

P98000104355



ACCOUNT NO. : 072100000032

REFERENCE : 277986 4311859

AUTHORIZATION

Patricia Pajaro

COST LIMIT : \$ 105

ORDER DATE : June 17, 1999

ORDER TIME : 11:04 AM

ORDER NO. : 277986-005

800002909228--7

CUSTOMER NO: 4311859

CUSTOMER: Shawn Bannister, Legal Asst
Haythe & Curley
237 Park Ave.
20th Floor
New York, NY 10017-3142

ARTICLES OF MERGER

VIDEOCALL INTERNATIONAL
CORPORATION

INTO

LEGACY SOFTWARE ACQUISITION,
INC.

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

 CERTIFIED COPY
XX PLAIN STAMPED COPY

CONTACT PERSON:

Christine L. Smith
TALLAHASSEE, FLORIDA

EXAMINER'S INITIALS:

99 JUN 18 PM 12:11

RECEIVED

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

99 JUN 18 PM 3:07

FILED

Sp
merger
6/18/99

Any schedules, exhibits, or annexes which are omitted from this document are assumed to be a part of the agreement for merger and are not required in the plan.

ARTICLES OF MERGER
Merger Sheet

MERGING: -----

VIDEOCALL INTERNATIONAL CORPORATION, a FL corp., P98000010280

INTO

LEGACY SOFTWARE ACQUISITION, INC., a Florida corporation,
P98000104355.

File date: June 18, 1999

Corporate Specialist: Susan Payne

Account number: 072100000032

Account charged: 70.00

ARTICLES OF MERGER

(Profit Corporations)

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to section 607.1105, F.S.

First: The name and jurisdiction of the surviving corporation is:

<u>Name</u>	<u>Jurisdiction</u>
<u>Legacy Software Acquisition, Inc.</u>	<u>Florida</u>

FILED
JUN 18
SECRETARY
CLAHASSE

Second: The name and jurisdiction of each merging corporation is:

<u>Name</u>	<u>Jurisdiction</u>
Videocall International Corporation	Florida

Third: The Plan of Merger is attached.

Fourth: The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State

OR / / (Enter a specific date. NOTE: An effective date cannot be prior to the date of filing or more than 90 days in the future.)

Fifth: Adoption of Merger by surviving corporation - (COMPLETE ONLY ONE STATEMENT)
The Plan of Merger was adopted by the shareholders of the surviving corporation on June 15, 1999.

The Plan of Merger was adopted by the board of directors of the surviving corporation on _____ and shareholder approval was not required.

Sixth: Adoption of Merger by merging corporation(s) (COMPLETE ONLY ONE STATEMENT)
The Plan of Merger was adopted by the shareholders of the merging corporation(s) on June 15, 1999.

The Plan of Merger was adopted by the board of directors of the merging corporation(s) on _____ and shareholder approval was not required.

(Attach additional sheets if necessary)

Seventh: SIGNATURES FOR EACH CORPORATION

Name of Corporation

Signature

Typed or Printed Name of Individual & Title

Videocall International Corporation

25/10/20

Harold Snyder
Vice President and Chief
Financial Officer

Legacy Software
Acquisition, Inc.

20

Harold Snyder
Vice President and Chief
Financial Officer

Talk Visual Corporation

228

Harold Snyder
Vice President and Chief
Financial Officer

PLAN OF MERGER

The following plan of merger is submitted in compliance with section 607.1101, F.S. and in accordance with the laws of any other applicable jurisdiction of incorporation.

First: The name and jurisdiction of the surviving corporation is:

Name

Jurisdiction

Legacy Software Acquisition, Inc.

Florida

Second: The name and jurisdiction of each merging corporation is:

Name

Jurisdiction

Videocall International Corporation

Florida

Third: The terms and conditions of the merger are as follows:

Fourth: The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving corporation or any other corporation or, in whole or in part, into cash or other property and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, or other securities of the surviving or any other corporation or, in whole or in part, into cash or other property are as follows:

(Attach additional sheets if necessary)

THE FOLLOWING MAY BE SET FORTH IF APPLICABLE:

Amendments to the articles of incorporation of the surviving corporation are indicated below or attached as an exhibit:

OR

Restated articles are attached:

Other provisions relating to the merger are as follows:

AGREEMENT AND PLAN OF MERGER
AMONG
LEGACY SOFTWARE, INC.,
LEGACY ACQUISITION, INC.
AND
VIDEOCALL INTERNATIONAL CORPORATION

September 14, 1998

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER entered into as of September 14, 1998 by and among Legacy Software, Inc., a Delaware corporation (the "**Buyer**"), Legacy Software Acquisition, Inc., a Florida corporation to be incorporated (the "**Transitory Subsidiary**"), and Videocall International Corporation., a Florida corporation (the "**Target**"). The Buyer, the Transitory Subsidiary, and the Target are referred to collectively herein as the "**Parties**;"

WHEREAS, upon the terms and subject to the conditions of this Agreement and of a Merger Agreement in the form attached hereto as Exhibit A (the "**Merger Agreement**"), in accordance with the Florida General Corporation Law, the Buyer, the Target, and the Transitory Subsidiary will carry out a business combination pursuant to which the Target will merge with and into the Transitory Subsidiary, the stockholders of the Target will convert all of their outstanding Target Shares into the Buyer Shares;

WHEREAS, the Board of Directors of the Buyer and of the Target unanimously have determined that the Merger is fair to, and in the best interests of, their respective companies and stockholders, and have approved and adopted this Agreement and the Merger, and have recommended approval and adoption of this Agreement and the Merger by their respective stockholders; and

WHEREAS, the Buyer's Board of Directors has approved and adopted this Agreement and has approved the Merger as the sole stockholder of the Transitory Subsidiary.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties agree as follows:

1. *Definitions.*

"**Affiliate**" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act.

"**Affiliated Group**" means any affiliated group within the meaning of Code §1504(a) or any similar group defined under a similar provision of state, local, or foreign law.

"**Buyer**" has the meaning set forth in the preface above.

"**Buyer-owned Share**" means any Target Share that the Buyer owns beneficially or of record.

"Buyer Shares" means the 5 million shares of the Common Stock, \$0.001 par value per share, and the 5 million shares of Series A Preferred Stock, \$0.001 par value, of the Buyer.

"Buyer's Most Recent Balance Sheet" means the balance sheet contained within the Buyer's Most Recent Financial Statements.

"Buyer's Most Recent Financial Statements" means the Buyer's financial statements for the six months ended June 30, 1998.

"Buyer's Most Recent Fiscal Year End" means the year ended December 31, 1997.

"Certificate of Merger" has the meaning set forth in §2(d) below.

"Closing" has the meaning set forth in §2(c) below.

"Closing Date" has the meaning set forth in §2(c) below.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means any information concerning the businesses and affairs of any of the Parties and their respective Subsidiaries that is not already generally available to the public.

"Controlled Group of Corporations" has the meaning set forth in Code §1563.

"Conversion Ratio" has the meaning set forth in §2(f)(i) below.

"Delaware General Corporation Law" means the general corporation laws of the State of Delaware.

"Disclosure Schedule" has the meaning set forth in §3 below.

"Dissenting Shares" has the meaning set forth in §2(i) below.

"Effective Time" has the meaning set forth in §2(e)(i) below.

"Employee Benefit Plan" means any (a) nonqualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan, (b) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (c) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), or (d) Employee Welfare Benefit Plan or material fringe benefit plan or program.

"Employee Pension Benefit Plan" has the meaning set forth in ERISA §3(2).

"Employee Welfare Benefit Plan" has the meaning set forth in ERISA §3(1).

"Environmental, Health, and Safety Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Resource Conservation and Recovery Act of 1976, and the Occupational Safety and Health Act of 1970, each as amended, together with all other laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof) concerning pollution or protection of the environment, public health and safety, or employee health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Exchange Agent" has the meaning set forth in §2(g) below.

"Fiduciary" has the meaning set forth in ERISA §3(21).

"Florida General Corporation Law" means the general corporation laws of the State of Florida.

"GAAP" means United States generally accepted accounting principles as in effect from time to time, applied on a consistent basis.

"Hart-Scott-Rodino Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Independent Auditors" has the meaning set forth in §2(f)(iii) below.

"Initial Closing Statement" has the meaning set forth in §2(f)(iii) below.

"Initial Closing Statement Income" has the meaning set forth in §2(f)(iii) below.

"Initial Closing Statement Revenues" has the meaning set forth in §2(f)(iii) below.

"Intellectual Property" means (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, (b) all trademarks, service marks, trade dress, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (c) all copyrightable works, all copyrights, and all applications, registrations, and renewals in connection therewith, (d) all mask works and all applications, registrations, and renewals in connection therewith, (e) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (f) all computer software (including data and related documentation), (g) all other proprietary rights, and (h) all copies and tangible embodiments thereof (in whatever form or medium).

"IRS" means the Internal Revenue Service.

"Liability" means any liability (whether absolute, accrued or contingent), including any liability for Taxes.

"Merger" has the meaning set forth in §2(a) below.

"Merger Agreement" has the meaning set forth in the preamble above.

"Multiemployer Plan" has the meaning set forth in ERISA §3(37).

"NASDAQ" means The NASDAQ SmallCap Market, Inc.

"Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency).

"Party" has the meaning set forth in the preface above.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Person" means an individual, a partnership, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity (or any department, agency, or political subdivision thereof).

"Prohibited Transaction" has the meaning set forth in ERISA §406 and Code §4975.

"Prospectus" means the final prospectus relating to the registration of the Buyer Shares issued in the Merger under the Securities Act.

"Reportable Event" has the meaning set forth in ERISA §4043.

"Requisite Buyer Stockholder Approval" means the affirmative vote of the holders of a majority of the Buyer Shares entitled to vote thereon, in favor of this Agreement and the Merger.

"Requisite Target Stockholder Approval" means the affirmative vote of the holders of 100% of the Target Shares entitled to vote thereon, in favor of this Agreement and the Merger.

"Rights" has the meaning set forth in §6(o) below.

"SEC" means the Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended.

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

"Security Interest" means any mortgage, pledge, lien, encumbrance, charge, or other security interest, other than (a) mechanic's, materialmen's, and similar liens, (b) liens for taxes not yet due and payable or for taxes that the taxpayer is contesting in good faith through appropriate proceedings, (c) purchase money liens and liens securing rental payments under capital lease arrangements, and (d) other liens arising in the Ordinary Course of Business and not incurred in connection with the borrowing of money.

