shall occur in Year:		Then the Stockholders shall be paid an Accelerated Premium Payment equal to:	Premium on Accelerated Earn-Out Payment:
1	→	Accredited Earn-Out Payment × 1.00	None
2	→	Accredited Earn-Out Payment × 1.25	25%
3	→	Accredited Earn-Out Payment × 1.50	50%
4	→	Accredited Earn-Out Payment × 1.75	75%

(g) Notice. Parent shall give Stockholders at least forty-five (45) days prior notice before consummating any Trigger Event ("Acceleration Notice"). The Stockholders shall have thirty (30) days from the date of the Acceleration Notice to notify Parent of their elect ("Election Notice") to exercise their rights under this Section 2.03(e), which election notice shall be in writing and set forth in detail the rights being exercised hereunder.

(h) Timing of Payments. Quarterly Earn-Out Payments and Contingent Payments shall be paid and issued to Stockholders within thirty (30) days after such consideration shall become due and owing pursuant to the terms this Section 2.03; Annual Earn-Out Payments shall be paid within sixty (60) days after such shall become due and owing; provided that in either case Parent was given reasonable time and opportunity to review and verify the relevant information and calculate the components of the Merger consideration. For purposes of this Section 2.03(h), the Accelerated Earn-Out Payments are deemed due and owing on the date of the Trigger Event and the Quarterly Earn-Out Payments and Annual Earn-Out Payments are deemed due and owing at the conclusion of the quarterly and annual periods to which such relate. Any payments not made by Parent to the Stockholders within the 30-day or 60-day period, respectively, shall accrue interest commencing with such payment date at the rate of 12% per annum.

(i) Access to Records. Stockholders and Surviving Corporation shall promptly furnish to Parent true, correct and complete copies of, and complete access to, all books, records and other information of Surviving Corporation as Parent deems necessary in order to calculate the components of the Merger consideration, including the Earn-Out and Accelerated Earn-Out Payments, and the Post-Rescission payments, if any.

(j) Shareholder and Similar Agreements. Issuance of shares of Parent Stock to Stockholders pursuant to this Section 2.03 shall be conditioned upon the agreement by the Stockholder to be bound by all contracts, covenants, documents, instruments and other agreements which restrict, limit or otherwise impact the rights of all holders of the equity securities to be issued to Stockholders hereunder, including, without limitation, the Stockholders Agreement dated March 21, 2000 and the Supplemental Stockholders Agreement dated October 12, 2001, copies of which are attached hereto as Exhibit E hereof (collectively, the "Parent Shareholders' Agreement"). Stockholders shall have no right to demand modification or alteration of any such rights, obligations, duties, covenants or agreements.

(l) Earn-Out Related Definitions.

"Acceleration Period" means the period between the January 1, 2005 and the Control Change Closing Date.

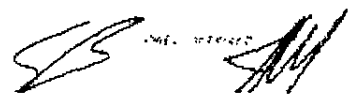
"AW License Fees" means any license fees, add-on fees and/or upgrade fees billed to a customer by Surviving Corporation for the AgencyWare software products, provided: (i) if such customer is a customer who pays annual licensing fees for AgencyWare of less than \$25,000, then such customer shall be assumed to pay a license fee of a minimum of \$50 per month per seat for all seat licensees of such software products or (ii) if such customer pays annual licensing fees for AgencyWare greater than \$25,000, then the amount billed to such customer.

"Consulting Fees" means consulting, support, warranty, implementation and/or maintenance services fees billed by the Surviving Corporation.

"CD License Fees" means any license fees, add-on fees and/or upgrade fees billed to a customer by Surviving Corporation for the Commissions Due software products, provided that such license fees equal the greater of (a) the CD License Fees attributable for such period or (b) 75% of the Current CD Fees for Target for the 12 month period immediately preceding the Closing Date pro-rated for any period less than 12 months;

"Current CD Fees" means the license fees for Commissions Due software products as set forth on Exhibit F.

"Excluded Revenue" means all Revenue and Net Revenue of the Surviving Corporation which are derived from the commercialization, sale, licensing or servicing of products or services developed independently by Parent or its Affiliates (other than the Surviving



Corporation). Excluded Revenue shall be disregarded for purposes of determining the Earn-Out Payments and the Accelerated Earn-Out Payments.

"Expected Net Revenue" shall mean, with respect to each Year, as follows: (i) \$1,000,000 with respect to Year 1; (ii) \$2,000,000 with respect to Year 2; (iii) \$3,000,000 with respect to Year 3; and (iv) \$4,000,000 with respect to Year 4.

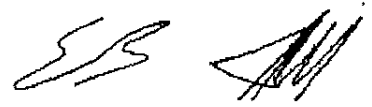
"Net Revenue" means total Revenue billed minus discounts and allowances, as presented in accordance with generally accepted accounting principles consistent with prior financial accounting practices and periods of Parent.

"Revenue" means total revenue, but excluding Excluded Revenue.

**2.04 Operation of Surviving Corporation During Earn-Out Period.** Subject to Section 5.06 hereof, during the Earn-Out Period, the parties agree that the Surviving Corporation will be operated as a separate, independent software business unit with the Stockholders having the right to manage and supervise such unit at its existing location in Miami, Florida. During the Earn-Out Period, the Stockholders shall have the right to hire and fire employees, determine salary and compensation structure of such employees and do and take all such other actions to manage, operate and supervise such unit in a reasonable and lawful business manner consistent with the business practices of the Parent and subject to the oversight of the Board of Directors of the Parent and delegated to corporate management of the Parent. The oversight of Parent's Board of Directors and authority delegated to corporate management of Parent shall include, for this purpose, the right to approve any material expenditures inconsistent with historical or budgeted expenditures of Target, and the right to require termination of an employee for an articulated reason, whether or not such reason would constitute "cause". Parent shall provide Stockholders (a) with quarterly reports within fifteen days of the close of any Quarter as to the calculation of the Earn-Out Payments and all information as Stockholders may reasonably request to confirm and ascertain proper payments applicable thereto; (b) with yearly reports within forty-five days of the close of any Annual period as to the calculation of the Earn-Out Payments and all information as Stockholders may reasonably request to confirm and ascertain proper payments applicable thereto. The Stockholders and their designated agents shall have the right to inspect, review and/or audit and copy the books and records of the Parent and the Surviving Corporation to ascertain proper payment of the Earn-Out Payments. Parent shall maintain proper books and records to reasonably facilitate a review and audit of such Earn-Out Payments hereunder. If the accountant designated by the Stockholders determines that the Parent has failed to make proper Earn-Out Payments due the Stockholders and such past-due amount is greater than 5% of the applicable Earn-Out Payment, then the Parent shall reimburse the Stockholders and/or pay for the fees attributable to such accountant with respect to such review and/or audit. Otherwise, the Stockholders shall pay for the fees attributable to such accountant with respect to such review and/or audit.

### ARTICLE III STOCKHOLDERS REPRESENTATIONS AND WARRANTIES

The following representations and warranties are being given and made by Target and Stockholders,





jointly and severally but subject to the limitation on liability provided in Sections 7.04 and 7.05 hereof, to induce Parent and Merger Sub to enter into this Agreement and to carry out the Merger and other transactions contemplated by this Agreement, and Target and Stockholders acknowledge that Parent and Merger Sub have relied upon such representations and warranties.

3.01. **Organization and Qualification.** Target is a corporation duly organized, validly existing and in good standing under the laws of Florida, has the corporate power and authority to carry on its business as such business is now being conducted and to enter into and perform its obligations hereunder. Target has no offices outside Florida and is not required to qualify as a foreign corporation to do business in any other jurisdiction. Target has no subsidiaries.

