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DIVISION OF CORPORATIONS

## MERGER OR SHARE EXCHANGE

APPTIMUM, INC.

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**ARTICLES OF MERGER  
OF  
APP ACQUISITION CORPORATION  
WITH AND INTO  
APPTIMUM, INC.**

The following Articles of Merger have been duly adopted and are submitted in accordance with the Florida Business Corporation Act, pursuant to Section 607.1105 of the Florida Statutes:

**First:** The name and jurisdiction of the surviving corporation ("Surviving Corporation") is:

<u>Name</u>	<u>Jurisdiction</u>
Apptimum, Inc.	Florida

**Second:** The name and jurisdiction of the merging corporation ("Merging Corporation") is:

<u>Name</u>	<u>Jurisdiction</u>
APP Acquisition Corporation	Florida

**Third:** On the Effective Date (as defined below), Merging Corporation shall be merged with and into Surviving Corporation and the separate existence of Merging Corporation shall cease (the "Merger"). Surviving Corporation is the surviving corporation of the Merger. A copy of the Plan of Merger is attached hereto as Exhibit A and made a part hereof by reference as if fully set forth herein.

**Fourth:** The Merger shall become effective ("Effective Date") on the date of filing these Articles of Merger with the Florida Department of State.

**Fifth:** In accordance with applicable Florida law, the Plan of Merger was approved by the shareholders of the Surviving Corporation on February 24, 2006.

**Sixth:** In accordance with applicable Florida law, the Plan of Merger was approved by the shareholder of the Merging Corporation on February 13, 2006.

**[SIGNATURES APPEAR ON FOLLOWING PAGE]**

**SIGNATURE PAGE - ARTICLES OF MERGER**

**IN WITNESS WHEREOF**, the undersigned have caused these Articles of Merger to be executed as of the 28<sup>th</sup> day of January, 2006.

**APP ACQUISITION CORPORATION**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**APPTIMUM, INC.**

By Lauren D. Hahn

Name Lauren D. Hahn

Title Chief Financial Officer

**SIGNATURE PAGE - ARTICLES OF MERGER**

IN WITNESS WHEREOF, the undersigned have caused these Articles of Merger to be executed as of the 28<sup>th</sup> day of February, 2006.

**APP ACQUISITION CORPORATION**

By Kai RLL  
Name Keith Dolliver  
Title President

**APPTIMUM, INC.**

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT A**  
**PLAN OF MERGER**  
**BETWEEN**  
**APP ACQUISITION CORPORATION**  
**AND**  
**APPTIMUM, INC.**

This Plan of Merger is entered into by and among Apptimum, Inc., a Florida corporation, and APP Acquisition Corporation, a Florida corporation, for the purpose of merging, at the Effective Time (as defined below) APP Acquisition Corporation with and into Apptimum, Inc. in accordance with the Florida Business Corporation Act and the following agreements, terms and provisions set forth herein (the "Merger").

1. **Parties to Merger and Name of Surviving Corporation.** The name and jurisdiction of the surviving corporation is Apptimum, Inc., a Florida corporation (the "Surviving Corporation"). The name and jurisdiction of the merging corporation is APP Acquisition Corporation, a Florida corporation (the "Merging Corporation", and together with the Surviving Corporation, the "Corporations").

2. **Terms and Conditions.** The terms and conditions of the Merger, in addition to the terms and conditions set forth herein and in that certain Merger Agreement, dated as of February 9, 2006, among Merging Corporation, Microsoft Corporation, a Washington corporation ("Parent"), Surviving Corporation, David Henrickson, Eiko Eisen, Eisenworld GmbH and Zee Aganovic, and David Henrickson as shareholders representative, as amended (the "Agreement"), are as follows:

(a) At the Effective Time (as defined below), Merging Corporation will be merged with and into Surviving Corporation, the separate corporate existence of Merging Corporation shall cease and Surviving Corporation shall continue as the surviving corporation and a wholly-owned subsidiary of Parent.