"Subsidiary" means any corporation with respect to which a specified Person (or a Subsidiary thereof) owns a majority of the common stock or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors.

"Surviving Corporation" has the meaning set forth in §2(a)(i) below.

"Target" has the meaning set forth in the preface above.

"Target Director Designees" means Michael J. Zwebner, Eugene A. Rosov, Michael Cuzner-Charles and Alexander H. Walker, Jr.

"Target Options" means the options to acquire Target Shares issued to the officers, directors, employees and consultants of the Target, and identified on Schedule 3(c) of the Disclosure Schedule.

"Target Share" means any share of Common Stock, \$0.01 par value per share, of the Target.

"Target Stockholder" means any Person who or which holds any Target Shares.

"Target's Most Recent Balance Sheet" means the balance sheet contained within the Target's Most Recent Financial Statements.

"Target's Most Recent Financial Statements" has the meaning set forth in §3(g) below.

"Target's Most Recent Financial Statement Date" has the meaning set forth in §3(g) below.

"Target's Most Recent Fiscal Year End" has the meaning set forth in §3(g) below.

"Target's Notice" has the meaning set forth in §5(q) hereof.

"Tax" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code §59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

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

"to the Buyer's Knowledge" or other reference herein to the Buyer's knowledge or awareness, means the actual knowledge of C. Robert Kline, Ph.D and William E. Sliney, after due inquiry of the officers and directors of the Buyer and after reasonable investigation of the books, records and files of the Buyer.

"to the Target's Knowledge" or other reference herein to the Target's knowledge or awareness, means the actual knowledge of Michael J. Zwebner, Eugene A. Rosov and Harold Snyder, after due inquiry of the officers and directors of the Target and after reasonable investigation of the books, records and files of the Target.

"Transitory Subsidiary" has the meaning set forth in the preface above.

2. **Basic Transaction.**

(a) *The Merger.*

(i) On and subject to the terms and conditions of this Agreement and the Merger Agreement, and in accordance with the Florida General Corporation Law, the Target will merge with and into the Transitory Subsidiary (the "Merger") at the Effective Time. The Transitory Subsidiary shall be the corporation surviving the Merger as a wholly-owned subsidiary of the Buyer (the "Surviving Corporation").

(ii) The Target hereby represents that its Board of Directors, at a meeting duly called and held at which a quorum was present and acting throughout, has unanimously (A) determined that this Agreement, the Merger Agreement and the Merger are fair to and in the best interests of, the Target and its stockholders, (B) approved this Agreement, the Merger Agreement and the Merger, and (C) resolved to recommend approval and adoption by the stockholders of the Target of this Agreement, the Merger Agreement and the Merger to the extent required and in a manner permitted by the Florida General Corporation Law.

(b) *Action by the Buyer.* The Buyer, acting through its Board of Directors, shall, as soon as practicable, take all actions necessary to obtain stockholder approval in accordance with the Delaware General Corporation Law and the Securities Exchange Act by: (A) as soon as practicable, duly call, give notice of, convene and hold the Special Buyer Meeting for the purpose of adopting and approving this Agreement, the Merger Agreement and the Merger; (B) include in the Definitive Buyer Proxy Materials the conclusion and recommendation of the Board of Directors to the effect that the Board of Directors, having determined that this Agreement, the Merger Agreement and the Merger are in the best interests of the Buyer and its stockholders, has approved this Agreement, the Merger Agreement and the Merger and recommends that the stockholders of the Buyer vote in favor of the approval and adoption of this Agreement, the Merger Agreement and the Merger; (C) use its reasonable best efforts to obtain the necessary approval and adoption of this Agreement, the Merger Agreement and the Merger by the stockholders of the Buyer; and (D) as sole stockholder of the Transitory Subsidiary, shall adopt and approve this Agreement, the Merger Agreement and the Merger.

(c) *The Closing.* The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Troop Steuber Pasich Reddick & Tobey, LLP in Los Angeles, California, commencing at 9:00 a.m. local time on the second business day following the satisfaction or waiver of all conditions to the obligations of the Parties to consummate the transactions contemplated hereby (other than conditions with respect to actions the respective Parties will take at the Closing itself) or such other date as the Parties may mutually determine (the "Closing Date").

(d) *Actions at the Closing.* At the Closing, (i) the Target will deliver to the Buyer the various certificates, instruments, and documents referred to in §6(a) below, (ii) the Buyer and the Transitory Subsidiary will deliver to the Target the various certificates,

instruments, and documents referred to in §6(b) below, (iii) the Transitory Subsidiary and the Target will file with the Secretary of State of the State of Florida a Certificate of Merger in the form attached hereto as Exhibits B (the "Certificate of Merger"), and (iv) the Buyer will deliver to the Exchange Agent in the manner provided below in this §2 the certificates evidencing the Buyer Shares issued in the Merger.

(e) *Effect of Merger.*

(i) *General.* The Merger shall become effective at the time (the "Effective Time") the Transitory Subsidiary and the Target file the Certificate of Merger with the Secretary of State of Florida. The Merger shall have the effect set forth in the Florida General Corporation Law. The Surviving Corporation may, at any time after the Effective Time, take any action (including executing and delivering any document) in the name and on behalf of either the Buyer or the Target in order to carry out and effectuate the transactions contemplated by this Agreement.

(ii) *Certificate of Incorporation.* The Certificate of Incorporation of the Transitory Subsidiary in effect at and as of the Effective Time will remain the Certificate of Incorporation of the Surviving Corporation without any modification or amendment in the Merger.

(iii) *Bylaws.* The Bylaws of the Transitory Subsidiary in effect at and as of the Effective Time will remain the Bylaws of the Surviving Corporation without any modification or amendment in the Merger.

(iv) *Directors and Officers.* The directors and officers of the Target in office at and as of the Effective Time will remain the directors and officers of the Surviving Corporation (retaining their respective positions and terms of office), together with the Target Director Designees.

(v) *Buyer Shares.* Each Buyer Share issued and outstanding at and as of the Effective Time will remain issued and outstanding.

(vi) *Target Shares.* No Target Share shall be deemed to be outstanding or to have any rights other than those set forth in §2(f) and §2(i) below after the Effective Time.

(f) *Conversion of Target Shares.* At the Effective Time, by virtue of the Merger and without any action on the part of the Buyer, the Target, the Transitory Subsidiary, or the holders of any of the foregoing securities:

Every share of Target Stock issued and outstanding and owned by the Buyer immediately prior to the Effective Time, shall automatically be canceled and retired and shall cease to exist, and no cash or Buyer Shares, or other consideration

shall be delivered or deliverable or exchanged therefor. For purposes of this §2(f)(i) and the calculation of the Conversion Ratio, it is assumed that there are such number of Target Shares outstanding as referenced in the attached Schedule 2(f)-1. At and as of the Effective Time, (1) each Target Share (other than any Dissenting Shares or Buyer-owned Shares) shall be converted into the right to receive such number of Buyer Shares (the ratio of Buyer Shares to one Target Share is referred to herein as the "**Conversion Ratio**") as specified in the attached Schedule 2(f)-2, (2) each Dissenting Share shall be converted into the right to receive payment from the Buyer with respect thereto in accordance with the provisions of the Florida General Corporation Law, and (3) each Buyer-owned Share shall be canceled; *provided, however*, that the Conversion Ratio shall be subject to equitable adjustment in the event of any stock split, stock dividend, reverse stock split, or other change in the number of Target Shares outstanding; *provided further, however*, that the Conversion Ratio shall be subject to adjustments, if applicable, provided in §2(f)(ii), (iii) and (iv) below. No fractional Buyer Shares shall be issued. Any conversion which would otherwise result in a fractional share shall be rounded up to the nearest whole Buyer Share.

(g) ***Procedure for Payment.***

(i) Immediately after the Effective Time, (A) the Buyer will furnish to Chase Mellon Shareholder Services (the "**Exchange Agent**") instructions directing the Exchange Agent to issue to each Target Shareholder (other than holders of Dissenting Shares and Buyer-owned Shares) their pro rata share of Buyer Shares equal to the product of (I) the Conversion Ratio *times* (II) the number of Target Shares such stockholder owns, and (B) the Buyer will cause the Exchange Agent to mail a letter of transmittal (with instructions for its use) in the form attached hereto as Exhibit C to each record holder of outstanding Target Shares for the holder to use in surrendering the certificates which represented his, her, or its Target Shares in exchange for a certificate representing the number of Buyer Shares to which he, she, or it is entitled.

(ii) The Buyer will not pay any dividend or make any distribution on Buyer Shares (with a record date at or after the Effective Time) to any record holder of outstanding Target Shares until the holder surrenders for exchange his, her, or its certificates which represented Target Shares. The Buyer instead will pay the dividend or make the distribution to the Exchange Agent in trust for the benefit of the holder pending surrender and exchange. The Buyer may cause the Exchange Agent to invest any cash the Exchange Agent receives from the Buyer as a dividend or distribution in one or more of the permitted investments set forth on Exhibit D attached hereto; *provided, however*, that the terms and conditions of the investments shall be such as to permit the Exchange Agent to make prompt payments of cash to the holders of outstanding Target Shares as necessary. The Buyer may cause the Exchange Agent to pay over to the Buyer any net earnings with respect to the investments, and the Buyer will replace promptly any cash which the Exchange Agent loses through investments.

In no event, however, will any holder of outstanding Target Shares be entitled to any interest or earnings on the dividend or distribution pending receipt.

(iii) The Buyer may cause the Exchange Agent to return any Buyer Shares and dividends and distributions thereon remaining unclaimed 180 days after the Effective Time, and thereafter each remaining record holder of outstanding Target Shares shall be entitled to look to the Buyer (subject to abandoned property, escheat, and other similar laws) as a general creditor thereof with respect to the Buyer Shares and dividends and distributions thereon to which he, she, or it is entitled upon surrender of his, her, or its certificates.

(iv) The Buyer shall pay all charges and expenses of the Exchange Agent.

(h) *Closing of Transfer Records.* After the close of business on the Closing Date, transfers of Target Shares outstanding prior to the Effective Time shall not be made on the stock transfer books of the Surviving Corporation. On or after the Closing Date, any Target Share presented to the Buyer, the Exchange Agent, or the Surviving Corporation, as the case may be, shall be converted into the applicable number of Buyer Shares.

