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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

What's Up, Inc.

- ☐ Individual(s)
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ Corporation-State
- ☐ Other _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

2. Name and address of receiving party(ies)

Name: AppliedTheory Corporation
Internal Address: _____
Street Address: 224 Harrison St.
City: Syracuse State: NY Zip: 13202

- ☐ Individual(s) citizenship _____
- ☐ Association _____
- ☐ General Partnership _____
- ☐ Limited Partnership _____
- ☒ Corporation-State Delaware
- ☐ Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☒ Assignment
- ☐ Merger
- ☐ Security Agreement
- ☐ Change of Name
- ☐ Other _____

Execution Date: 11-1-00

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)
1804865
1955693
2285078
2608415
2374370
2334576
2311546
2629123

Additional number(s) attached ☐ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Terri Luckett
Internal Address: _____
Street Address: 224 Harrison St., 8th FLOOR
City: Syracuse State: NY Zip: 13202

6. Total number of applications and registrations involved: 8

7. Total fee (37 CFR 3.41).....$ 215.00

- ☒ Enclosed 40 + (25 x 7) = 215.00
- ☐ Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kristen A. Leeb — Name of Person Signing
Kristen A Leeb — Signature
7/23/02 — Date

Total number of pages including cover sheet, attachments, and document: ☐

07/24/2002 LMUELLER 00000137 1804855
01 FC:481 40.00 OP
02 FC:482 175.00 OP

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

AGREEMENT AND PLAN OF MERGER

by and among

APPLIEDTHEORY CORPORATION,

APPLIEDTHEORY GEORGIA ACQUISITION CORP.,

WHAT'S UP, INC.,

and

THE SHAREHOLDERS OF WHAT'S UP, INC.

NOVEMBER 1, 2000

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER dated as of November 1, 2000 (the "Agreement"), by and among AppliedTheory Corporation, a Delaware corporation ("Parent"), AppliedTheory Georgia Acquisition Corp., a Georgia corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), What's Up, Inc., a Georgia corporation (the "Company"), and those persons listed on Schedule A to this Agreement (the "Company Stockholders").

WHEREAS, the Company Stockholders and the respective boards of directors of each of Parent, Merger Sub and the Company have determined that the merger of Merger Sub with and into the Company (the "Merger") on the terms and conditions contained herein and in accordance with the Georgia Business Corporation Code (the "Corporation Act") is advisable and have approved the Merger;

WHEREAS, for federal income tax purposes, it is intended that the Merger shall qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code, as amended;

WHEREAS, Merger Sub was created solely for the purpose of effecting the Merger and will conduct no other activity; and

WHEREAS, the Company Stockholders, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with this Agreement and to prescribe certain conditions to the Merger.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I

THE MERGER

1.1. The Merger

Upon the terms and subject to the conditions of this Agreement, at the Effective Time (as defined in Section 1.2) and in accordance with the Corporation Act, Merger Sub shall be merged with and into the Company and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the "Surviving Corporation") and will be a wholly-owned subsidiary of Parent. The Merger shall have the effects specified in the Corporation Act.

1.2. Closing; Effective Time

Subject to the provisions of Article VI, the closing of the Merger (the "Closing") shall take place in New York City at the offices of the Company, as soon as

practicable but in no event later than 10:00 a.m. New York City time on the second business day after the earliest date on which each of the conditions set forth in Article VI (other than conditions that are satisfied by the delivery of documents or the payment of money at or prior to the Closing) have been satisfied or waived by the party or parties entitled to the benefit of such conditions, or at such other date, time and place as Parent and the Company shall mutually agree. The date on which the Closing actually occurs is hereinafter referred to as the "Closing Date." At the Closing, Merger Sub and the Company shall cause articles of merger (the "Articles of Merger") to be executed and filed with the Secretary of State of the State of Georgia in accordance with the Corporation Act. The Merger shall become effective as of the date and time of such filing or as of such subsequent date and time as Parent and the Company shall agree to and shall be set forth in the Articles of Merger (the "Effective Time").