3.02. **Authorization of Agreement and Approval of Merger.**

(a) The execution, delivery and performance of this Agreement by Target has been duly and validly authorized and approved by its Board of Directors and Stockholders, and no further corporate action or authorization on the part of Target, except for approval of Stockholders, is required to deliver this Agreement and perform the transactions contemplated hereby, and this Agreement is a legal, valid and binding obligation of Target, enforceable against it in accordance with its terms except as such enforceability is limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles.

(b) Stockholders have duly executed this Agreement, and this Agreement is a legal, valid and binding Obligation of Stockholders, enforceable against each of them in accordance with its terms, and constitutes their approval of the Merger as the sole shareholders of Target in accordance with Section 607.1103 of the Florida Business Corporation Act, as amended.

3.03. **No Conflict.** Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor compliance by any of the parties with any of the provisions hereof, will: (a) conflict with or result in any breach of any provision of the Certificate of Incorporation or By-laws of Target; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority or any other person except for such as will have been obtained or given on or before Closing; (c) result in a default (or give rise to any right of renegotiation, termination, cancellation or acceleration) under any of the terms, conditions or provisions of any agreement or other instrument to which Target or any of Stockholders is a party or by which any of the assets of Target or any of Stockholders is bound; or (d) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Target or any of Stockholders. Copies of Target's Articles of Incorporation and By-laws, as amended through the date hereof, heretofore delivered to Parent by Stockholders, are complete, accurate, and such Articles and By-laws are in full force and effect.

3.04. **Capital Stock of Target.** The authorized, issued and outstanding capital stock of Target as of this date consists of 1,000 shares of common stock, no par value, of which 1,000 shares are outstanding (the issued and outstanding shares are hereinafter referred to as the "Target Shares"). The Target Shares have been duly authorized, are validly issued and outstanding, and are fully-paid and nonassessable, with no personal liability attaching to the ownership thereof, and issued in compliance with all applicable federal and state securities laws. Except for the Target Shares, Target

does not have any capital stock outstanding, and Target has outstanding no stock appreciation or similar rights, nor do there exist any convertible securities, warrants, rights, options, or other contractual rights or commitments pursuant to which any person may cause or require authorized but unissued shares of Target's capital stock or any other security of Target to be issued to any person. Stockholders are the owners of all of the outstanding capital stock of Target, the number, class and amount of which is set forth in Section 3.04 to the Disclosure Schedule, and Stockholders own the Target Shares free and clear of any and all Claims, rights of first refusal, preemptive rights or rights with respect to voting. None of Stockholders is a party to any agreement by which any person may have the right to require any or all of Stockholders to transfer all, part of or any interest in any of the Target Shares nor is any of Stockholders a party to any agreement or instrument restricting such Stockholders' voting of such shares or giving another person the right to vote such shares.

**3.05. Financial Information.**

(a) As of the date of this Agreement and as of Closing, except (i) as set forth in the Target Financials, (ii) as described in Section 3.05 of the Disclosure Schedule and (iii) for accounts payable accrued in the ordinary course of business since the last date of the Target Financials in amounts and type consistent with past practice, Target had no material Liabilities, contingent or otherwise, and there were no Claims against the property of Target. Any and all Target Financials and any and all other financial information delivered by Target to Parent or Merger Sub are true, correct and complete in all material respects and reflect fairly and accurately the financial condition of Target as of the date of each such Target Financials or the effective date of other financial information. Target's financial books and records of account contain true, correct and all proper entries, reflecting all consolidated and consolidating transactions, prepared in accordance with all requirements of law and on a basis consistent with the Target Financials.

(b) Since December 17, 2004, Target has not incurred any Liabilities other than in the ordinary course of business, consistent with past practices, and has not taken any of the actions described in Section 5.02 of this Agreement.

(c) All accounts receivable of Target that are reflected on the Financial Statements and the accounting records of the Target as of the date of this Agreement and the Closing Date (referred to collectively as the "Accounts Receivable") represent or will represent valid obligations arising from products actually sold or services actually performed in the ordinary course of business subject to reasonable offset for nonpayment consistent with prior collection history for accounts receivable of Target.

(d) As of January 13, 2005, the aggregate accounts receivable by Target in respect of services performed by Target prior to January 13, 2005 was \$32,576.91.

(e) Target has timely filed all tax returns required by it to be filed by reason of any revenue received, payment made or assets owned or leased (including, without limitation, all withholding tax returns). All taxes shown to be due and payable on such returns, any assessments imposed, and to the Stockholder's knowledge all other taxes due and payable by the Target on or before the Closing have been paid or will be paid prior to the time they become delinquent. True and complete copies of all tax returns filed by Target after January 1, 2000 and copies of all

elections made at any time by Target under the Internal Revenue Code have been furnished to Parent. Target has not been advised (a) that any of its returns, federal, state or other, have been or are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes. There are no special elections or other conditions in effect with respect to Target which could impose on the Surviving Corporation or Parent any liability for any taxes imposed with respect income or events occurring on periods prior to Closing.

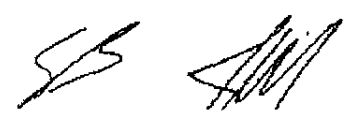
(f) Target operates at least one significant historic business line, or owns at least a significant portion of its historic business assets, in each case within the meaning of Reg. 1.368-1(d).

**3.06. Absence of Certain Changes.** Following the latest date of the Target Financials, except for transactions or conditions disclosed in Section 3.06 of the Disclosure Schedule, Target has not: (a) had any material, adverse change in its financial condition, properties, business or operations; (b) entered into any other transactions material to its business not in the ordinary course of business; (c) declared, set aside or paid any distribution or dividend to Stockholders, or repurchased any of its capital stock; or (d) repaid any indebtedness to Stockholders or any Affiliate.

**3.07. Compliance with Laws.** Target, in the ownership of its property and the conduct of its business, complies with all applicable laws, ordinances, rules, regulations, judgments, orders or covenants, conditions and restrictions (collectively "Laws"), whether Federal, state, local, or foreign and has all permits, licenses and authorizations required by such governmental agencies for the conduct of its business or use or ownership of its assets except where such violation or noncompliance would not have a material adverse effect on Target's business operations or financial condition, including, without limitation, the ownership of its properties or the carrying on of its present or contemplated business. Within the 5 years immediately preceding the date of this Agreement, neither Target nor any of Stockholders has been charged with any violation of any Law or, to Target and Stockholders' knowledge, been subject to any investigation with respect to violation of any Law.

**3.08. No Broker's or Finder's Fees.** Neither Target nor any of Stockholders has dealt with any broker, finder, investment banker or any other person who may claim entitlement to a broker's or finder's fee, commission or similar compensation in connection with any of the transactions contemplated by this Agreement.