(i) *Dissenting Shares.*

(i) Notwithstanding any other provision of this Agreement to the contrary, shares of Target Stock that are outstanding immediately prior to the Effective Time and which are held by Target Stockholders who shall not have voted in favor of the Merger or consented thereto in writing and who shall be entitled to and shall have demanded properly in writing appraisal for such shares in accordance with the Florida General Corporation Law and who shall not have withdrawn such demand or otherwise have forfeited appraisal rights (collectively, the "**Dissenting Shares**") shall not be converted into or represent the right to receive Buyer Shares. Such stockholders shall be entitled to receive payment of the appraised value of such Target Shares held by them in accordance with the provisions of the Florida General Corporation Law, except that all Dissenting Shares held by such stockholders, who shall have failed to perfect or who effectively shall have withdrawn, forfeited, or lost their rights to appraisal of such Target Shares under the Florida General Corporation Law, shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to receive, the Buyer Shares, upon surrender, in the manner provided in §2(f) above.

(ii) The Target shall give the Buyer prompt notice of any demands for appraisal received by it, withdrawals of such demands, and any other instruments served pursuant to the Florida General Corporation Law and received by the Target and relating thereto. The Target (and after the Closing, the Transitory Subsidiary) shall

direct all negotiations and proceedings with respect to demand for appraisal rights under the Florida General Corporation Law.

3. ***Representations and Warranties of the Target.*** The Target represents and warrants to the Buyer that the statements contained in this §3 are correct and complete as of the date of this Agreement and, subject to amendment by Target for events occurring after the date of this Agreement, will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §3), except as set forth in the disclosure schedule accompanying this Agreement and initialed by the Parties (the "Disclosure Schedule"). The Disclosure Schedule will be arranged in paragraphs corresponding to the lettered and numbered paragraphs contained in this §3. The Disclosure Schedule may be amended from time to time and such Disclosure Schedule as amended becomes the Disclosure Schedule of the disclosing party.

(a) ***Organization, Qualification, and Corporate Power.*** The Target is a corporation duly organized, validly existing, and in corporate good standing under the laws of the State of Florida. The Target is duly qualified as a foreign corporation in each jurisdiction where its ownership or leasing of property or where the nature of its activities requires such qualification. The Target has full corporate power and authority to carry on the businesses in which it is engaged and to own, lease, and use the properties owned, leased, and used by it, and has in full force and effect all authorizations and has made all filings to the extent required for such ownership, lease, and use of its properties and the conduct of its business.

(b) ***Capitalization.*** The entire authorized capital stock of the Target is set forth in the attached 2(f)-1. All of the issued and outstanding Target Shares have been duly authorized and are validly issued, fully paid, and nonassessable. Except for the Target Options, there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Target to issue, sell, or otherwise cause to become outstanding any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Target.

(c) ***Authorization of Transaction.*** The Target has the requisite corporate power and authority to execute and deliver this Agreement and the Merger Agreement and to perform its obligations hereunder and thereunder; *provided, however*, that the Target cannot consummate the Merger unless and until it receives the Requisite Target Stockholder Approval. This Agreement constitutes the valid and legally binding obligation of the Target, enforceable against Target in accordance with its terms and conditions, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

(d) *Noncontravention.* To the Target's Knowledge, neither Target's execution and the delivery of this Agreement, nor Target's consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Target is subject or any provision of the charter or bylaws of the Target, which would have a material adverse effect on the Target, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any material agreement, contract, lease, license, instrument or other arrangement to which the Target is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets). To the Target's Knowledge, and other than in connection with the Florida General Corporation Law, the Target does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement, except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation or failure to give notice would not have a material adverse effect on the ability of Target to consummate the transactions contemplated by this Agreement or have a material adverse effect on the Target's business, operations, condition (financial or otherwise), assets or Liabilities as in existence immediately prior to the Closing.

(e) *Title to Assets.* The Target has good title to, or a valid leasehold interest in, the properties and assets used by the Target, located on its premises, or shown on the Most Recent Balance Sheet or acquired after the date thereof, free and clear of all Security Interests, except for properties and assets disposed of in the Ordinary Course of Business since the date of the Most Recent Balance Sheet.

(f) *Subsidiaries.* There are no Subsidiaries of the Target.

(g) *Financial Statements.* Attached hereto as Exhibit E are the following financial statements (collectively the "**Financial Statements**"): unaudited balance sheet and statements of operations and cash flows as of and for the period ended September 10, 1998 ("**Most Recent Financial Statement Date**") for the Target. The Financial Statements (including the notes thereto) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, present fairly the financial condition of the Target as of such dates and the results of operations of the Target for such periods, are correct and complete in all material respects; and are consistent in all material respects with the books and records of the Target; *provided, however*, that they are subject to normal year-end adjustments and lack footnotes and other presentation items.

(h) *Events Subsequent to Most Recent Financial Statement Date.* Since the Most Recent Financial Statement Date and continuing up to and including the date of this Agreement, there has not been any material adverse change in the business, financial condition, operations or results of operations of the Target. Without limiting the generality of the foregoing, since that date:

(i) the Target has not sold, leased, transferred, or assigned any of its assets, tangible or intangible, other than in the Ordinary Course of Business;

(ii) the Target has not entered into any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) either involving more than \$50,000 or outside the Ordinary Course of Business;

(iii) the Target has not and to the Target's Knowledge, no other party has accelerated, terminated, modified, or canceled any agreement, contract, lease, or license (or series of related agreements, contracts, leases, and licenses) involving more than \$50,000 to which the Target is a party or by which the Target is bound;

(iv) the Target has not imposed any Security Interest upon any of its assets, tangible or intangible, except in favor of Buyer;

(v) the Target has not made any capital expenditure (or series of related capital expenditures) either involving more than \$50,000 or outside the Ordinary Course of Business;

(vi) the Target has not made any capital investment in, any loan to, or any acquisition of the securities or assets of, any other Person (or series of related capital investments, loans, and acquisitions) either involving more than \$50,000 or outside the Ordinary Course of Business;

(vii) the Target has not issued any note, bond, or other debt security or created, incurred, assumed, or guaranteed any indebtedness for borrowed money or capitalized lease obligation either involving more than \$50,000 singly or \$100,000 in the aggregate, except with respect to the Buyer;

(viii) the Target has not delayed or postponed the payment of accounts payable and other Liabilities outside the Ordinary Course of Business;

(ix) the Target has not canceled, compromised, waived, or released any right or claim (or series of related rights and claims) either involving more than \$50,000 or outside the Ordinary Course of Business;

(x) the Target has not granted any license or sublicense of any rights under or with respect to any Intellectual Property;

(xi) there has been no change made or authorized in the charter or bylaws of the Target;

(xii) the Target has not issued, sold, or otherwise disposed of any of its capital stock, or granted any options, warrants, or other rights to purchase or obtain (including upon conversion, exchange, or exercise) any of its capital stock, except in connection with the exercise of the Target Options;

(xiii) the Target has not declared, set aside, or paid any dividend or made any distribution with respect to its capital stock (whether in cash or in kind) or redeemed, purchased, or otherwise acquired any of its capital stock;

(xiv) the Target has not experienced any material damage, destruction, or loss (whether or not covered by insurance) to its property;

(xv) the Target has not made any loan to, or entered into any other transaction with, any of its directors, officers, and employees outside the Ordinary Course of Business;

(xvi) the Target has not entered into any employment contract or collective bargaining agreement, written or oral, or modified the terms of any existing such contract or agreement;

(xvii) the Target has not granted any increase in the base compensation of any of its directors, officers, and employees outside the Ordinary Course of Business;

(xviii) the Target has not adopted, amended, modified or terminated any bonus, profit-sharing, incentive, severance, or other plan, contract, or commitment for the benefit of any of its directors, officers, and employees (or taken any such action with respect to any other Employee Benefit Plan);

(xix) the Target has not made any other change in employment terms for any of its directors, officers, and employees outside the Ordinary Course of Business;

(xx) the Target has not made or pledged to make any charitable or other capital contribution outside the Ordinary Course of Business;

(xxi) there has not been any other material occurrence, event, incident, action, failure to act, or transaction outside the Ordinary Course of Business involving the Target; and

(xxii) the Target has not committed to any of the foregoing, except in respect to the transactions contemplated by this Agreement.

(i) **Undisclosed Liabilities.** The Target has no material Liability except for (i) Liabilities reflected on the Financial Statements and (ii) Liabilities which have arisen after the Most Recent Financial Statement Date in the Ordinary Course of Business, none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law.

(j) **Legal Compliance.** The Target has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof), and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against the Target alleging any failure so to comply and, to the Target's Knowledge, there is no basis for any such action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice to be filed or to be commenced against any of them alleging any failure so to comply. This compliance includes compliance with the state, federal and international securities laws in connection with the offering and or sale of the Target's Shares.

(k) **Tax Matters.**

(i) The Target has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(ii) The Target does not expect any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim, and there is no basis for any such dispute or claim, concerning any Tax Liability of the Target. §3(k) of the Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to the Target for taxable periods ended on or after December 31, 1997, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Target has delivered to the Buyer correct and complete copies of all state, local, and federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Target since December 31, 1993.

(iii) The Target has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(iv) The unpaid Taxes of the Target (A) did not, as of the Most Recent Financial Statement Date, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) reflected in the Most Recent Balance Sheet (and in any notes thereto) and

(B) will not exceed that reserve as adjusted for the passage of time up to and including the Closing Date in accordance with the past custom and practice of the Target in filing its Tax Returns.

(v) The Target has not filed a consent under Code §341(f) concerning collapsible corporations. The Target has not made any payments, is not obligated to make any payments, nor is the Target a party to any agreement that under certain circumstances would obligate it to make any payments that will not be deductible under Code §280G. The Target has not been a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). The Target has disclosed on its federal income Tax Returns all positions taken therein that would give rise to a substantial understatement of federal income Tax within the meaning of Code §6662. The Target is not a party to any Tax allocation or sharing agreement. The Target (A) has not been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Target) nor (B) does the Target have any Liability for the Taxes of any Person (other than the Target) under Treas. Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(vi) §3(k) of the Disclosure Schedule sets forth the following information with respect to the Target as of the most recent practicable date (as well as on an estimated pro forma basis as of the Closing giving effect to the consummation of the transactions contemplated hereby): (A) the basis of the Target in its assets; and (B) to the extent applicable, the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax, or excess charitable contribution allocable to the Target.

