

# P99000021764

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Division of Corporations  
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**MERGER OR SHARE EXCHANGE  
SMARTBEAR SOFTWARE INC.**

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**COVER LETTER**

**TO:** Amendment Section  
Division of Corporations

**SUBJECT:** SmartBear Software Inc.  
Name of Surviving Corporation

The enclosed Articles of Merger and fee are submitted for filing.

Please return all correspondence concerning this matter to following:

Scott Reich  
Contact Person

Willkie, Farr & Gallagher  
Firm/Company

787 Seventh Avenue  
Address

New York, N.Y. 10019-6099  
City/State and Zip Code

sreich@willkie.com  
E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Scott Reich  
Name of Contact Person

At ( 212 ) 728-8153  
Area Code & Daytime Telephone Number

☒ Certified copy (optional) \$8.75 (Please send an additional copy of your document if a certified copy is requested)

**STREET ADDRESS:**  
Amendment Section  
Division of Corporations  
Clifton Building  
2661 Executive Center Circle  
Tallahassee, Florida 32301

**MAILING ADDRESS:**  
Amendment Section  
Division of Corporations  
P.O. Box 6327  
Tallahassee, Florida 32314



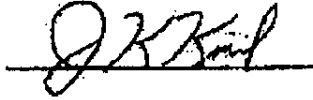
**Seventh: SIGNATURES FOR EACH CORPORATION**

Name of Corporation

Signature of an Officer or  
Director

Typed or Printed Name of Individual & Title

SmartBear Software Inc.



Joseph Krivickas, President and CEO

Boca Internet

Technologies, Inc.

Richard S. Haak, Jr. *EVP + TREASURER*

**Seventh: SIGNATURES FOR EACH CORPORATION**

Name of Corporation

Signature of an Officer or  
Director

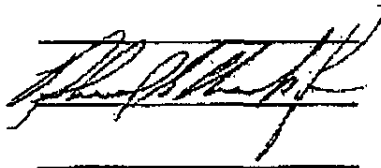
Typed or Printed Name of Individual & Title

SmartBear Software Inc.

Joseph Krivickas, President and CEO

Boca Internet

Technologies, Inc.



Richard S. Haak, Jr. . EVP + TREASURER

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of December 31, 2012 (this "Agreement"), by and between SMARTBEAR SOFTWARE INC., a Delaware corporation (the "Company"), and BOCA INTERNET TECHNOLOGIES, INC., a Florida corporation (the "Disappearing Entity").

### WITNESSETH:

WHEREAS, the Company is a corporation duly organized under the laws of the State of Delaware, and the Disappearing Entity is a corporation duly organized under the laws of the State of Florida; and

WHEREAS, the board of directors and the sole stockholder of the Disappearing Entity have duly approved this Agreement and the merger of the Disappearing Entity with and into the Company on the terms and subject to the conditions set forth in this Agreement (the "Merger"); and

WHEREAS, the board of directors and the sole stockholder of the Company have duly approved this Agreement and the merger of the Disappearing Entity with and into the Company on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, hereby agree as follows:

### ARTICLE I.

#### MERGER

SECTION 1.1. Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with each of the Florida Business Corporation Act (the "FBCA") and the Delaware General Corporation Law (the "DGCL"), the Disappearing Entity shall be merged with and into the Company at the Effective Time (as hereinafter defined). Following the Effective Time, the separate corporate existence of the Disappearing Entity shall cease and the Company shall continue as the entity surviving the Merger (the "Surviving Entity") under the name "SMARTBEAR SOFTWARE INC.", and shall succeed to and assume all the rights and obligations of the Disappearing Entity in accordance with the FBCA and the DGCL.

SECTION 1.2. Closing. The closing of the Merger will take place at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 at the Effective Time.

SECTION 1.3. Effective Time. On the date hereof, the parties hereto shall file with the Secretary of State of the State of Delaware a certificate of merger and/or other appropriate documents as provided in Section 607.1105 of the FBCA and Section 252 of the DGCL (in any such case, the "Certificate of Merger") executed in accordance with the relevant provisions thereof and shall make all other filings or recordings required under the FBCA and DGCL to

effectuate the Merger. The Merger shall become effective at the close of business on December 31, 2012 (the "Effective Time").

SECTION 1.4. Effect of Merger. The Merger shall have the effects set forth in the applicable provisions of the FBCA and the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of the Disappearing Entity shall vest in the Surviving Entity and all debts, liabilities, obligations and duties of the Disappearing Entity shall become the debts, liabilities, obligations and duties of the Surviving Entity.

SECTION 1.5. Organizational Documents.

(a) The Certificate of Incorporation of the Company as in effect immediately before the Effective Date of the Merger shall continue in full force and effect as the Certificate of Incorporation of the Surviving Entity.

(b) The Bylaws of the Company as in effect immediately before the Effective Date of the Merger shall continue in full force and effect as the Bylaws of the Surviving Entity until duly amended in accordance with the provisions thereof and applicable law.

SECTION 1.6. Directors and Officers. The directors and officers of the Company immediately prior to the Effective Time shall be the officers of the Surviving Entity, until their respective successors are duly elected or appointed and qualified, or until their earlier death, resignation or removal.

**ARTICLE II.**

**EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT ENTITIES**

SECTION 2.1. Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any capital stock of the Company or the Disappearing Entity: (a) each issued and outstanding share of capital stock of the Company will remain issued and outstanding; and (b) each issued and outstanding share of capital stock of the Disappearing Entity, which consists of 910,000 shares of Voting Common Stock, \$.01 par value per share, and 90,000 shares of Non-Voting Common Stock, \$.01 par value per share, shall automatically be canceled, extinguished and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

**ARTICLE III.**

**MISCELLANEOUS**

SECTION 3.1. Further Assurances. If, at any time after the Effective Time, the Surviving Entity shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Entity its right, title or interest in, to or under any of the

rights, properties or assets of the Disappearing Entity acquired or to be acquired by the Surviving Entity as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and other designees of the Surviving Entity are hereby authorized to execute and deliver, in the name and on behalf of the Disappearing Entity, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of the Disappearing Entity or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Entity or otherwise to carry out this Agreement.

SECTION 3.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof.

SECTION 3.3. Entire Agreement. This Agreement and the Certificate of Merger constitute the entire agreement of the parties with respect to the subject matter hereof and supersede all other prior agreements, understandings and arrangements, oral or written, express or implied, between the parties hereto in respect of the subject matter hereof.

SECTION 3.4. Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile), each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

SECTION 3.5. Severability. If any provision of this Agreement shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, all other provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.

[Remainder of page intentionally left blank]



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

**COMPANY:**

SMARTBEAR SOFTWARE INC., a Delaware corporation

By: 

Name: Joseph Krivickas

Title: President and CEO

**DISAPPEARING ENTITY:**

BOCA INTERNET TECHNOLOGIES, INC., a Florida corporation

By: \_\_\_\_\_

Name: Richard S. Haak, Jr.

Title: Chief Financial Officer and Treasurer

{Signature Page to Merger Agreement}

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of  
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**COMPANY:**

SMARTBEAR SOFTWARE INC., a Delaware  
corporation

By: \_\_\_\_\_

Name: Joseph Krivickas  
Title: President and CEO

**DISAPPEARING ENTITY:**

BOCA INTERNET TECHNOLOGIES, INC., a  
Florida corporation

By: \_\_\_\_\_

Name: Richard S. Haak, Jr.  
Title: Chief Financial Officer and Treasurer

[Signature Page to Merger Agreement]