**3.09. Agreements, Contracts and Commitments.** Except as disclosed in Section 3.09 of the Disclosure Schedule, Target is not a party to, bound by or committed to enter into any written or oral: (i) employment contract or other agreement of any kind whatsoever for the compensation of any of its employees; (ii) lease or purchase agreement with respect to real property or personal property; (iii) employee benefit plan within the meaning of Section 3(3) of the Employment Retirement Income Security Act of 1974, any other bonus, profit sharing, deferred compensation, hospitalization, health care, disability, medical or dental, retirement, insurance, sick or vacation pay, pension, welfare, severance, stock option, stock bonus or stock purchase plan, or any other plan, agreement or arrangement providing for employee benefits or for the remuneration, direct or indirect, of Target's employees; (iv) agreements of guarantee or indemnification; (v) any loan or credit agreements providing for the extension of credit to or by Target; (vi) joint venture or other



agreement involving the sharing of costs or profits; (vii) agreements with Stockholders or any Affiliate of Stockholders; or (viii) any other agreement or undertaking involving more than \$5,000 in aggregate annual payments or receipts and not terminable by Target without penalty, cost or liability (whether express, implied or by operation of law or otherwise) on notice of not more than thirty (30) days. Copies (or, with respect to oral agreements, understandings or commitments, complete and accurate descriptions thereof) of the contracts, agreements, leases, understandings, plans, obligations, commitments and other documents referred to in Section 3.09 of the Disclosure Schedule heretofore delivered to Parent are true and complete. Neither Target nor, to Stockholders' knowledge, any other party is in breach of any agreement which is material to Target's business.

3.10. Litigation. Except as set forth in Section 3.10 of the Disclosure Schedule, there are no actions, suits or proceedings at law or in equity, or arbitration proceedings, or claims, demands or investigations, pending or to Stockholders' knowledge, threatened against or involving Target (or Stockholders with respect to the business of assets of Target) nor are there any administrative proceedings pending or to Stockholders' knowledge, threatened against or involving Target (or Stockholders with respect to the business of assets of Target) by or before any governmental board, department, commission, bureau, instrumentality or agency (including but not limited to any federal, state, local or foreign governmental agency). Neither Target nor Stockholders is in violation of any order, ruling, decree or judgment of any court or arbitration tribunal or governmental board, department, commission, bureau, instrumentality or agency.

3.11. Investment Representations.

(a) Stockholders have been furnished copies of the Parent Financials, copies of which are attached hereto as Exhibit C, and have had the opportunity to ask of the executive officers of Parent any and all relevant questions in connection with any aspect of Parent including, but not limited to, the rights represented by the Parent Stock, and have received answers which Stockholders consider to be responsive to such questions.

(b) Stockholders acknowledge that there is currently no market for or any other means of obtaining liquidity for the Parent Stock. Stockholders are able to bear the economic risk of the investment represented by the Parent Stock for an indefinite period.

(c) Each of Stockholders is acquiring the Parent Stock for its own account for the purpose of investment and not for or with a view to the resale, distribution, subdivision or fractionalization thereof.

(d) Stockholders understand that their right to transfer the Parent Stock will be subject to the restrictions set forth in the Parent Shareholders' Agreement and the further restrictions under applicable state and federal securities laws. The certificates representing Parent Stock issued to Stockholders will bear a legend reflecting these restrictions.

(e) In accepting the Parent Stock as partial consideration for the Merger, Stockholders are not relying on any representation, warranty or statement made by the Parent or any of its agents, employees, advisors, attorneys or representatives which is not specifically made in this Agreement or in any document attached hereto. Stockholders are relying exclusively on the

representations and warranties of Parent made herein and the documents attached hereto. Stockholders, together with their legal and financial advisors, have sufficient sophistication and experience in business and financial matters to make an informed decision regarding accepting the Parent Stock.

3.12. **Full Disclosure.** Stockholders and Target have disclosed to Parent and to Merger Sub all material facts relating to Target's assets, stock, business, condition (financial and otherwise) and operations in this Agreement (including the Schedules hereto). Neither this Agreement nor any other document, certificate, exhibit, statement or schedule furnished or to be furnished by or on behalf of Stockholders or Target to Parent in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the factual statements contained therein, in light of the circumstances under which they are made, not misleading.

3.13. **Intellectual Property.**

(a) Section 3.13 of the Disclosure Schedule contains an accurate and complete list and description of all material Software, and all names, corporate names, fictitious names, tradenames, trademarks, trademark applications, service marks, service mark applications, brand names, product names, and slogans, patents, patent applications, copyrights, copyright applications, designs, logos, web sites, and domain names owned, marketed, licensed, supported, maintained, used or under development by Target. Except as set forth on Section 3.13 of the Disclosure Schedule or in the previous sentence, no other material Software or Intangibles (other than trade secrets and know-how) are used to by Target in its business.

(b) Except for limited use licenses and copyright permissions held by Target as set forth on Section 3.13 of the Disclosure Schedule, no rights of any third party are necessary to: (i) market, license, sell, modify, update, and/or create derivative works for CommissionsDue, AgencyWare or any other Software and/or products of Target; and (ii) operate the business of Target in the ordinary course as presently operated.

(c) Except as set forth on Section 3.13 of the Disclosure Schedule, all of the material Target Intangibles (other than standard commercially available software) were created as a work for hire (as defined under U.S. copyright law) by regular full time employees of Target. To the extent that any author or developer of any such Target Intangibles was not a regular full-time employee of Target at the time such person contributed to such Intangibles, except as set forth on Section 3.13 of the Disclosure Schedule, such author or developer has irrevocably assigned to Target in writing all copyrights and other proprietary rights in such person's work with respect to such Target Intangibles and all such copyrights and other proprietary rights are listed and described on Section 3.13 of the Disclosure Schedule.

(d) With respect to the Software listed on Section 3.13 of the Disclosure Schedule, (i) Target maintains machine-readable master-reproducible copies, source code listings, technical documentation and (other than the AgencyWare product) user manuals for the most current releases or versions thereof and for all earlier releases or versions thereof currently being supported by them; (ii) in each case, the machine-readable copy substantially conforms to the corresponding

source code listing; (iii) it is written in the language set forth on Section 3.13 of the Disclosure Schedule, for use on the hardware set forth on Section 3.13 of the Disclosure Schedule with standard operating systems; (iv) it can be maintained and modified by reasonably competent programmers familiar with such language, hardware and operating systems; and (v) in each case, it operates substantially in accordance with the user manual therefor without any known material operating defects other than those defects set forth on the "Bug List" attached hereto as Section 3.13 of the Disclosure Schedule.

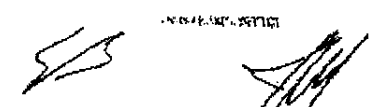
(e) None of the Target Intangibles or their respective past or current uses, including the preparation, distribution, marketing or licensing thereof, has violated or infringed upon, or is violating or infringing upon, any Software, technology, patent, copyright, trade secret or other Intangible of any Person. Parent and Merger Sub acknowledge that Target and Stockholders have not conducted any search of patent or copyright records, requested any legal opinion or taken any other formal investigative action in connection with the preceding representation. No proceeding is pending or, to Target's and Stockholders' knowledge, is threatened, nor has any claim or demand been made, which challenges or challenged the legality, validity, enforceability, use or exclusive ownership by Target of any of the Target Intangibles. To Target's and Stockholders' knowledge, no Person is violating or infringing upon, or has violated or infringed upon at any time, any of the Target Intangibles.

(f) Target and Stockholders have maintained in confidence all trade secrets and copyrights with respect to the Target Intangibles. Except as set forth in Section 3.13 of the Disclosure Schedule, Target has not disclosed or delivered to any escrow agent or to any other Person, or permitted the disclosure to any escrow agent or to any other Person of, the source code (or any aspect or portion thereof) for or relating to any past, present or future product of Target.

(g) Any license, sublicense or other contract covering or relating to any Target Intangibles is legal, valid, binding, enforceable and in full force and effect, and upon consummation of the transactions contemplated hereby, will continue to be legal, valid, binding, enforceable and in full force and effect on terms identical to those in effect immediately prior to the consummation of the transactions contemplated hereby (to the same extent as valid, binding and enforceable prior to these transactions with respect to other parties. No proceeding is pending or to Target's and Stockholders' knowledge, is being or has been threatened, nor has any claim or demand been made, which challenges the legality, validity, enforceability or ownership of any license, sublicense or other contract covering or relating to any Target Intangibles.