(I) *Real Property.*

(i) The Target does not own any real property:

(ii) §3(l)(ii) of the Disclosure Schedule lists and describes briefly all real property leased or subleased to the Target. The Target has delivered to the Buyer correct and complete copies of the leases and subleases listed in §3(l)(ii) of the Disclosure Schedule (as amended to date). With respect to each lease and sublease listed in §3(l)(ii) of the Disclosure Schedule,

(A) the lease or sublease is in full force and effect and constitutes a legal, valid and binding agreement of the Target, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability

of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity);

(B) the Target is not and to the Target's Knowledge, no other party to the lease or sublease is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute a material breach or default or permit termination, modification, or acceleration thereunder;

(C) there are no oral agreements, forbearance programs in effect or material disputes as to the lease or sublease;

(D) the Target has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold;

(E) (i) the Target is not in violation of any applicable laws or governmental rules and regulations in regard to the use of the facilities leased or subleased thereunder, and (ii) the Target has not received any written notice from any governmental authority of any such violation; and

(F) all facilities leased or subleased thereunder are supplied with or have available utilities and other services suitable for the operation of said facilities.

(m) ***Intellectual Property.***

(i) The Target owns or has the right to use pursuant to license, sublicense, agreement, or permission all Intellectual Property sufficient for the operation of the businesses of the Target as presently conducted and as presently proposed to be conducted. The Target has taken sufficient protective measures to maintain and protect each item of Intellectual Property that it owns or uses.

(ii) The Target has not interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of third parties, and the Target has not received any charge, complaint, claim, demand, or notice alleging any such interference, infringement, misappropriation, or violation (including any claim that the Target must license or refrain from using any Intellectual Property rights of any third party). To the Target's Knowledge, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with any Intellectual Property rights of the Target.

(iii) The Target does not own any patent or application therefor. §3(m)(iii) of the Disclosure Schedule identifies each material license, agreement, or other permission which the Target has granted to any third party with respect to any of its Intellectual Property. The Target has delivered to the Buyer correct and complete

copies of all material licenses, agreements, and permissions (as amended to date) and has made available to the Buyer correct and complete copies of all other written documentation evidencing ownership and prosecution (if applicable) of each such item. §3(m)(iii) of the Disclosure Schedule also identifies each trade name or unregistered trademark used by the Target in connection with any of its businesses. With respect to each item of Intellectual Property required to be identified in §3(m)(iii) of the Disclosure Schedule,

(A) the Target possesses all right, title, and interest in and to the item, free and clear of any Security Interest, license, or other restriction;

(B) the item is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge; and

(C) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or, to the Target's Knowledge, threatened which challenges the legality, validity, enforceability, use, or ownership of the item, and there is no basis for any such action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand; and

(D) the Target has never agreed to indemnify any Person for or against any interference, infringement, misappropriation, or other conflict with respect to the item pursuant to any material agreement relating to the Intellectual Property.

(iv) §3(m)(iv) of the Disclosure Schedule identifies each material item of Intellectual Property that any third party owns and that the Target uses pursuant to license, sublicense, agreement, or permission. The Target has delivered to the Buyer correct and complete copies of all such licenses, sublicenses, agreements, and permissions (as amended to date). With respect to each item of Intellectual Property required to be identified in §3(m)(iv) of the Disclosure Schedule,

(A) the license, sublicense, agreement, or permission covering the item is in full force and effect and constitutes a legal, valid and binding agreement of the Target, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity);

(B) (i) the Target is not in material breach or default, and (ii) no event has occurred which with notice or lapse of time would constitute a material breach or default or permit termination, modification, or acceleration thereunder;

(C) the Target is not a party to any sublicense material to the business of the Target;

(D) to the Target's Knowledge, the underlying item of Intellectual Property is not subject to any outstanding injunction, judgment, order, decree, ruling, or charge;

(E) no action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand is pending or is threatened which challenges the legality, validity, or enforceability of the underlying item of Intellectual Property; and

(F) the Target has not granted any sublicense or similar right with respect to the license, sublicense, agreement, or permission.

(v) The Target will not interfere with, infringe upon, misappropriate, or otherwise come into conflict with, any Intellectual Property rights of third parties as a result of the continued operation of its businesses as presently conducted and as presently proposed to be conducted.

(n) **Tangible Assets.** §3(n) of the Disclosure Schedule lists the Target's tangible assets. The Target owns or leases all buildings, machinery, equipment, and other tangible assets adequate for the conduct of the business as presently conducted and as presently proposed to be conducted. Each such tangible asset is free from material defects (patent and latent), has been maintained in all material respects in accordance with normal industry practice, is in reasonable operating condition and repair (subject to normal wear and tear), and is suitable for the purposes for which it presently is used and presently is proposed to be used.

(o) **Inventory.** The inventory of the Target consists of purchased parts and finished goods, all of which is presently usable and salable for the purpose for which it was procured, except for obsolete items and items of below standard quality, all of which have been written off or written down to their net realizable value as reflected in the aggregate on the Most Recent Balance Sheet, to be adjusted for the passage of time up to and including the Closing Date in accordance with past custom and practice of the Target.

(p) **Contracts.** §3(p) of the Disclosure Schedule lists the following contracts and other agreements to which the Target is a party, except contracts and other agreements involving a potential acquisition of the capital stock or assets of Target, which by their terms are subject to a non-disclosure covenant:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$25,000 per annum;

(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, involve consideration in excess of \$50,000 per year or result in a material loss to the Target;

(iii) any agreement concerning a partnership or joint venture;

(iv) any agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$25,000 or under which it has imposed a Security Interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or non-competition, except as hereinabove provided;

(vi) any agreement involving any of the Target Stockholders and their Affiliates (other than the Target);

(vii) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former directors, officers, and employees;

(viii) any collective bargaining agreement;

(ix) any agreement for the employment of any individual on a full-time, part-time, consulting, or other basis, not cancelable on 30 days or less notice, and which provides for annual compensation in excess of \$25,000 or provides severance benefits;

(x) any agreement under which it has advanced or loaned any amount to any of its directors, officers, and employees outside the Ordinary Course of Business;

(xi) except as otherwise listed pursuant to this §3(p), any agreement under which the consequences of a default or termination could have a material adverse effect on the business, operations, condition (financial or otherwise), assets or Liabilities of the Target, other than client or customer sales contracts entered into in the Ordinary Course of Business of the Target;

(xii) any other agreement (or group of related agreements) the performance of which involves annual consideration in excess of \$50,000.

The Target has delivered to the Buyer a correct and complete copy of each written agreement listed in §3(p) of the Disclosure Schedule (as amended to date) and a written summary setting forth the material terms and conditions of each oral agreement referred to in §3(p) of the Disclosure Schedule. With respect to each such agreement: (A) the agreement is in full force and effect and constitutes a legal, valid and binding agreement of the Target, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or inequity); and (B) no party is in material breach or default, and no event has occurred which with notice or lapse of time would constitute a material breach or default, or permit termination, modification, or acceleration, under the agreement.

(q) *Notes and Accounts Receivable.* All notes and accounts receivable of the Target are reflected properly on its books and records, are valid receivables and are collectible in the aggregate, net of reserves for bad debts, pending sales, and cancellations, as reflected in the Most Recent Balance Sheet (or in any notes thereto), to be adjusted for the passage of time up to and including the Closing Date in accordance with the past custom and practice of the Target.

(r) *Powers of Attorney.* There are no outstanding powers of attorney executed on behalf of the Target.

(s) *Insurance.* §3(s) of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, liability, and workers' compensation coverage and bond and surety arrangements) to which the Target has been a party, a named insured, or otherwise the beneficiary of coverage at any time within the past three years:

- (i) the name, address, and telephone number of the agent;
- (ii) the name of the insurer, the name of the policyholder, and the name of each covered insured;
- (iii) the policy number and the period of coverage;
- (iv) a description of any retroactive premium adjustments or other loss-sharing arrangements.

With respect to each such insurance policy: (A) the policy is in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms, of the Target, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies (regardless of whether

enforceability is considered in a proceeding at law or inequity); and (B) neither the Target nor any other party to the policy is in material breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a material breach or default, or permit termination, modification, or acceleration, under the policy.

(t) **Litigation.** §3(t) of the Disclosure Schedule sets forth in each instance in which the Target (i) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (ii) is a party or, to the Target's Knowledge, is threatened to be made a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator. There is no basis for any present or future action, suit, proceeding, hearing and investigation that could result in any material adverse change in the business, operations, condition (financial or otherwise), assets or Liabilities of the Target.

(u) **Product Warranty.** Within the last 48 months, each product sold, leased, or delivered by the Target has been in conformity with all express and implied warranties of the Target, and the Target does not have any Liability (and there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any Liability) for replacement or repair thereof or other damages in connection therewith, subject only to the reserve for product warranty claims reflected in the Most Recent Balance Sheet to be adjusted for the passage of time up to and including the Closing Date in accordance with the past custom and practice of the Target. §3(u) of the Disclosure Schedule includes copies of the standard terms and conditions of sale or lease for the Target (containing applicable guaranty, warranty, and indemnity provisions).

(v) **Employees.** No executive, key employee, or group of employees has tendered resignations or expressed their intentions to terminate employment with the Target. The Target is not a party to or bound by any collective bargaining agreement, nor has the Target experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes. To the Target's Knowledge, there is no organizational effort presently being made or threatened by or on behalf of any labor union with respect to employees of the Target.

(w) **Employee Benefits.**

(i) §3(w) of the Disclosure Schedule lists each Employee Benefit Plan that the Target maintains or as to which the Target contributes.

(A) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) complies in material form and in operation in all material respects with the applicable requirements of ERISA, the Code, and other applicable laws.

(B) All reports and descriptions (including Form 5500 Annual Reports, Summary Annual Reports, PBGC-1's, and Summary Plan Descriptions) have been filed or distributed appropriately with respect to each such Employee Benefit Plan. The requirements of Part 6 of Subtitle B of Title I of ERISA and of Code §4980B will have been met in all material respects prior to the Closing Date with respect to each applicable Employee Benefit Plan which is an Employee Welfare Benefit Plan.