1.3. Effect on Capital Stock

(a) At the Effective Time, each share of common stock, no par value, of the Company (the "Company Stock") issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in Section 1.6) and Parent Shares (as defined in Section 1.3(c)) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive approximately 305.91 (i.e., 305.91:1, the "Initial Exchange Ratio") shares of common stock, par value $.01 per share, of Parent ("Parent Common Stock") and $200 (the aggregate number of shares of Parent Common Stock into which the outstanding Company Stock is convertible shall initially be 152,957 shares of Parent Common Stock, multiplied by $8.00 and, together with the $100,000 to be received by the holders of the Company Stock in the aggregate, shall be referred to as the "Initial Merger Consideration"); provided, that pursuant to Section 1.3(d), no fractional share of Parent Common Stock shall be delivered hereunder. The parties hereto determined the Initial Exchange Ratio by dividing 152,957 by 500 (the "Company Capitalization"), such number being the total number of shares of Company Stock outstanding at the Effective Time.

(b) Subject to Section 1.4 hereof, following the Effective Time, the Initial Merger Consideration shall be delivered to those parties who are holders of Company Stock (the "Selling Stockholders") immediately prior to the Effective Time in exchange for certificates representing all outstanding shares of Company Stock and any other outstanding ownership interests in the Company. The Company Stockholders acknowledge and agree that the Parent Common Stock delivered to the holders of Company Stock hereunder shall not be registered under the Securities Act of 1933, as amended (the "Securities Act") and that the sale or other disposition of such Parent Common Stock shall be subject to the restrictions arising under Rule 144 of the Securities Act until a registration statement shall have been filed for the purposes of registering such Parent Common Stock under the Securities Act. As of the Effective Time, all shares of Company Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist. If, between the date of this Agreement and the Effective Time, the shares of Parent Common Stock shall be changed into a different number or class of shares by reason of a stock split, stock dividend, reverse stock split,

reclassification, recapitalization or other similar transaction, the Initial Merger Consideration and the Merger Consideration shall be adjusted accordingly.

(c) Each share of Company Stock held in the Company's treasury immediately prior to the Effective Time, if any, and each share of Company Stock then owned by Parent, Merger Sub or any other wholly-owned subsidiary of Parent, other than any such shares held on behalf of third parties, if any (collectively, the "Parent Shares"), shall, by virtue of the Merger, be automatically cancelled and retired and shall cease to exist and no consideration shall be delivered in exchange therefor.

(d) No fractional shares of Parent Common Stock shall be issued pursuant hereto. In lieu of the issuance of any fractional share of Parent Common Stock, cash adjustments will be paid to holders in respect of any fractional share of Parent Common Stock that would otherwise be issuable, and the amount of such cash adjustment shall be equal to the product obtained by multiplying such stockholder's fractional share of Parent Common Stock that would otherwise be payable by the per share value of Parent Common Stock set forth in Section 1.4 herein.

(e) Each of Parent, Merger Sub and the Company shall be entitled to deduct and withhold from the Merger Consideration (and any dividends or distributions thereon) otherwise payable hereunder to any person such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of federal, state, local or foreign income tax law. To the extent that Parent, Merger Sub or the Company so withholds those amounts, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Company Stock in respect of which such deduction and withholding was made by Parent, Merger Sub or the Company, as the case may be.

The parties intend this transaction to constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

1.4. Escrow of Parent Common Stock; Adjustment to Merger Consideration

The parties hereto agree that, at the Closing, a portion of the Parent Common Stock delivered to the holders of Company Stock as Merger Consideration representing 15% of the Company Shares (as such amount is reduced in accordance with the provisions of Section 7.2(b) herein) delivered as Merger Consideration (the "Escrow Fund") shall be deducted from the shares of Parent Common Stock deliverable to the Company Stockholders and shall be held by Wells Fargo Bank Texas, N.A. ("Escrow Agent"), subject to an escrow agreement (the "Escrow Agreement") by and among Escrow Agent, Parent and the Company Stockholders prior to Closing. A form of the Escrow Agreement is attached hereto as Exhibit A. The parties hereto acknowledge and agree that Escrow Agent shall hold the Escrow Fund pursuant to the Escrow Agreement. The Company Stockholders further acknowledge and agree that they shall (in the aggregate, jointly and severally) be responsible for up to one half of any administration and other fees charged by the Escrow Agent. The Escrow Fund shall be subject to the Escrow