(h) Except as set forth in Section 3.13 of Target Disclosure Schedule, none of the Software or other Intangibles listed or required to be listed in Section 3.13 of Target Disclosure Schedule is owned by or registered in the name of any current or former owner, shareholder, partner, director, executive, officer, employee, salesman, agent, customer, representative or contractor nor does any such Person have any interest therein or right thereto, including the right to royalty payments.

(i) Except with respect to demonstration or trial copies, to Target's and Stockholders' knowledge, no portion of any Target Intangible contains any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware



components designed to permit unauthorized access or to disable or erase software, hardware, or data without the consent of the user.

(j) Set forth in Section 3.13 of Target Disclosure Schedule is each internet domain name used by Target. All registrations of domain names are in good standing, and no action has been taken or is pending to challenge rights to, suspend, cancel or disable any domain name, registration therefor or the right of Target to use a domain name. Target has all right, title and interest in and to, and rights to use on the internet and otherwise as a trade-mark and trade name, the domain names.

(k) To Target's and Stockholders' knowledge, there is no governmental prohibition or restriction on the use of any of the Software or any other Intangible in any U.S. jurisdiction or on the export or import of any of the Software or any other Intangible from or to any jurisdiction.

(l) Except as disclosed in Section 3.13 of the Target Disclosure Schedule, Target is the sole owner of, and has good and marketable title to, and all right, title and interest in and to all databases related to Target's business. Except as specified in Section 3.13 of the Target Disclosure Schedule, no Person other than Target has any right or interest of any kind or nature in or to such databases. To Target's and Stockholders' knowledge, no person (i) is violating or infringing upon, or has violated or infringed upon at any time, any right of Target in or to such databases; or (ii) is breaching or has breached at any time any duty or obligation owed to Target in respect of such databases. All licenses referred to in Section 3.13 of the Disclosure Schedule are in full force and effect and neither Target nor the other party thereto (to Target's and Stockholders' knowledge) is in default of its obligations thereunder. Neither the past nor current use of any such database or the information contained therein (i) to Target's and Stockholder's knowledge, has violated or infringed upon, or is violating or infringing upon, the rights of any Person; or (ii) breaches any duty or obligation owed to any Person; or (iii) to Target's and Stockholder's knowledge, violates the privacy or any law relating to the privacy of any Person.

**3.14 Related Parties.** Except as set forth in Section 3.14 of the Target's Disclosure Schedule, (i) neither Stockholders nor any Affiliate of Target or any Stockholder or any family member of either Stockholder has any interest in any Intangible used or owned by Target, (ii) there are no existing and there has been no contract, transaction, indebtedness or other arrangement, or any related series thereof, between the Target and any its directors, officers or the Stockholders, any Affiliate of Target or either Stockholder or any family member of any Stockholder (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses), and (iii) at the Closing, all such contracts, transactions, indebtedness and other arrangements shall be terminated.

**3.15 Customers and Contracts.**

(a) Section 3.15 of the Disclosure Schedule sets forth each maintenance contract or other contract for future delivery of product or performance of services to which Target is a party ("Customer Contracts").



(b) Target has delivered to Parent true and correct copies of each of the Customer Contracts and each form of license agreement for Software executed with any customer since January 1, 2002, and summary descriptions or the terms of any oral agreement or other arrangement with a customer.

(c) Each of the Customer Contracts is in full force and effect according to its terms. Neither Target nor, to Target's knowledge, any third party is in default or breach under any Customer Contract. No event, occurrence or condition exists which, with the lapse of time, the giving of notice, or both would become a default by Target or, to Target or Stockholder's knowledge, by any third party under any Customer Contract. No customer has within the past 12 months made any claim that Target has not complied with the terms of any Customer Contracts or delivered defective Software.

(d) To Target's and Stockholders' knowledge, Target's business relationships with its customers are good, and neither Target nor Stockholders have any knowledge or notice of any termination, cancellation, decision not to renew or adverse change in its business relationship with any customer (or affiliated group of customers) whose payments accounted for more than 2% of the revenues of Target in 2003 or 2004 through the date of this Agreement. Target and Stockholders have no knowledge of any reason why recurring receipts from maintenance contracts will be materially less in the twelve months following Closing than in the twelve months prior to Closing.

#### ARTICLE IV PARENT'S REPRESENTATIONS AND WARRANTIES

In order to induce Target and Stockholders to enter into this Agreement and to approve the Merger and consummate the transactions contemplated hereby, Parent represents and warrants to Target and Stockholders as follows:

4.01. **Organization and Qualification.** Parent is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and has the corporate power and authority to carry on its business as such business is now being conducted and to carry out the transactions contemplated by this Agreement. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of Delaware, and has the corporate power and authority to carry out the transactions contemplated by this Agreement.

4.02. **Authorization of Agreement.** The execution, delivery and performance of this Agreement by Parent and Merger Sub has been duly and validly authorized and approved by their respective Board of Directors and, in the case of Merger Sub, by Parent as its sole stockholder. No further action or authorization is required to deliver this Agreement and perform the transactions contemplated hereby. This Agreement is a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of them in accordance with its terms except as such enforceability is limited by bankruptcy, insolvency and other similar laws affecting the enforcement of creditors' rights generally or by general equitable principles.



4.03. No Conflict. Neither the execution and delivery of this Agreement by Parent and Merger Sub, nor the consummation of the transactions contemplated hereby by Parent and Merger Sub, nor compliance by Parent and Merger Sub with any of the provisions hereof, will: (a) conflict with or result in any breach of any provision of their Articles of Incorporation or By-laws; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental or regulatory authority or any other person; (c) result in a default (or give rise to any right of renegotiation, termination, cancellation or acceleration) under any of the terms, conditions or provisions of any instrument or agreement to which either is a party; or (d) violate any order, writ, injunction, decree, statute, rule or regulation applicable to either.

4.04. Capital Stock of Parent. The authorized, issued and outstanding capital stock of Parent is as set forth on Schedule 4.04 hereto. The Parent Stock has been duly authorized, and when issued as contemplated by this Agreement, will be validly authorized, issued and outstanding, and fully-paid and nonassessable, with no personal liability attaching to the ownership thereof. All of the issued and outstanding shares of the capital stock of the Parent are duly authorized, validly issued, fully paid, nonassessable and issued in compliance with all applicable federal and state securities laws.

4.05. Financial Statements/Undisclosed Liabilities. As of December 31, 2003, and except as set forth in the Parent Financials or described in Schedule 4.05 hereto, Parent had no material Liabilities and there were no material Claims against Parent's property. The Parent Financials fairly present its financial position as of December 31, 2003, and December 31, 2002, and its results of operations, for the twelve months then ended prepared in accordance with generally accepted accounting principles.

4.06. Absence of Certain Changes. Following December 31, 2003, except for transactions contemplated by this Agreement, and transactions or conditions disclosed in Schedule 4.06 hereto, Parent has not had any material, adverse change in its financial condition, properties, business or operations, nor has it entered into any other transactions material to its business not in the ordinary course of business.

4.07. Compliance with Laws. Parent, in the ownership of its property and the conduct of its business, is in compliance with all applicable laws, ordinances, rules, regulations, judgments, orders or covenants, conditions and restrictions, whether federal, state, local, foreign or private, and has all permits, licenses and authorizations required by such governmental agencies except where such violation would not have a material adverse effect on Parent's business operations or financial condition, including, without limitation, the ownership of its properties or the carrying on of its present or contemplated business.