(C) All contributions (including all employer contributions and employee salary reduction contributions) which are due have been paid to each such Employee Benefit Plan which is an Employee Pension Benefit Plan and any and all contributions for any period ending on or before the Closing Date which are not yet due have been paid to each such Employee Pension Benefit Plan or accrued in accordance with the past custom and practice of the Target. All premiums or other payments for all periods ending on or before the Closing Date have been paid or accrued in accordance with the past custom and practice of the Target with respect to each such Employee Benefit Plan which is an Employee Welfare Benefit Plan.

(D) Each such Employee Benefit Plan which is an Employee Pension Benefit Plan meets the material formal requirements of a "qualified plan" under Code §401(a) and has received, within the last two years, an updated favorable determination letter from the Internal Revenue Service.

(E) The Target does not maintain and has not maintained any Employee Pension Benefit Plan which is a defined benefit type plan.

(F) The Target has delivered to the Buyer correct and complete copies of the plan documents and summary plan descriptions, the most recent determination letter received from the IRS, the most recent Form 5500 Annual Report, and all related trust agreements, insurance contracts, and other funding agreements which implement each such Employee Benefit Plan.

(ii) The Target is not a member of a Controlled Group of Corporations. With respect to each Employee Benefit Plan that the Target maintains or ever has maintained or to which the Target contributes, ever has contributed, or ever has been required to contribute:

(A) No such Employee Benefit Plan which is an Employee Pension Benefit Plan (other than any Multiemployer Plan) has been completely or partially terminated or been the subject of a Reportable Event as to which notices would be required to be filed with the PBGC. No proceeding by the PBGC to terminate any such Employee Pension Benefit Plan (other than any

Multiemployer Plan) has been instituted or, to the Target's Knowledge, threatened.

(B) There have been no Prohibited Transactions with respect to any such Employee Benefit Plan. No Fiduciary has any Liability for breach of fiduciary duty or any other failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No action, suit, proceeding, hearing, or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or threatened. There is no basis for any such action, suit, proceeding, hearing, or investigation.

(C) The Target has not incurred, nor to the Target's Knowledge, is there any reason to expect that the Target will incur any Liability to the PBGC (other than PBGC premium payments) or otherwise under Title IV of ERISA (including any withdrawal Liability) or under the Code with respect to any such Employee Benefit Plan which is an Employee Pension Benefit Plan.

(iii) The Target does not contribute to, never has contributed to, and never has been required to contribute to any Multiemployer Plan, nor does it have any Liability (including withdrawal Liability) under any Multiemployer Plan.

(iv) The Target does not maintain and never has maintained and does not contribute, never has contributed, and never has been required to contribute to any Employee Welfare Benefit Plan providing medical, health, or life insurance or other welfare-type benefits for current or future retired or terminated employees, their spouses, or their dependents (other than in accordance with Code §4980B).

(x) *Guaranties.* The Target is neither a guarantor nor liable for any Liability or obligation (including indebtedness) of any other Person.

(y) *Environmental, Health, and Safety.* The Target has complied in all material respects with all Environmental, Health, and Safety Laws, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against the Target alleging any failure so to comply. Without limiting the generality of the preceding sentence, the Target has obtained and been in compliance with all of the terms and conditions of all material permits, licenses, and other authorizations which are required under, and has complied with all other material limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules, and timetables which are contained in, all Environmental, Health, and Safety Laws, except where such non-compliance would not have a material adverse effect on the operations of the Target.

(z) *Certain Business Relationships With the Target.* None of the Target Stockholders and their Affiliates has been involved in any business or contractual (whether

written or oral) arrangement or relationship with the Target within the past 12 months involving aggregate annual payments in excess of \$50,000, and none of the Target Stockholders and their Affiliates owns any asset, tangible or intangible, which is used in the business of the Target.

(aa) **Brokers' Fees.** Except as set forth in Schedule 3(aa) of the Disclosure Schedule, and as otherwise provided in §8(1), the Target has no liability or obligation to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated by this Agreement.

(ab) **Continuity of Business Enterprise.** The 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 Treas. Reg. §1.368-1(d).

(ac) **Substantial Customers, Brokers and Suppliers**

(i) §3(ac) of the Disclosure Schedule lists the 10 customers of the Target with the highest volume of purchases from the Target during the period ending September 10, 1998, and the amount for which each such customer was invoiced during such period.

(ii) The Target has not been declared ineligible to bid on a state or federal government contract.

(iii) No customer listed on §3(ac) of the Disclosure Schedule has (A) ceased, or notified the Target in writing of an intention to cease dealing with or through the Target; (B) reduced or notified the Target in writing of an intention to reduce, substantially its dealings with or through the Target; or (C) changed, or notified the Target in writing of an intention to change, substantially the terms on which it is prepared to deal with or through the Target. To the Target's Knowledge all of the customers listed in §3(ac) of the Disclosure Schedule will continue to be a customer of the Transitory Subsidiary after the Closing.

(ad) **Disclosure.** None of the information that Target has provided in connection with the representations and warranties provided for herein contain or that the Target will supply specifically for use in the Registration Statement, the Prospectus, or the Definitive Buyer Proxy Materials will contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are or will be made, not misleading.

4. **Representations and Warranties of the Buyer.** In addition to the transactions with Dr Ariella Lehrer and Legacy Interactive Inc, which have been disclosed to and approved by the Target, the Buyer represents and warrants to the Target that the statements contained in this §4 are correct and complete as of the date of this Agreement and will be correct and

complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this §4), except as set forth in the Disclosure Schedule. The Disclosure Schedule will be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this §4. The Disclosure Schedule may be amended from time to time and such Disclosure Schedule as amended becomes the Disclosure Schedule of the disclosing party.

(a) **Organization, Qualification, and Corporate Power.** The Buyer is a corporation duly organized, validly existing, and in corporate good standing under the laws of the State of Delaware. The Buyer is duly qualified as a foreign corporation in each jurisdiction where its ownership or leasing of property or where the nature of its activities requires such qualification, except to the extent that the failure to so qualify would not have a material adverse effect on the business, operations, condition (financial or otherwise), assets or Liabilities of the Buyer. The Buyer has full corporate power and authority to carry on the businesses in which it is engaged and to own, lease, and use the properties owned, leased, and used by it, and has in full force and effect all authorizations and has made all filings to the extent required for such ownership, lease, and use of its properties and the conduct of its business, except to the extent that the failure to obtain such authorizations or to make such filings would not have a material adverse effect on the operations of the Buyer.

(b) **Capitalization.** The entire authorized capital stock of the Buyer consists of 5,000,000 shares of preferred stock, none of which is outstanding, and 10,000,000 Buyer Shares, details of which are set forth on Schedule 4(b) attached hereto. All of the issued and outstanding Buyer Shares have been duly authorized and are validly issued, fully paid, and nonassessable (except for the Buyer Shares currently offered, which will be fully paid and nonassessable when issued). All of the Buyer Shares to be issued in the Merger have been duly authorized and, upon consummation of the Merger, will be validly issued, fully paid, and nonassessable. Except for the options and warrants listed on §4(b) to the Disclosure Schedule, there are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Buyer to issue, sell, or otherwise cause to become outstanding any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock, profit participation, or similar rights with respect to the Buyer.

(c) **Authorization of Transaction.** The Buyer has the requisite corporate power and authority to execute and deliver this Agreement and the Merger Agreement and to perform its obligations hereunder and thereunder; *provided, however*, that the Buyer cannot consummate the Merger unless and until it receives a Hardship Exemption or the Requisite Buyer Stockholder Approval. This Agreement constitutes the valid and legally binding obligation of the Buyer, enforceable against the Buyer in accordance with its terms and conditions, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of

creditors' rights generally and the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity).

(f) **Undisclosed Liabilities.** The Buyer has no material Liability except for (i) Liabilities reflected on the Buyer's Most Recent Balance Sheet (and in any notes thereto) and (ii) Liabilities which have arisen after the Buyer's Most Recent Fiscal Year End in the Ordinary Course of Business, none of which results from, arises out of, relates to, is in the nature of, or was caused by any breach of contract, breach of warranty, tort, infringement, or violation of law.

(g) **Legal Compliance.** To the Buyer's Knowledge, the Buyer has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of federal, state, local, and foreign governments (and all agencies thereof), except to the extent any such failure would not have a material adverse effect on the operations of the Buyer, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against the Buyer alleging any failure so to comply and, to the Buyer's Knowledge, there is no basis for any such action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice to be filed or to be commenced against any of them alleging any failure so to comply.

(h) **Noncontravention.** To the Buyer's Knowledge, neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (i) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental agency, or court to which the Buyer is subject or any provision of the charter or bylaws of the Buyer, or (ii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under any material agreement, contract, lease, license, instrument or other arrangement to which the Buyer is a party or by which it is bound or to which any of its assets is subject (or result in the imposition of any Security Interest upon any of its assets). To the Buyer's Knowledge, and other than in connection with the Delaware General Corporation Law, the Securities Exchange Act, the Securities Act, and the state securities laws, the Buyer does not need to give any notice to, make any filing with, or obtain any authorization, consent, or approval of any government or governmental agency in order for the Parties to consummate the transactions contemplated by this Agreement, except where the violation, conflict, breach, default, acceleration, termination, modification, cancellation or failure to give notice would not have a material adverse effect on the ability of the Buyer to consummate the transactions contemplated by this Agreement or have a material adverse effect on the Buyer's business, operations, condition (financial or otherwise), assets or Liabilities as in existence immediately prior to the Closing.

(i) **Tax Matters.**

(i) The Buyer has filed all Tax Returns required to be filed by it. All such Tax Returns were correct and complete in all material respects. All Taxes owed by the Buyer (whether or not shown on any Tax Return) have been paid. The Buyer currently is not the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where the Buyer does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Security Interests on any of the assets of the Buyer that arose in connection with any failure (or alleged failure) to pay any Tax.

(ii) The Buyer has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

(iii) The Buyer does not expect any authority to assess any additional Taxes for any period for which Tax Returns have been filed. There is no dispute or claim, and to the Buyer's Knowledge there is no basis for any such dispute or claim, concerning any Tax Liability of the Buyer. §4(i) of the Disclosure Schedule lists all federal, state, local, and foreign income Tax Returns filed with respect to the Buyer for taxable periods ended on or after December 31, 1995, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of audit. The Buyer has delivered to the Target correct and complete copies of all state, local, and federal income Tax Returns, examination reports, and statements of deficiencies assessed against or agreed to by the Buyer since December 31, 1995.