Agreement (with such changes therein as Parent, Company Stockholders and Escrow Agent shall reasonably approve prior to the Closing). As further described in the Escrow Agreement, during the term of the Escrow Agreement, the Company Stockholders shall be deemed the owners of and shall have voting power over all Parent Common Stock in the Escrow Fund. Any dividends or other distributions with respect to Parent Common Stock that are made in the form of cash or any other form of property, except for ownership rights in Parent or any of its Subsidiaries (as defined in Section 9.1), shall be distributed to the Company Stockholders. Any dividends or other distributions with respect to Parent Common Stock that are made in the form of capital stock or of any other form of ownership interest in Parent or any of its Subsidiaries shall remain in the Escrow Fund until the end of the term of the Escrow Agreement. As further provided in the Escrow Agreement, if during the term of the Escrow Agreement Parent shall suffer a Loss (as defined in Section 7.2), Parent shall be entitled to receive for its own account payment out of the Escrow Fund of that number of shares of Parent Common Stock, valued at $8.00, as is required to reimburse Parent for such Loss and satisfy Parent's right to indemnification under Section 7.2. Any claims for payment in respect of Losses which are made by Parent under Section 7.2 during the period between the Closing and the one-year anniversary of the Closing (the "Escrow Release Date") shall be satisfied out of the Escrow Fund unless and until the Escrow Fund shall be depleted, in which case Parent shall be entitled to payment directly from the Company Stockholders in satisfaction of any Losses; provided, that Parent's right to payment for Losses is in all cases, in addition to and not in substitution of any other rights or remedies available to Parent under this Agreement, any other agreement in respect of the transactions contemplated by this Agreement, or by operation of law or in equity, including the right to specific performance or injunctive relief. On the Escrow Release Date, any shares of Parent Common Stock remaining in the Escrow Fund shall be released to the Company Stockholders, subject to the provisions of the Escrow Agreement. If there is any inconsistency between the terms of the Escrow Agreement and this Agreement regarding the Escrow Fund, the terms of the Escrow Agreement shall control.

1.5. Final Determination of Merger Consideration The Merger Consideration shall be subject to adjustment from the Initial Merger Consideration as follows:

(a) Within a reasonable period of time following the end of the calendar year 2000 (but in any event no later than March 31, 2001), the Parent shall cause the certified public accountants regularly serving the Parent to review the Surviving Corporation's books and records. If such review shall disclose that the Surviving Corporation's gross Web Revenues (as defined herein) for the six month period ended December 31, 2000, calculated in accordance with GAAP (the "Second Six Month Web Revenue"), is either greater or less than $718,000, then the Initial Merger Consideration shall be adjusted by multiplying the Initial Merger Consideration, by the Second Six Month Web Revenue and dividing the resulting amount by $718,000 (the result being the "Adjusted Merger Consideration"). For purposes of this Section 1.5(a), Web Revenues shall mean revenues derived by the Surviving Corporation, determined in accordance with GAAP, from hosting, maintenance, Fox site maintenance, Fox site development,

web stats, web other, and web development, in each case as such category of revenue has been used in preparing the Company Financial Statements (as hereinafter defined).

Promptly after determination of the Adjusted Merger Consideration (but not later than March 31, 2001), if the Adjusted Merger Consideration is less than $1,355,000, then, upon demand of the Parent and in accordance with the Escrow Agreement, the Escrow Agent shall deliver to the Parent that number of shares of Parent Common Stock which is equal to (a) the difference between the Adjusted Merger Consideration and $1,355,000, divided by (b) $8.00. Promptly after determination of the Adjusted Merger Consideration (but no later than March 31, 2001), if the Adjusted Merger Consideration is greater than $1,355,000, then the Parent shall promptly deliver to the Escrow Agent that number of shares of Parent Common Stock which is equal to (a) the difference between the Adjusted Merger Consideration and $1,355,000, divided by (b) $8.00, to be held and distributed by the Escrow Agent pursuant to the terms of the Escrow Agreement.

(b) The Company Shareholders shall be entitled to receive as additional Merger Consideration, in addition to the Adjusted Merger Consideration, for each share of Company Stock an amount equal to the Specified Liabilities (but, with respect to each of the Specified Liabilities, not more than the amount set forth in Section 7.2(a)) divided by 500. "Specified Liabilities" shall mean (a) expenses incurred and paid by the Company Shareholders prior to the Closing Date for attorneys', bankers' and other professionals' fees and expenses in connection with the negotiation of this Agreement and the consummation of the Merger and the transactions contemplated hereby (b) the amount paid by the Company Shareholders in respect of the Company's Small Business Administration loan from SouthTrust Bank, N.A., as reflected in the most recent Company Financial Statements, plus interest accrued thereon after the date of the most recent Company Financial Statements and (c) unpaid back wages and reimbursements for expenses incurred in the regular course of the Company's business owed by the Company to Richard Warner and Lynn LeBreton. In lieu of payment of such obligations by the Company Stockholders and reimbursement in the form of additional Merger Consideration, the Parent may pay the Specified Liabilities directly at Closing, in each case subject to indemnification set forth in Section 7.2(a).