(b) The Merger shall have the effects set forth in Section 607.1106 of the Florida Business Corporation Act ("FBCA") with respect to a merger.

3. **Effective Time.** The Merger shall become effective on the date of filing the Articles of Merger with the Florida Department of State ("Effective Time").

4. **Manner and Basis of Converting Shares, Options and Warrants.** Subject to the terms and conditions of the Agreement, at the Effective Time by virtue of the Merger and without any action on the part of Surviving Corporation, Merging Corporation, Parent, or any other party to the Agreement, the following actions will occur:

(a) Each share of Merging Corporation's common stock, issued and outstanding immediately prior to the Effective Time, shall be converted into one validly issued, fully paid, and nonassessable share of Surviving Corporation common stock ("Surviving Corporation Common Stock"), with the stock certificate of Merging Corporation evidencing ownership of such share of Surviving Corporation Common Stock.;

(b) Each share of Class A and Class B Common Stock held by the Surviving Corporation as treasury stock and each share of Class A and Class B Common Stock owned directly or indirectly by the Surviving Corporation or by any subsidiary of Surviving Corporation shall automatically be canceled and retired and shall cease to exist and no consideration shall be delivered or deliverable in exchange therefor.

(c) Each outstanding share of Class A and Class B Common Stock and each vested and unexercised option and warrant issued and outstanding immediately prior to the Effective Time (other than dissenting shares, treasury shares, or any shares of Class A or Class B Common Stock owned by the Surviving Corporation or one of its subsidiaries), shall be converted into, or with respect to options and warrants, cancelled in exchange for, their respective cash conversion payments as follows:

(i) Each vested and unexercised warrant or option issued and outstanding immediately prior to Closing shall be cancelled or terminated, with the consent of the holder (if required pursuant to the terms thereof), in exchange for the right to receive an amount equal to the product of (i) that number of shares of Surviving Corporation Class B Common Stock, for which such warrant or option may be exercised, multiplied by (ii) a cash conversion payment minus the exercise price per share of such warrant or option. Any applicable withholding taxes shall be withheld from payment of such amount.

(ii) Each share of Surviving Corporation Class A Common Stock, and Class B Common Stock, issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive a cash conversion payment.

(iii) At the Effective Time all outstanding shares of Class A and Class B Common Stock shall no longer be outstanding and shall be cancelled and cease to exist, and each certificate previously representing any shares of Class A and Class B Common Stock shall represent only the right to receive the applicable cash conversion payment. The amount to which any holders of shares of Class A and warrants are entitled shall be subject to reduction as a result of the deposit of funds with an escrow agent to satisfy certain indemnification claims made in connection with the Agreement.

5. Articles of Incorporation of Surviving Corporation. The articles of incorporation of Surviving Corporation shall be amended in their entirety (except as to the name of the Surviving Corporation, which shall remain "Apptimum, Inc.") to be the same as the articles of incorporation of Merging Corporation, as in effect immediately prior to the Effective Time, a copy of which is attached hereto as Attachment 1, until later amended in accordance with the FBCA.

6. Bylaws of Surviving Corporation. The bylaws of Surviving Corporation shall be amended and restated in their entirety to be the same as the bylaws of the Merging Corporation, as in effect immediately prior to the Effective Time, until later amended in accordance with the provisions thereof, the articles of incorporation and the FBCA.

7. Officers of Surviving Corporation. The directors and officers of the Merging Corporation immediately prior to the Effective Time shall be the directors and officers of the

Surviving Corporation in each case until their respective successors shall have been duly elected, designated, or qualified or until their earlier death, resignation, or removal in accordance with the Surviving Corporation's articles of incorporation and bylaws.

8. Approval. The Merger has previously been submitted to and approved by the Corporations' respective Boards of Directors and shareholders. The proper officers of the parties shall be, and hereby are, authorized and directed to perform all such further acts and execute and deliver to the proper authorities for filing all documents, as the same may be necessary or proper to effect the Merger contemplated by this Plan of Merger.