4.08. No Broker's or Finder's Fees. Neither Parent nor Merger Sub has dealt with any broker, finder, investment banker or any other person who may claim entitlement to a broker's or finder's fee, commission or similar compensation in connection with any of the transactions contemplated by this Agreement.

4.09. Full Disclosure. Neither this Agreement nor any other document, certificate, exhibit, statement or schedule furnished or to be furnished by or on behalf of Parent or Merger Sub



to Target in connection with the transactions contemplated hereby contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the factual statements contained therein, in light of the circumstances under which they are made, not misleading.

#### 4.10 Taxes.

(a) Parent has timely filed all tax returns required by it to be filed by reason of any revenue received, payment made or assets owned or leased (including, without limitation, all withholding tax returns). All taxes shown to be due and payable on such returns, any assessments imposed, and to the Parent knowledge all other taxes due and payable by the Parent on or before the Closing have been paid or will be paid prior to the time they become delinquent. Parent has not been advised (a) that any of its returns, federal, state or other, have been or are being audited as of the date hereof, or (b) of any deficiency in assessment or proposed judgment to its federal, state or other taxes.

(b) It is the present intention of Parent to continue at least one significant historic business line of Target, or to use at least a significant portion of Target's historic business assets in a business, in each case within the meaning of Reg. 1.368-1(d).

4.11. Litigation. Except as set forth in Section 4.11 of the Disclosure Schedule, there are no actions, suits or proceedings at law or in equity, or arbitration proceedings, or claims, demands or investigations, pending or to Parent's knowledge, threatened against or involving Parent nor are there any administrative proceedings pending or to Parent's knowledge, threatened against or involving Parent by or before any governmental board, department, commission, bureau, instrumentality or agency (including but not limited to any federal, state, local or foreign governmental agency). Parent is not in violation of any order, ruling, decree or judgment of any court or arbitration tribunal or governmental board, department, commission, bureau, instrumentality or agency.

4.12. Ownership of Assets. Parent has good and marketable title to its properties and assets and has good title to all its leasehold interests, in each case subject to no Obligations, except for Obligations and Liabilities disclosed on the Parent's Financials or that have been incurred in the ordinary course of its business. Parent has sufficient title and ownership of or exclusive licenses to all patents, trademarks, service marks, trade names, copyrights, trade secrets, software, other intellectual property information, and proprietary rights and processes necessary for its business as now conducted without any conflict with or infringement of the rights of others.

### ARTICLE V

#### PRE-CLOSING AND POST-CLOSING COVENANTS AND PROCEEDINGS

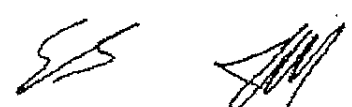
5.01. Access and Information/Target. Between the date of this Agreement and the Closing Date, Stockholders shall cause Target to give to Parent and its respective authorized representatives and agents reasonable access during normal business hours to all of Target's properties, offices, and other facilities, books, contracts, records and other documents and personnel

relating to its assets and operations, and shall cause its respective officers, employees and advisors to make available to Parent such documents, copies of documents, financial and operating data and other information concerning their property and affairs as Parent requires to confirm the accuracy and completeness of the representations and warranties made in this Agreement. Nothing contained in this Section 5.01 shall affect Parent's or Merger Sub's right to rely upon, or the survival of, the representations and warranties made by Target and Stockholders in this Agreement. All confidential and proprietary information concerning Target and Stockholders disclosed to Parent pursuant to this Section or otherwise in connection with this Agreement shall be treated in confidence and subject to that certain Confidentiality Agreement executed by the parties, dated \_\_\_\_\_, 2004.

5.02. **Conduct of Business.** After the date hereof, except as otherwise specifically provided in this Agreement or permitted by the prior written consent of Parent, Stockholders shall not cause or permit Target to, and Target shall not:

- (a) issue any capital stock or any securities convertible into capital stock;
- (b) split, subdivide or reclassify its capital stock;
- (c) amend its Articles of Incorporation or By-laws or merge, consolidate or dissolve;
- (d) incur any Obligation or Liability other than in the ordinary course of business and in accordance with past practice and on normal commercial terms;
- (e) declare or pay any dividend or other distribution on its capital stock or repay any loans or other indebtedness to Stockholders or any of Stockholders' Affiliates;
- (f) purchase or redeem any of its capital stock;
- (g) cancel or transfer other than for full and fair consideration any Obligation owed to it, other than to adjust accounts receivable in the ordinary course of business and in accordance with past practice;
- (h) enter into or terminate any contract or arrangement other than in the ordinary course of business and in accordance with past practice;
- (i) materially change its accounting methods;
- (j) grant any right to acquire any of its assets other than in the ordinary course of business, under normal commercial terms and in accordance with past practice; or
- (k) incur any Obligation to do any of the foregoing.

5.03 **Liabilities at Closing.** At the Closing Date, the Liabilities of Target (exclusive of Liabilities evident on the face of written documents disclosed to Parent in any Schedule to this Agreement) will not exceed \$10,000.



5.04 **No Shop.** Parent and Merger Sub shall have the exclusive right to proceed with the Transaction between the date hereof and the Closing Date ("Exclusivity Period"). During the Exclusivity Period, Target and Stockholders, and each of their respective officers, directors, shareholders, advisors, representatives or agents will not initiate, solicit, negotiate or pursue with any third party any inquiry, proposal or offer relating to the acquisition and/or financing of the Target or its business, or any portion thereof, whether by purchase of assets or stock, by merger, consolidation or other reorganization or by other transaction (an "Alternative Offer") and shall not provide any information regarding the Target to any third party where Target, Stockholders or their respective officers, directors, shareholders, advisors, representatives and agents have reason to believe such information will be used in connection with an Alternative Offer. Target and Stockholders will promptly advise Parent and Merger Sub in writing of the terms of any Alternative Offer received and the name of the offeror.

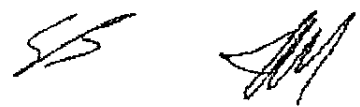
5.05 **Continuity of Business Enterprise.** Parent will continue at least one significant historic business line of Target, or use at least a significant portion of Target's historic business assets in a business, in each case within the meaning of Reg. 1.368-1(d), except that Parent may transfer Target's historic business assets (i) to a corporation that is a member of Parent's qualified group, within the meaning of Reg. 1.368-1(d)(4)(ii), or (ii) to a partnership if (A) one or more members of Parent's qualified group have active and substantial management functions as a partner with respect to Target's historic business or (B) members of Parent's qualified group in the aggregate own an interest in the partnership representing a significant interest in Target's historic business, in each case within the meaning of Reg. 1.368-1(d)(4)(iii).

5.06 **Operation of Surviving Corporation.** In the event the employment of a Stockholder with the Surviving Corporation is terminated during the Earn-Out Period, that Stockholder's right to manage as provided in Section 2.04 hereof shall terminate. In the event the employment of both Stockholders is terminated during the Earn-Out Period, Parent agrees that the Surviving Corporation shall continue to be operated as a separate business unit with no action taken or omission made for the purpose of reducing or minimizing, or impairing the ability of the Surviving Corporation to produce, the Earn-Out Payments. If the employment of both of the Stockholders is terminated by the Parent or Surviving Corporation during the Earn-Out Period without cause, such termination of employment without cause shall constitute a Trigger Event under Section 2.03(f) and the Stockholders shall have the right to make the election set forth in Section 2.03(f) hereof.