(iv) The Buyer has not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(v) The unpaid Taxes of the Buyer (A) did not, as of the Buyer's Most Recent Fiscal Year End, exceed the reserve for Tax Liability (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) expected to be set forth on the face of the Buyer's Most Recent Balance Sheet (rather than in any notes thereto) and (B) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Buyer in filing their Tax Returns.

(vi) The Buyer has not filed a consent under Code §341(f) concerning collapsible corporations. The Buyer has not made any payments, is not obligated to make any payments, nor is the Buyer a party to any agreement that under certain circumstances would obligate it to make any payments that will not be deductible under Code §280G. The Buyer has not been a United States real property holding corporation within the meaning of Code §897(c)(2) during the applicable period specified in Code §897(c)(1)(A)(ii). The Buyer has disclosed on its federal income Tax Returns all positions taken therein that would give rise to a substantial understatement of federal

income Tax within the meaning of Code §6662. The Buyer is not a party to any Tax allocation or sharing agreement. The Buyer (A) has not been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Buyer) nor (B) does the Buyer have any Liability for the Taxes of any Person (other than the Target) under Treas. Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract, or otherwise.

(vii) §4(i) of the Disclosure Schedule sets forth the following information with respect to the Buyer as of the most recent practicable date (as well as on an estimated pro forma basis as of the Closing giving effect to the consummation of the transactions contemplated hereby): (A) the basis of the Buyer in its assets; (B) to the extent applicable, the amount of any net operating loss, net capital loss, unused investment or other credit, unused foreign tax, or excess charitable contribution allocable to the Buyer.

(j) **Contracts.** §4(i) of the Disclosure Schedule lists the following contracts and other agreements to which the Buyer is a party, except contracts and other agreements involving a potential acquisition of the capital stock or assets of the Buyer, which by their terms are subject to a non-disclosure covenant:

(i) any agreement (or group of related agreements) for the lease of personal property to or from any Person providing for lease payments in excess of \$25,000 per annum;

(ii) any agreement (or group of related agreements) for the purchase or sale of raw materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, result in a material loss to the Buyer, or involve consideration in excess of \$50,000 per year;

(iii) any agreement concerning a partnership or joint venture;

(iv) any agreement (or group of related agreements) under which it has created, incurred, assumed, or guaranteed any indebtedness for borrowed money, or any capitalized lease obligation, in excess of \$25,000 or under which it has imposed a Security Interest on any of its assets, tangible or intangible;

(v) any agreement concerning confidentiality or non-competition, except as hereinabove provided;

(vi) any agreement involving any of the Buyer Management Stockholders and their Affiliates (other than the Target);

(vii) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, or other material plan or arrangement for the benefit of its current or former directors, officers, and employees;

(viii) any collective bargaining agreement;

(ix) any agreement for the employment of any individual on a full-time, part-time, consulting, or other basis not cancelable on 30 days or less notice providing annual compensation in excess of \$25,000 or providing severance benefits;

(x) any agreement under which it has advanced or loaned any amount to any of its directors, officers, and employees outside the Ordinary Course of Business;

(xi) except as otherwise listed pursuant to this §4(j), any agreement under which the consequences of a default or termination could have a material adverse effect on the business, financial condition, operations, results of operations of the Buyer, other than client or customer sales contracts entered into in the Ordinary Course of Business of the Buyer;

(xii) any other agreement (or group of related agreements) the performance of which involves annual consideration in excess of \$50,000.

The Buyer has delivered to the Target a correct and complete copy of each written agreement listed in §4(j) of the Disclosure Schedule (as amended to date) and a written summary setting forth the material terms and conditions of each oral agreement referred to in §4(j) of the Disclosure Schedule. With respect to each such agreement, to the Buyer's Knowledge: (A) the agreement is in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms, of the Buyer, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or inequity); (C) no party is in material breach or default, and no event has occurred which with notice or lapse of time would constitute a material breach or default, or permit termination, modification, or acceleration, under the agreement.

(k) **Litigation.** §4(k) of the Disclosure Schedule sets forth in each instance in which the Buyer (i) is subject to any outstanding injunction, judgment, order, decree, ruling, or charge or (ii) is a party or, to the Buyer's Knowledge, is threatened to be made a party to any action, suit, proceeding, hearing, or investigation of, in, or before any court or quasi-judicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator. To the Buyer's Knowledge, there is no basis for any present or future action, suit, proceeding, hearing and investigation that could result in any material adverse change in the business, condition (financial or otherwise), operations, assets or Liabilities of the Buyer.

(l) **Product Warranty.** Within the last 48 months, each product sold, leased, or delivered by the Buyer has been in conformity with all express and implied warranties of the Buyer, and the Buyer does not have any Liability (and to the Buyer's Knowledge, there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any Liability) for replacement or repair thereof or other damages in connection therewith, subject only to the reserve for product warranty claims set forth on the face of the Buyer's Most Recent Balance Sheet to be adjusted for the passage of time up to and including the Closing Date in accordance with the past custom and practice of the Buyer. §4(m) of the Disclosure Schedule includes copies of the standard terms and conditions of sale or lease for the Target (containing applicable guaranty, warranty, and indemnity provisions).

(m) **Continuity of Business Enterprise.** It is the present intention of the Buyer to continue at least one significant historic business line of the Target, or to use at least a significant portion of the Target's historic business assets in a business, in each case within the meaning of Treas. Reg. §1.368-1(d).

(n) **Real Property.**

(i) The Buyer does not own any real property:

(ii) §4(n)(ii) of the Disclosure Schedule lists and describes briefly all real property leased or subleased to the Buyer. The Buyer has delivered to the Target correct and complete copies of the leases and subleases listed in §4(n)(ii) of the Disclosure Schedule (as amended to date). With respect to each lease and sublease listed in §4(n)(ii) of the Disclosure Schedule,

(A) the lease or sublease is in full force and effect and constitutes a legal, valid and binding agreement of the Buyer, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, insolvency, moratoriums or other similar laws affecting the enforcement of creditors' rights generally and the availability of equitable remedies (regardless of whether enforceability is considered in a proceeding at law or in equity);

(B) the Buyer is not and to the Buyer's Knowledge, no other party to the lease or sublease is in material breach or default, and no event has occurred which, with notice or lapse of time, would constitute a material breach or default or permit termination, modification, or acceleration thereunder;

(C) there are no oral agreements, forbearance programs in effect or material disputes as to the lease or sublease;

(D) the Buyer has not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in the leasehold or subleasehold;

(E) (i) to the Buyer's Knowledge, the Buyer is not in violation of any applicable laws or governmental rules and regulations in regard to the use of the facilities leased or subleased thereunder, and (ii) the Buyer has not received any written notice from any governmental authority of any such violation; and

(F) all facilities leased or subleased thereunder are supplied with or have available utilities and other services suitable for the operation of said facilities.

(o) *Subsidiaries.* The Transitory Subsidiary, when incorporated, will be the only Subsidiary of the Buyer. §4(o) of the Disclosure Schedule sets forth for the Transitory Subsidiary (i) its name and expected jurisdiction of incorporation, (ii) the number of shares of authorized capital stock of each class of its capital stock, (iii) the number of shares of each class of its capital stock to be issued to the Buyer, and (v) the proposed directors and officers of the Transitory Subsidiary. As of the Closing, the Transitory Subsidiary will be a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. The Transitory Subsidiary will be duly authorized to conduct business and will be in good standing under the laws of each jurisdiction where such qualification is required. Prior to the Closing, the Transitory Subsidiary will not conduct any business. At the time of the Closing, the Transitory Subsidiary will have full corporate power and authority to ratify this Agreement and carry out the transactions contemplated herein. As of the Closing, all of the issued and outstanding shares of capital stock of the Transitory Subsidiary will have been duly authorized and will be validly issued, fully paid, and nonassessable. The Buyer will hold of record and own beneficially all of the outstanding shares of the Transitory Subsidiary, free and clear of any restrictions on transfer (other than restrictions under the Securities Act and state securities laws), Taxes, Security Interests, options, warrants, purchase rights, contracts, commitments, equities, claims, and demands. There are no outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Buyer to sell, transfer, or otherwise dispose of any capital stock of any of the Transitory Subsidiary. There are no outstanding stock appreciation, phantom stock, profit participation, or similar rights with respect to the Transitory Subsidiary. There are no voting trusts, proxies, or other agreements or understandings with respect to the voting of any capital stock of the Transitory Subsidiary. As of the Closing, the minute books (containing the records of meetings of the stockholders, the board of directors, and any committees of the board of directors), the stock certificate books, and the stock record books of the Transitory Subsidiary will be correct and complete. As of the Closing, the Transitory Subsidiary will not be in default under or in violation of any provision of its charter or bylaws. As of the Closing, the

Transitory Subsidiary will not control directly or indirectly or have any direct or indirect equity participation in any corporation, partnership, trust, or other business association.

(u) **Filings with the SEC.** To the Buyer's Knowledge, the Buyer has filed with the SEC all reports, registrations, and statements together with any amendments thereto required to be made thereto, all of which as the respective dates were in full compliance with the rules and regulations of the SEC.

(v) **Disclosure.** None of the information that Buyer has provided in connection with the representations and warranties provided for herein contain or that the Buyer will supply specifically for use in the Definitive Buyer Proxy Materials will contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they are or will be made, not misleading

5. **Covenants.** The Parties agree as follows with respect to the period from and after the execution of this Agreement.

(a) **Notices and Consents.** The Target and the Buyer will give any notices to third parties, and will use its respective reasonable best efforts to obtain any third party consents, that the Buyer or the Target reasonably may request in connection with the matters referred to in §3(d) or §4(h) above.

(b) **Regulatory Matters and Approvals.** Each of the Parties will give any notices to, make any filings with, and use its reasonable best efforts to obtain any authorizations, consents, and approvals of governments and governmental agencies in connection with the matters referred to in this agreement.

(c) **Listing of Buyer Shares.** The Buyer will use its reasonable best efforts to cause the Buyer Shares that will be issued in the Merger to be approved for listing on the Nasdaq SmallCap Market, subject to official notice of issuance, at or prior to the Effective Time.