9. Counterparts. This Plan of Merger may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument.

10. Miscellaneous. This Plan of Merger shall be construed in accordance with the laws of the State of Florida. The terms and conditions of this Plan of Merger are solely for the benefit of the parties hereto, and no other person shall have any rights or benefits whatsoever under this Plan of Merger, either as a third party beneficiary or otherwise. This Plan of Merger shall be construed together with and complement the Agreement with respect to the subject matter hereof and thereof. Neither this Plan of Merger nor the Agreement may be amended, changed or modified except by a writing signed by the party to be charged by said amendment, change or modification.

**ATTACHMENT 1**

**ARTICLES OF INCORPORATION  
OF  
APPTIMUM, INC.**

**ARTICLE 1  
NAME**

The name of this corporation is APPTIMUM, INC.

**ARTICLE 2  
PRINCIPAL OFFICE**

The principal place of business and mailing address of the Corporation is One Microsoft Way, Redmond, Washington 98052-8300

**ARTICLE 3  
DURATION**

This corporation has perpetual existence.

**ARTICLE 4  
PURPOSE**

This corporation is organized for the purpose of transacting any and all lawful business for which a corporation may be incorporated under Title XXXVI of the Florida Statutes (the "Florida Business Corporation Act").

**ARTICLE 5  
REGISTERED OFFICE AND AGENT**

The address of the registered office of the corporation is 1201 Hays Street, Tallahassee, Florida 32301 and the name of the registered agent at such address is Corporation Service Company.

**ARTICLE 6  
CAPITAL STOCK**

The authorized capital stock of this corporation shall consist of One Hundred Thousand (100,000) shares of common stock with no par value.

**ARTICLE 7  
DIRECTORS**

The number of directors of this corporation shall be fixed by the Bylaws and may be increased or decreased from time to time in the manner specified there.



**ARTICLE 8  
LIMITATION OF DIRECTOR LIABILITY**

A director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision, or failure to act, regarding corporate management or policy, by a director, unless:

(a) The director breached or failed to perform his or her duties as a director;  
and

(b) The director's breach of, or failure to perform, those duties constitutes:

1. A violation of the criminal law, unless the director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against a director in any criminal proceeding for a violation of the criminal law estops that director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law; but does not estop the director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

2. A transaction from which the director derived an improper personal benefit, either directly or indirectly;

3. A circumstance under which the liability provisions of s. 607.0834 are applicable;

4. In a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful misconduct; or

5. In a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

If the Florida Business Corporation Act is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Florida Business Corporation Act, as so amended. Any repeal or modification of the foregoing paragraph by the shareholders of the corporation shall not adversely affect any right or protection of a director of the corporation with respect to any acts or omissions of such director occurring prior to such repeal or modification.

**ARTICLE 9  
INDEMNIFICATION OF DIRECTORS**

9.1 The corporation shall indemnify its directors to the full extent permitted by the Florida Business Corporation Act now or hereafter in force. However, such indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful;

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit;

(c) In the case of a director, a circumstance under which the liability provisions of s. 607.0834 are applicable; or

(d) Willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.

The corporation shall advance expenses for such persons pursuant to the terms set forth in the Bylaws, or in a separate directors' resolution or contract.

9.2 The Board of Directors may take such action as is necessary to carry out these indemnification and expense advancement provisions. It is expressly empowered to adopt, approve, and amend from time to time such Bylaws, resolutions, contracts, or further indemnification and expense advancement arrangements as may be permitted by law, implementing these provisions. Such Bylaws, resolutions, contracts or further arrangements shall include but not be limited to implementing the manner in which determinations as to any indemnity or advancement of expenses shall be made.

9.3 No amendment or repeal of this Article shall apply to or have any effect on any right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

**ARTICLE 10  
TRANSACTIONS IN WHICH DIRECTORS HAVE AN INTEREST**

No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such *interested directors*;

(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the shareholders.