#### ARTICLE VI CONDITIONS TO CLOSING/ACTIONS AT CLOSING

The obligations of each of the parties hereto to effect the transactions contemplated herein shall be subject to satisfaction or written waiver of the following as of the Closing Date:

6.01. **Conditions to Obligations of Parent and Merger Sub.** The obligations of Parent and Merger Sub under this Agreement shall be subject to the condition that, as or prior to the Closing hereof, all of the following statements and/or conditions shall be true and/or satisfied (any of which conditions may be waived in writing by Parent):



(a) Performance. Stockholders shall have complied with all covenants and taken all actions herein required to be performed or taken by her on or before the Closing Date.

(b) Representations. Each representation and warranty of Stockholders herein shall have been true in all material respects as of the date hereof and shall be true in all material respects on and as of the Closing Date as though made on and as of the Closing Date, except to the extent that any thereof expressly relate to an earlier date, in which case such representations shall be true in all material respects on and as of such date.

(c) Legality. No law, rule or regulation or order of any court or agency shall prohibit the execution, delivery or performance of this Agreement or the consummation of the Merger or any other transaction contemplated hereby or subject execution, delivery, performance or consummation to any material condition. There shall not be pending before any court or agency any action seeking to enjoin the Merger or recover material damages in respect thereof.

(d) Other Approvals and Consents. Any and all required approvals or consents to the transactions contemplated by this Agreement, including but not limited to the transfer of any licenses, permits, or franchises of any nature, shall have been obtained and confirmed in writing. The consummation of the transactions contemplated by this Agreement shall not affect or impair the continued validity and enforceability of all contracts, licenses, permits, franchises, and distribution agreements the benefits of which are enjoyed or possessed by Target.

(e) Certificate. Parent and Merger Sub shall have received a certificate of Stockholders attesting to the satisfaction of the foregoing conditions in the form of Exhibit B-1 attached hereto.

X (f) Employment Agreements. Stockholders and Parent shall have entered into the Employment Agreement in the form attached hereto as Exhibit "G."

(g) Adequate Parent Stock. Parent shall have an adequate number of shares of Parent Stock authorized, available and approved by all necessary Persons for issuance in accordance with Sections 2.03(b) and 2.03(c) of this Agreement.

X (h) Assignment and Release Agreement. Stockholders shall have executed and delivered to Parent and Merger Sub the Assignment and Release Agreement in the form attached hereto as Exhibit "H".

(i) Cash on Hand. Target's cash balances immediately prior to closing shall be at least \$30,000.

6.02. Conditions to Obligations of Target and Stockholders. The obligations of Target and Stockholders under this Agreement shall be subject to the satisfaction at or prior to the Closing hereof of the following conditions (any of which may be waived in writing by Target):

(a) Performance. Parent and Merger Sub shall have complied with all covenants

and taken all actions herein required to be performed or taken by them on or before the Closing Date.

(b) Representations. Each representation and warranty of Parent herein shall have been true in all material respects as of the date hereof and shall be true in all material respects on and as of the Closing Date as though made on and as of the Closing Date, except to the extent it expressly relates to an earlier date, in which case such representations shall be true in all material respects on and as of such date.

(c) Legality. No law, rule or regulation or order of any court or other agency shall prohibit the execution, delivery or performance of this Agreement or the consummation of the Merger or other transaction contemplated hereby or subject execution, deliver, performance or consummation to any material obligation. There shall not be pending before any court or agency any action seeking to enjoin the Merger or recover material damages in respect hereof.

X (d) Employment Agreements. Stockholders and Parent shall have entered into the Employment Agreement in the form attached hereto as Exhibit "G."

X (e) Certificate. Stockholders and Target shall have received the certificate of the Chief Executive Officer of Parent attesting to the satisfaction of the foregoing conditions.

? 6.03. Filing of Certificate of Merger. Upon satisfaction or waiver of each of the foregoing conditions, Stockholders, Target and Parent shall cause the Certificate of Merger to be executed by the Constituent Corporations and delivered to Parent. Parent, on behalf of the Constituent Corporations, shall cause the Certificate of Merger to be filed with the Secretary of State of Delaware and the Secretary of the State of Florida as soon as practicable following the Closing, and in any event no later than the close of business on the business day next following the Closing Date.

6.04. Further Assurances. At any time, and from time to time, after the date of this Agreement, each party will execute such additional instruments and take such action as may be reasonably requested by the other party to confirm or perfect title to any property transferred hereunder or otherwise to carry out the intent and purposes of this Agreement.

#### ARTICLE VII INDEMNIFICATION; SURVIVAL OF WARRANTIES; STOCKHOLDER REPRESENTATIVE

7.01. Indemnification by Stockholders. Subject to the terms of Sections 7.04 and 7.05 hereof, Stockholders, jointly and severally, shall defend, indemnify and hold harmless Parent, Merger Sub (prior to the Effective Time) and Surviving Corporation (subsequent to the Effective Time) and their subsidiaries and other affiliates, officers, directors, stockholders, attorneys, employees and agents (collectively, the "Parent Indemnified Parties"), from and against loss, liability, claim, Obligation, damage, expense (including costs of investigation and defense), deficiency or diminution in value, fines and penalties directly or indirectly arising out of or resulting

from or in connection with any of the following:

(a) any material inaccuracy in any of the representations and warranties of Target and/or Stockholders contained in this Agreement or in any certificate, agreement or instrument executed or delivered by any Stockholder pursuant to this Agreement or the Merger, including, without limitation, the Target Financials;

(b) any failure by Target and/or either Stockholders to perform or comply with or fulfill any of their respective agreements or covenants contained herein or therein;

(c) any taxes of the Target, if any, with respect to any taxable period (or portion of a taxable period) ending on or prior to the Closing Date, and any taxes of the Stockholders (including taxes on allocable income from Target if Target is an "S" corporation) with respect to any taxable period; or

(d) any Liability or Obligation of Target incurred prior to, or arising from acts or omissions prior to, the Closing Date, unless such Liabilities or obligations are disclosed in this Agreement or in the Disclosure Schedule.

**7.02. Indemnification by Parent.** Subject to the terms of Section 7.04 hereof, Parent shall defend, indemnify and hold harmless Stockholders, and their personal representatives, estates, attorneys and agents (collectively, the "Stockholder Indemnified Parties"), from and against loss, Liability, claim, Obligation, damage, expense (including costs of investigation and defense), deficiency or diminution in value, fines and penalties directly or indirectly arising out of or resulting from or in connection with any of the following:

(a) any material inaccuracy in any of the representations and warranties of Parent or Merger Sub contained in this Agreement or in any certificate, agreement or instrument executed or delivered by Parent or Merger Sub pursuant to this Agreement or the Merger, including without limitation the Parent Financials; or

(b) any failure by Parent and/or Merger Sub to perform or comply with or fulfill any of their respective agreements or covenants contained herein or therein.

**7.03 Procedures.** In the event that any claim or demand for which an indemnifying party ("Indemnitor") would be liable to an indemnified party ("Indemnitee") hereunder is asserted against or sought to be collected from an Indemnitee by a third party, the Indemnitee shall promptly notify Indemnitor of such claim or demand, specifying the nature of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). The Indemnitor shall then have twenty (20) days from the personal delivery or mailing of the Claim Notice (the "Notice Period"): (x) to notify the Indemnitee (i) whether or not it disputes its liability to the Indemnitee hereunder with respect to such claim or demand and (ii) notwithstanding any such dispute, whether or not it desires, at its sole cost and expense, to defend the Indemnitee against such claim or demand, and (y) to cure the matter giving rise to the Claim Notice to the extent such matter does not involve a third party claim.