(d) **No Material Changes.** Both parties agree that prior to the Closing Date neither party will make or permit to be made any material change affecting any bank, trust company, savings and loan association, brokerage firm, or safe deposit box or in the names of the persons authorized to draw thereon, to have access thereto or to authorize transactions therein or in any powers of attorney, or open additional accounts or boxes or grant any additional powers of attorney, without in each case obtaining the prior written consent of the other party, such consent not be unreasonably withheld or delayed.

(e) **Operation of Business.** Neither party will engage in any practice, take any action, or enter into any transaction, in any material respect, outside the Ordinary Course

of Business, without the prior written consent of the other party. Without limiting the generality of the foregoing:

(i) Neither party will authorize or effect any change in its charter or bylaws;

(ii) Neither party will grant any options, warrants, or other rights to purchase or obtain any of its capital stock or issue, sell, or otherwise dispose of any of its capital stock (except upon the conversion or exercise of options, warrants, and other rights currently outstanding);

(iii) Neither party will declare, set aside, or pay any dividend or distribution with respect to its capital stock (whether in cash or in kind), or redeem, repurchase, or otherwise acquire any of its capital stock, in either case outside the Ordinary Course of Business;

(iv) Neither party will issue any note, bond, or other debt security or create, incur, assume, or guarantee any indebtedness for borrowed money or capitalized lease obligation outside the Ordinary Course of Business;

(v) Neither party will impose any Security Interest upon any of its assets outside the Ordinary Course of Business;

(vi) Neither party will make any capital investment in, make any loan to, or acquire the securities or assets of any other Person outside the Ordinary Course of Business;

(vii) Neither party will initiate any changes in employment terms for any of its directors, officers, and employees outside the Ordinary Course of Business; and

(viii) Neither party will commit to any of the foregoing.

(f) **Full Access.** The Parties will permit representatives of the other Party to have full access at all reasonable times, and in a manner so as not to interfere with the normal business operations of the Parties, to all premises, properties, personnel, books, records (including tax records), contracts, and documents of or pertaining to each of the Parties. The Parties will treat and hold as such any Confidential Information they receive in the course of the reviews contemplated by this §5(f), will not use any of the Confidential Information except in connection with this Agreement, and, if this Agreement is terminated for any reason whatsoever, agree to return to the respective Party all tangible embodiments (and all copies) thereof which are in their respective possession.

(g) **Notice of Developments.** Each Party will give prompt written notice to the other of the occurrence of any event that would constitute a breach of any of its own representations and warranties in §3 and §4 above. No disclosure by any Party pursuant to this §5(g), however, shall be deemed to amend or supplement the Disclosure Schedule or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant, except as otherwise provided in §3 above.

(h) **Exclusivity.** Neither party will solicit, initiate, or encourage the submission of any proposal or offer, and will not entertain, pursue, consider or accept any proposal or offer from any Person relating to the acquisition of all or substantially all of its capital stock or assets (including any acquisition structured as a merger, consolidation, or share exchange). Each party shall notify the other party immediately if any Person makes any proposal, offer, inquiry, or contact with respect to any of the foregoing and will provide the other party with a written copy of any such proposal, offer, inquiry, or contact.

(i) **Continuity of Business Enterprise.** The Buyer will continue at least one significant historic business line of the Target, or use or lease a significant portion of the Target's historic business assets in a business, in each case within the meaning of Treas. Reg. §1.368-1(d).

(j) **Directorships.** The Buyer will recommend to its stockholders the Target Director Designees for nomination to positions as directors of the Buyer at the next annual or special meeting of stockholders of the Buyer. As the sole stockholder of Transitory Subsidiary, the Buyer shall elect the Target Director Designees as directors of the Transitory Subsidiary. The Buyer will also take all actions necessary to amend the Buyer's bylaws and charter, if necessary or advisable, to provide for staggered terms of Board members.

(k) **Ancillary Agreements.** The Target shall provide each of its stockholders that acquired common stock in the Target based upon the private offering memorandum dated July 28, 1998 an opportunity to rescind and shall not draw upon any subscription payments until such time as the investors have declined the opportunity to exercise his hers or its rescission rights after a reasonable period of time (the "**Rescission Offer**"). The Rescission Offer shall be in compliance with any and all applicable state and federal laws including "blue sky laws." No Buyer Shareholder approval shall be effective until such time as the Rescission Offer has been completed. The Rescission Offer must include disclosure on the risks of the Merger including the lack of liquidity of the Buyer Shares and the possibility that the Buyer Stockholders may have to pay taxes in connection with the Merger.

(l) **Target Employees.** The Buyer shall cause the Transitory Subsidiary to (i) continue to employ each person employed by Target on the Closing Date on at least an "employment-at-will" basis as of the first business day after the Closing Date, (ii) provide such benefits and salary to such person comparable to the benefits and salary previously provided or paid by Target as of the Closing Date, and (iii) grant to each such person credit for his/her years of service with the Target for purposes of calculating such person's right to participate in applicable benefit plans and programs and the level of such participation.

(m) **Notification of Changes in Representations and Warranties.** The Parties will notify each other of any material changes in the representations and warranties provided in §3 and §4 hereof as soon as reasonably practicable after the respective Party first discovers such changed circumstances.

(n) **Estoppel Certificates.** The Target shall use its reasonable best efforts to obtain Estoppel Certificates (the "Estoppel Certificates") in the form attached hereto as Exhibit G.

(o) **Rights Offering.** The Board of Directors of the Buyer shall authorize a rights offering to their current stockholders that will provide the issuance of one right for each share of Buyer's Common Stock outstanding or issuable upon exercise of currently outstanding options or warrants (the "Rights"). The Rights will enable each current stockholder to purchase one new share of the Buyer's Common Stock for \$0.50. The Target Stockholders shall agree to waive their right to participate in this Rights offering. The Rights offering shall be open and exercisable for a period twenty four months from the commencement date of such Rights offering. The Rights are not transferrable except to the immediate family or a trust set up for the benefit of such stockholder.

6. **Conditions to Obligation to Close.**

(a) **Conditions to Obligation of the Buyer.** The obligation of the Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

(i) this Agreement, the Merger Agreement and the Merger shall have received the Requisite Buyer Stockholder Approval;

(ii) the Target shall have procured all of the third party consents specified in §5(a) above;

(iii) each representation and warranty set forth in §3 above shall be true and correct in all material respects at and as of the Closing Date, subject to any amendments thereto as permitted under §3 above;

(iv) the Target shall have fully performed and complied with all of its covenants contained in §5 hereunder through the Closing;

(v) no action, suit, or proceeding shall be pending or threatened before any court or quasijudicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge could (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (C) materially and adversely affect the right of the Surviving Corporation to own the former assets and to operate the former businesses of the Target, and (D) and no such injunction, judgement, order, decree, ruling or charge shall be in effect;

(vi) the Target shall have delivered to the Buyer a certificate to the effect that each of the conditions specified above in §6(a)(i)-(v) is satisfied;

(vii) this Agreement, the Merger Agreement and the Merger shall have received the Requisite Target Stockholder Approval;

(viii) the Buyer Shares that will be issued in the Merger shall have been approved for listing on the Nasdaq SmallCap Market, subject to official notice of issuance;

(ix) the Parties shall have received all authorizations, consents, and approvals of governments and governmental agencies referred to in §3(d) and §4(h) above;

(x) the Buyer shall have received from counsel to the Target an opinion in form and substance as set forth in Exhibit H attached hereto, addressed to the Buyer, and dated as of the Closing Date;

(xi) the Buyer shall have received the resignations, effective as of the Closing, of each director and officer of the Target;

(xii) the Buyer shall have completed its due diligence and all outstanding issues relating thereto shall have been satisfactorily resolved to the satisfaction of the Parties;

(xiii) the Buyer shall be satisfied that the Target's offering of Target Shares (A) did not violate any state, federal or international securities laws; (B) that the Buyer's Stockholders were fully informed of the potential tax consequence of an investment in the Target; and (C) that the Target will not be subject to any new regulations;

(xiv) the Target shall have delivered the Estoppel Certificates executed by the lessors of the properties listed in Schedule 3(1)(ii) of the Target's Disclosure Schedule;

(xv) the Target shall have canceled all outstanding or authorized options, warrants, purchase rights, subscription rights, conversion rights, exchange rights, or other contracts or commitments that could require the Target to issue, sell, or otherwise cause to become outstanding any of its capital stock;

(xvi) all actions to be taken by the Target in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Buyer;

(xvii) from the date hereof through the Effective Time, there shall have been no material adverse change (or developments involving a prospective material adverse change) in the business, condition (financial or otherwise), operations, properties, or prospects of the Target; and

(xviii) the Target Stockholders shall have waived their right to participate in the Rights offering.

The Buyer may waive any condition specified in this §6(a) if it executes a writing so stating at or prior to the Closing.

(b) ***Conditions to Obligation of the Target.*** The obligation of the Target to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

(i) this Agreement, the Merger Agreement and the Merger shall have received the Requisite Buyer Stockholder Approval and the Buyer's Approval as the sole stockholder of the Transitory Subsidiary;

(ii) the Buyer Shares that will be issued in the Merger shall have been approved for listing on the Nasdaq SmallCap Market, subject to official notice of issuance;

(iii) each representation and warranty set forth in §4 above shall be true and correct in all material respects at and as of the Closing Date;

(iv) the Buyer shall have performed and complied with all of its covenants hereunder through the Closing;

(v) no action, suit, or proceeding shall be pending or threatened before any court or quasijudicial or administrative agency of any federal, state, local, or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling, or charge could (A) prevent consummation of any of the transactions contemplated by this Agreement, (B) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (C) materially and adversely affect the right of the Surviving Corporation to own the former assets and to operate the former businesses of the Target; and (D) no such injunction, judgement, order, decree, ruling or charge shall be in effect;

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or

(vi) the Buyer shall have delivered to the Target a certificate to the effect that each of the conditions specified above in §6(b)(i)-(v) and §6(b)(vii)-(ix) below, is satisfied;

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(vii) this Agreement, the Merger Agreement and the Merger shall have received the Requisite Target Stockholder Approval;

(viii) the Target Director Designees shall be elected directors of the Buyer, contingent only upon the Closing;

(ix) the Parties shall have received all authorizations, consents, and approvals of governments and governmental agencies referred to in §3(d) and §4(h) above;

(x) the Target Director Designees shall be elected directors of the Transitory Subsidiary;

(xi) both parties shall have completed their due diligence and all outstanding issues relating thereto shall have been resolved to the satisfaction of the Parties;

(xii) the Buyer shall have procured all of the third party consents specified in §5(a) above;

(xiii) all actions to be taken by the Buyer in connection with consummation of the transactions contemplated hereby and all certificates, opinions, instruments, and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to the Target; and

(xiv) from the date hereof through the Effective Time, there shall have been no material adverse change (or developments involving a prospective material adverse change) in the business, condition (financial or otherwise), operations, properties, or prospects of the Buyer.