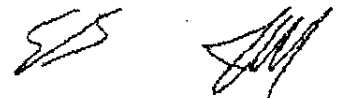
(i) If the Indemnitor disputes its liability with respect to such claim or demand or the amount thereof (whether or not the Indemnitor desires to defend the Indemnitee against such claim or demand as provided in paragraphs (ii) and (iii) below), such claim or demand shall not be settled without the prior written consent of the Indemnitee.

(ii) In the event that the Indemnitor notifies the Indemnitee within the Notice Period that it desires to defend the Indemnitee against such claim or demand, then, except as hereinafter provided, the Indemnitor shall have the right to defend the Indemnitee by appropriate proceedings, which proceedings shall be promptly settled or prosecuted by it to a final conclusion in such a manner as to avoid any risk of the Indemnitee becoming subject to liability for any other matter; provided, however, the Indemnitor shall not, without the prior written consent of the Indemnitee, consent to the entry of any judgment against the Indemnitee or enter into any settlement or compromise which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnitee of a release, in form and substance satisfactory to the Indemnitee, from all liability in respect of such claim or litigation. If any Indemnitee desires to participate in, but not control, any such defense or settlement, it may do so at its sole cost and expense. If, in the reasonable opinion of the Indemnitee, any such claim or demand or the litigation or resolution of any such claim or demand involves an issue or matter which could have a materially adverse effect on the business, operations, assets, properties or prospects of the Indemnitee, including without limitation the administration of the tax returns and responsibilities under the tax laws of any Indemnitee, then the Indemnitee shall have the right to control the defense or settlement of any such claim or demand, and its reasonable costs and expenses shall be included as part of the indemnification obligation of Indemnitor hereunder; provided, however, that the Indemnitee shall not settle any such claim or demand without the prior written consent of the Indemnitor, which consent shall not be unreasonably withheld. If the Indemnitee should elect to exercise such right, the Indemnitor shall have the right to participate in, but not control, the defense or settlement of such claim or demand, at its sole cost and expense.

(iii) If the Indemnitor elects not to defend the Indemnitee against such claim or demand, whether by not giving the Indemnitee timely notice as provided above or otherwise, then the amount of any such claim or demand, or if the same be defended by the Indemnitor or by the Indemnitee (but no Indemnitee shall have any obligation to defend any such claim or demand) then that portion thereof as to which such defense is unsuccessful, in each case, shall be conclusively deemed to be a liability of the Indemnitor hereunder, unless the Indemnitor shall have disputed its liability to the Indemnitee hereunder, as provided in paragraph (a) above.

(iv) In the event an Indemnitee should have a claim against the Indemnitor hereunder that does not involve a claim or demand being asserted against or sought to be collected from it by a third party, the Indemnitee shall promptly send a Claim Notice with respect to such claim to the Indemnitor. If the Indemnitor does not notify the Indemnitee within the Notice Period that it disputes such claim, the amount of such claim shall be conclusively deemed a liability of the Indemnitor hereunder.

**7.04. Survival of Warranties and Indemnification Obligations.** All representations, warranties, covenants and obligations in this Agreement, the Exhibits and Schedules hereto, and any





other certificate or document delivered pursuant to this Agreement will survive the Closing Date for a period of three years. The right to indemnification, payment of damages or other remedy based on such representations, warranties, covenants, and obligations will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. Any claim for indemnification pursuant to Subsection 7.01 or 7.02 must be made on or before the third anniversary of the Effective Time.

**7.05. Recourse Against Parent Shares and Limitation on Liability.**

(a) Recourse Against Parent Shares. In the event of an indemnification obligation by the Stockholders pursuant to Section 7.01 hereof, then the Stockholders shall have the option and right to satisfy, in whole or in part, such indemnification obligation to the Parent by either (a) paying cash to the Parent equal to such indemnification obligation or (b) tendering shares of Parent Stock issued hereunder with a fair market value equal to such indemnification obligation to the Parent. In the event the Stockholders elect to exercise their right and option to tender shares of Parent Stock, Stockholders agree that they will surrender to Parent stock certificates representing the number of shares to be cancelled, which number shall be arrived at by dividing the amount of such indemnification amount being satisfied by the tender of such shares by the fair market value of one share of the Parent Stock, as determined in the reasonable discretion of Parent's Board of Directors acting in good faith if the Parent is a privately-held company at the time of such valuation. The parties hereto hereby agree that (i) any reduction and/or cancellation of the Parent Stock shall constitute a reduction in the Merger Consideration for state and federal income tax purposes, and (ii) they will file, amend and/or modify their respective state and federal income tax returns in a manner necessary to reflect such reduction in the Merger Consideration.

(b) Limitation on Liability. Except for liabilities arising out of willful or intentional failure to fulfill agreements or covenants, or willful or intentional material inaccuracy in representations or warranties, the liability of each Stockholder pursuant to this Agreement, or in connection with any action or claim related to this Agreement (including without limitation, any tort claims), shall be limited to the Merger Consideration that each Stockholder receives hereunder. In addition, except for such willful or intentional failures or inaccuracies, in the event of liability for which a Claim Notice is first sent more than 545 days after the Effective Time, Stockholders' liability shall be limited to the amount of Earn-Out Payments payable after the date that is 545 days after the Effective Time. Parent may, at its option, offset any such indemnification liability described in the previous sentence against any Earn-Out Payments so payable, and in such event, Stockholders will not have the option to pay by application of Parent Stock. Indemnification is the sole remedy for any and all claims arising of a type identified in Section 7.01 and 7.02 of this Agreement, other than those arising solely due to the conduct of a party after the Effective Time.

(c) Deductible Amount for Indemnification. Notwithstanding anything to the contrary set forth in this Agreement, neither the Stockholders nor the Parent shall be liable hereunder to the other party hereto (or to any Parent Indemnified Parties or to any Stockholder Indemnified Parties) as a result of the indemnification obligations contained herein, until the

indemnification obligation incurred by the Parent Indemnified Parties on the one hand and the Stockholder Indemnified Parties on the other hand, in the respective aggregate, that are subject to such indemnification exceed in the aggregate Fifty Thousand Dollars (\$50,000), in which event the Parent or Stockholders, as the case may be, shall be liable for the full amount of such indemnification obligation incurred by the indemnified party.

7.06. Appointment of Stockholders' Representative; Acceptance. By executing this Agreement, each of the Stockholders hereby irrevocably constitutes and appoints James R. McCallion as the Stockholders' Representative, or any assignee or successor thereof, acting as hereinafter provided, as his attorney-in-fact and agent to act in his name, place and stead in connection with all matters arising from and under this Agreement after the Closing Date, and acknowledges that such appointment is coupled with an interest. By executing this Agreement, the Stockholders' Representative hereby (i) accepts his appointment and authorization to act as the Stockholders' Representative and as attorney-in-fact and agent in accordance with the terms hereof and (ii) agrees to perform its obligations hereunder, and otherwise to comply with this Article 7.

7.07. Authority. Each Stockholder fully and completely, without restriction:

(a) agrees to be bound by all notices received or given by, and all agreements and determinations made by, and all documents executed and delivered by the Stockholders' Representative pursuant to this Agreement after the Closing Date;

(b) authorizes the Stockholders' Representative, after the Closing Date to assert claims, make demands and commence actions on behalf of a Stockholder pursuant to this Agreement:

(i) to dispute or to refrain from disputing any claim made by Stockholders pursuant to this Agreement;

(ii) to negotiate and compromise any dispute which may arise, and exercise or refrain from exercising remedies available to any Stockholder, pursuant to this Agreement, and to sign any releases or other documents with respect to such dispute or remedy (and to bind the Stockholders in so doing);

(iii) to give such instructions and do such other things and refrain from doing such things as the Stockholders' Representative shall deem appropriate to carry out the provisions of this Agreement;

(iv) to give any and all consents and notices pursuant to this Agreement; and

(v) to perform all actions, exercise all powers, and fulfill all duties otherwise assigned to the Stockholders' Representative in this Agreement; and

Notwithstanding the foregoing, all payments and issuances of stock to a Stockholder hereunder shall be made directly to such Stockholder pursuant to this Agreement.

7.08. **Actions.** Each of the Stockholders hereby expressly acknowledges and agrees that the Stockholders' Representative has the sole and exclusive authority to act on its behalf in respect of all matters arising under or pursuant to this Agreement after the Closing Date, notwithstanding any dispute or disagreement among them, and that no Stockholder shall have any authority to act unilaterally or independently of Stockholders' Representative in respect to any such matter. Accordingly, the Parent and the Surviving Corporation shall be entitled to rely on any and all actions taken by the Stockholders' Representative pursuant to this Agreement without any liability to, or obligation to inquire of, any of the Stockholders. All notices, counter-notices or other instruments or designations delivered to the Parent, the Surviving Corporation or any other Person in regard to the Agreement on behalf of the Stockholders shall not be effective unless, but shall be effective if, signed by the Stockholders' Representative, and if not, such document shall have no force or effect whatsoever and the Parent, the Surviving Corporation and any other Person or entity may proceed without regard to any such document. In addition, all notices given to or knowledge of Stockholders' Representative in connection with this Agreement or the transactions contemplated hereby shall be deemed notice to and knowledge of each of the Stockholders. All Persons are hereby expressly authorized to rely on the genuineness of the signature of the Stockholders' Representative, and upon receipt of any writing that reasonably appears to have been signed by the Stockholders' Representative. The Parent, the Surviving Corporation and any other Person may act upon the same without any further duty of inquiry as to the genuineness of the writing.

7.09. **Effectiveness.** The authorizations of the Stockholders' Representative shall be irrevocable and effective until his rights and obligations pursuant to this Agreement terminate by virtue of the termination of all obligations of the Stockholders to the Parent and Parent to Stockholders under this Agreement.

#### ARTICLE VIII MISCELLANEOUS

8.01. **Notices.** All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when mailed by first class, registered or certified mail, postage prepaid and addressed as follows:

Parent and Merger Sub: c/o Online Benefits, Inc.  
333 Earle Ovington Boulevard  
Uniondale, New York 11553  
Attn: John E. Donahue  
Phone: 516-414-7013  
Fax: 516-414-5103

With a required  
copy to:

Eckert Seamans Cherin & Mellott

1515 Market Street, 9th Floor  
Philadelphia, Pennsylvania 19102  
Attn: Gary A. Miller, Esquire  
Phone: 215-851-8472  
Fax: 215-851-8383

Target and Stockholders: c/o Captiva Systems, Inc.  
12973 S.W. 112th St, #184  
Miami, FL 33186  
Attn: James R. McCallion  
Phone: 305-252-3373  
Fax:

With a Required  
copy to:

Berger Singerman, P.A.  
200 South Biscayne Boulevard, Suite 1100  
Miami, Florida 33131  
Attn: Thomas O. Wells, Esq.  
Phone: 305-755-9500  
Fax: 305-714-4340

Addresses may be changed by notice in writing signed by the addressee and given in accordance with this Section 8.01.

8.02. Entire Agreement; Amendment. This Agreement (including all exhibits and schedules hereto) supersedes any and all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof, and contains the entire agreement between such parties with respect to the transactions contemplated hereunder. This Agreement may be amended only by an instrument in writing signed by all of the parties.

8.03. Binding Effect; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns. Neither this Agreement nor any interest herein may directly or indirectly be transferred or assigned by any party, in whole or in part, without the written consents of all other parties.

8.04. Severability. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

8.05. Headings. The headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision of this Agreement.

8.06. No Third Party Beneficiaries. This Agreement is for the benefit of, and may be enforced only by, the parties and their respective successors and assigns, and is not for the benefit of, and may not be enforced by, any third party.

8.07. **Counterparts.** This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

8.08. **Termination.** This Agreement may be terminated (a) by written agreement of all parties, (b) by either party, in the event of breach of any representation, warranty or covenant of this Agreement by the other party, (c) by either party in the event that the conditions to that party's obligation to consummate the Merger are incapable of satisfaction, or (d) by either party if Closing has not occurred by January 16, 2004. The remedy of termination afforded under this Section 8.08 is in addition to, and shall not be deemed to waive or limit in any other way, any other remedies available to the parties at law or in equity for breach, nonperformance or otherwise.

8.09. **Expenses.** Each of the parties hereto shall bear its own legal and any other expenses with respect to this transaction.

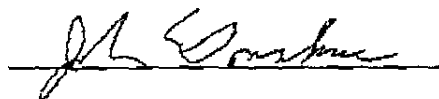
8.10 **Governing Law and Jurisdiction.** THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF. The parties hereby irrevocably submit to the jurisdiction of the Federal courts of the United States of America located in New York City, New York, and the state courts of New York solely in respect of the interpretation and enforcement of the provisions of this Agreement and of the documents referred to in this Agreement, and in respect of the transactions contemplated hereby, and hereby waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with respect to such action or proceeding shall be heard and determined in such a Federal or state court. The parties hereby consent to and grant any such court jurisdiction over the Person of such parties and over the subject matter of such dispute and agree that mailing of process or other papers in connection with any such action or proceeding in the manner provided in this Agreement or in such other manner as may be permitted by law, shall be valid and sufficient service thereof.

[ Signature Page Follows ]

(AUDIT NO: H050001114783)

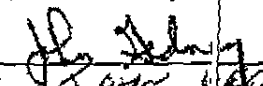
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

Attest or Witness:



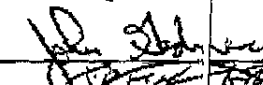
PARENT:


ONLINE BENEFITS, INC.

By:   
Name: J. Donahue  
Title: President

MERGER SUB:

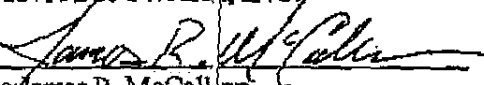
CAPTIVA ACQUISITION CORP.

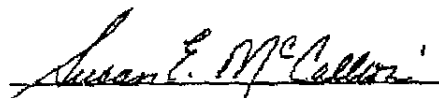
By:   
Name: J. Donahue  
Title: President



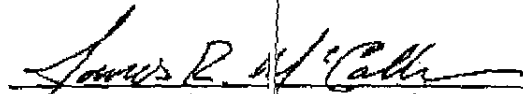
TARGET:

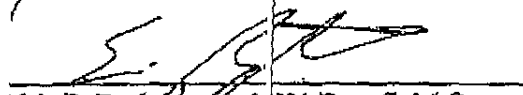
CAPTIVA SOFTWARE, INC.

By:   
Name: James R. McCallion  
Title: President



STOCKHOLDERS:

  
James R. McCallion (55% Beneficial Owner)

  
Eric R. Bechinger (45% Beneficial Owner)

(AUDIT NO: H050001114783)