The Target may waive any condition specified in this §6(b) if it executes a writing so stating at or prior to the Closing.

7. *Termination*

(a) *Termination of Agreement* Either the Buyer or the Target may terminate this Agreement with the prior authorization of its board of directors (whether before or after stockholder approval) as provided below:

(i) the Buyer and the Target may terminate this Agreement by mutual written consent at any time prior to the Effective Time;

(ii) the Buyer may terminate this Agreement by giving written notice to the Target at any time prior to the Effective Time (A) in the event the Target has breached any representation, warranty, or covenant contained in this Agreement in any material respect, the Buyer has notified the Target of this breach, in writing, and the breach has continued without cure for a period of five (5) business days after the written notice of breach or (B) if the Closing shall not have occurred on or before December 30, 1998, by reason of the failure of any condition precedent under §6(a) hereof that cannot be satisfied through the exercise of reasonable best efforts within five (5) business days following December 30, 1998 (unless the failure results primarily from the Buyer breaching any representation, warranty, or covenant contained in this Agreement);

(iii) the Target may terminate this Agreement by giving written notice to the Buyer at any time prior to the Effective Time (A) in the event the Buyer has breached any representation, warranty, or covenant contained in this Agreement in any material respect, the Target has notified the Buyer of the breach, in writing, and the breach has continued without cure for a period of five (5) business days after the written notice of breach or (B) if the Closing shall not have occurred on or before December 30, 1998, by reason of the failure of any condition precedent under §6(b) hereof that cannot be satisfied through the exercise of reasonable best efforts within five (5) business days following December 30, 1998 (unless the failure results primarily from the Target breaching any representation, warranty, or covenant contained in this Agreement);

(iv) any Party may terminate this Agreement by giving written notice to the other Party at any time in the event this Agreement and the Merger fail to receive the Requisite Buyer Stockholder Approval or the Requisite Target Stockholder Approval, respectively; and

(b) *Effect of Termination* If any Party terminates this Agreement pursuant to §7(a) above, all rights and obligations of the Parties hereunder shall terminate without any liability of any Party to any other Party (except for any liability of any Party then in breach);

provided, however, that the confidentiality provisions contained in §5(f) above and the Confidentiality and the Non-Disclosure Agreement referenced therein shall survive any such termination; *provided further, however*, that any such termination will have no effect on amounts that the Target currently owes or may owe in the future to the Buyer. Anything herein to the contrary notwithstanding, termination of this Agreement pursuant to §7(a) above shall be the sole and exclusive remedy for the breach of any representation or warranty by a Party under §3 or §4 above.

8. *Miscellaneous.*

(a) *Survival* None of the representations, warranties, and covenants of the Parties (other than the provisions in §2 above concerning issuance of the Buyer Shares), the provisions of §5(i) above concerning continuity of business enterprise, the provisions of §5(j) above concerning the respective employment agreements, the provisions of §5(k) above concerning the Target Designee Directors, the provisions of §5(s) above concerning the Conversion Options, and the provisions of §5(t) above concerning registration of the Conversion Options) will survive the Effective Time. This §8(a) is not intended to limit, expand, or otherwise affect the rights, remedies, or obligations that the Buyer, the Target, or any other Person may have pursuant to other written agreements referred to in this Agreement or otherwise.

(b) *Press Releases and Public Announcements.* No Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other Party; *provided, however*, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its reasonable efforts to advise the other Party prior to making the disclosure).

(c) *No Third Party Beneficiaries.* This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. This §8(c) is not intended to limit, expand, or otherwise affect the rights, remedies, or obligations that the Buyer, the Target, or any other Person may have pursuant to other written agreements referred to in this Agreement or otherwise.

(d) *Entire Agreement.* This Agreement (including the documents referred to herein) constitutes the entire agreement between the Parties and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

(e) *Succession and Assignmen.* This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party.

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

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

(h) *Notices.* All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to the Target:

Michael J. Zwebner
Videocall International, Inc.
1 Canal Park
Cambridge, MA 02142

Copy to:

Alexander Walker, Jr.
57 West 200 South
Suite 400
Salt Lake City, UT 84101

If to the Buyer:

C. Robert Kline, Ph.D.
Legacy Software, Inc.
5340 Alla Road
Los Angeles, CA 90066

Copy to:

V. Joseph Stubbs, Esq.
Troop Steuber Pasich Reddick & Tobey, LLP.
2029 Century Park East, 24th Floor
Los Angeles, CA 90067

Any Party may send any notice, request, demand, claim, or other communication hereunder to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other Party notice in the manner herein set forth.

(i) **Governing Law.** This Agreement shall be governed by and construed in accordance with applicable federal laws and the domestic laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

(j) **Amendments and Waivers.** The Parties may mutually amend any provision of this Agreement at any time prior to the Effective Time with the prior authorization of their respective boards of directors; *provided, however*, that any amendment effected subsequent to stockholder approval will be subject to the applicable restrictions contained in the Delaware General Corporation Law and in the Florida General Corporation Law. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by both of the Parties. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(k) **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(l) **Expenses.** Except as herein provided, each of the Parties will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement. However, the Buyer will pay at the Closing (i) the fees of Troop Steuber Pasich Reddick & Tobey, LLP.

(m) **Construction.** Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context otherwise requires. The word "including" shall mean including without limitation.

(n) **Incorporation of Exhibits and Schedules.** The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof.

(o) ***Venue; Jurisdiction.*** All actions with respect to this Agreement will be instituted in a state court sitting in Wilmington, Delaware or in a federal court in the State of Delaware, subject to the provisions on arbitration in §8(p) below. By the execution of this Agreement, each Party irrevocably and unconditionally submits to the jurisdiction (both subject matter and personal) of each such court and irrevocably and unconditionally waives: (a) any objection such Party might now or hereafter have to the venue in any such court; and (b) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

(p) ***Arbitration.*** Any disputes arising out of this Agreement and the transactions among the Parties contemplated by this Agreement shall be settled by binding arbitration to be held in Wilmington, Delaware in accordance with the rules of the American Arbitration Association. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. This §8(p) is not intended to limit, expand, or otherwise affect the rights, remedies, or obligations that the Buyer, the Target, or any other Person may have pursuant to other written agreements referred to in this Agreement or otherwise.

(q) ***Attorneys' Fees.*** Each Party agrees that the losing party in any suit or action shall reimburse the prevailing party for its reasonable costs, expenses, and attorney's fees incurred in any action brought to determine the rights of the Parties hereunder.

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

Legacy Software, Inc.

By: /s/ William Slinev
Title: Vice President - CFO

Legacy Software Acquisition, Inc.

By: /s/ Ariella J. Lehrer
Title: President

Videocall International Corporation

By: /s/ M. Zwebner
Title: Chairman

MERGER AGREEMENT

AMENDMENT NO. 1

dated as of

December 1, 1998

to

AGREEMENT AND PLAN OF MERGER

dated as of

September 14, 1998

Among

Talk Visual Corporation

(f/k/a Legacy Software, Inc.),

Legacy Acquisition, Inc.

and

Videocall International Corporation

AMENDMENT NO. 1
to
AGREEMENT AND PLAN OF MERGER

AMENDMENT NO. 1 dated as of December 1, 1998, to the AGREEMENT AND PLAN OF MERGER dated as of September 14, 1998, (the "Merger Agreement") among Talk Visual Corporation (f/k/a Legacy Software, Inc.), a Delaware corporation ("Buyer"), Videocall International Corporation, a Florida corporation ("Target"), and Legacy Acquisition, Inc., a Florida corporation and a wholly owned subsidiary of Buyer ("Merger Subsidiary").

WHEREAS, Buyer, Target and Merger Subsidiary have entered into the Merger Agreement; and

WHEREAS, Buyer, Target and Merger Subsidiary desire, through this Amendment No. 1, to amend the Merger Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein and in the Merger Agreement, the parties hereto agree as follows:

1. Section 5 of the Merger Agreement is hereby amended by deleting subsection 5(o) of such section in its entirety and by substituting in lieu thereof the following:

"(o) *Rights Offering.* The Board of Directors of the Buyer shall authorize a rights offering to their current stockholders that will provide the issuance of one right for each share of Buyer's Common Stock outstanding or issuable upon exercise of currently outstanding options or warrants (the "Rights"). The Rights will enable each current stockholder to purchase one new share of the Buyer's Common Stock for \$2.50. The Target Stockholders shall agree to waive their right to participate in this Rights offering with respect to shares of Buyer's Common Stock received by them in connection with the Merger. The Rights offering shall be open and exercisable for a period of ninety (90) days from the commencement date of such Rights offering. The Rights are not transferable except to the immediate family or a trust set up for the benefit of such stockholder."

2. Section 7(a) of the Merger Agreement is hereby amended by changing the date in clauses (ii) and (iii) thereof from "December 31, 1998" to "June 30, 1999."

3. All references in the Merger Agreement to the "Agreement" shall be to the Merger Agreement as amended by this Amendment No. 1.

4. All other terms and conditions of the Merger Agreement shall remain unaffected by this Amendment No. 1 and shall remain in full force and effect.

5. This Amendment No. 1 may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Amendment No. 1 shall become effective when each party hereto shall have received counterparts hereof signed by all of the other parties hereto. This Amendment No. 1 shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to be duly executed by their respective authorized officers as of the day and year first above written.

Attested:

TALK VISUAL CORPORATION

/s Andrew Beck

By: /s/ Harold Snyder

Name: Harold Snyder

Title: Chief Financial Officer

VIDEOCALL INTERNATIONAL
CORPORATION

Attested:

/s Andrew Beck

By: /s/ Harold Snyder

Name: Harold Snyder

Title: Chief Financial Officer

LEGACY ACQUISITION, INC.

Attested:

/s Andrew Beck

By: /s/ Harold Snyder

Name: Harold Snyder

Title: Chief Financial Officer