1.6. Shares of Dissenting Stockholders

(a) Notwithstanding anything in this Agreement to the contrary, any shares of Company Stock that are issued and outstanding immediately prior to the Effective Time and that are held by a stockholder who has properly exercised and perfected his appraisal rights under Section 14-2-1321 of the Corporation Act ("Dissenting Shares") shall not be converted into or exchangeable for the right to receive the Merger Consideration but shall entitle the holder thereof to receive payment therefor as shall be determined pursuant to Section 14-2-1330 et seq. of the Corporation Act.

(b) If such holder shall have failed to perfect or shall have effectively withdrawn or lost his right to payment of fair value under the Corporation Act, then as of the Effective Time, each share of Company Stock of such holder shall thereupon be deemed to have been converted into and to have become exchangeable for

the right to receive the shares of Parent Common Stock without any interest thereon, in accordance with Section 1.3 hereof, and such shares shall no longer be Dissenting Shares.

(c) The Company shall give the Parent (i) prompt notice of its receipt of any written demands for dissenters' rights for any shares of Company Stock, withdrawals of such demands, and any other instruments relating to the Merger served pursuant to Article 13 of the Corporation Act and received by the Company and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for dissenters' rights under the Corporation Act. The Company shall not, except with the prior written consent of the Parent or as may be required under applicable law, voluntarily make any payment with respect to any demands for dissenters' rights for Company Stock or offer to settle or settle any such demands.

1.7. Merger Sub Common Stock

Each share of Merger Sub Common Stock (as defined in Section 4.2(b)) issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one share of common stock of the Surviving Corporation.

1.8. Articles of Incorporation and By-Laws

At the Effective Time, (i) the articles of incorporation of the Surviving Corporation shall be amended and restated in their entirety to read as the articles of incorporation of Merger Sub in effect immediately prior to the Effective Time, except that such articles of incorporation shall provide that the name of the corporation be AppliedTheory Georgia Corporation, and (ii) the by-laws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with applicable law, except that such by-laws shall provide that the name of the corporation be AppliedTheory Georgia Corporation.

1.9. Directors and Officers

The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation and the officers of the Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation, each to hold office in accordance with the articles of incorporation and by-laws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified.

ARTICLE II

SEVERAL REPRESENTATIONS AND WARRANTIES OF THE COMPANY STOCKHOLDERS

Except as disclosed in writing in the disclosure schedules being delivered at or prior to the execution of this Agreement (the "Disclosure Schedule"), which

schedules shall identify the specific sections or subsections in this Agreement to which each such disclosure relates, each of the Company Stockholders hereby represents and warrants, as to himself, herself or themselves and not as to any other Company Stockholder, to Parent and Merger Sub as follows:

2.1. Authority; Execution and Delivery

Such Company Stockholder has the power, capacity and authority to enter into this Agreement and the other agreements contemplated hereby and to perform fully such Company Stockholder's obligations hereunder and thereunder. This Agreement and the other agreements contemplated hereby have been duly executed and delivered by such Company Stockholder and constitute the legal, valid and binding obligations of such Company Stockholder, enforceable against such Company Stockholder in accordance with their terms, except as the enforcement hereof (or thereof) may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights in general or by general principles of equity.

2.2. Agreements to Sell the Company Stock or the Business of the Company

Such Company Stockholder has no obligation, absolute or contingent, to any other person to (i) sell such Company Stockholder's Company Stock, (ii) sell any assets of the Company (other than sales of inventory in the ordinary course of the Company's business), (iii) issue, sell or otherwise transfer any capital stock or any security convertible into or exchangeable for capital stock of the Company, (iv) effect any merger, consolidation or other reorganization of the Company or (v) enter into any agreement with respect to any of the foregoing.

2.3. Ownership of Company Stock

Such Company Stockholder is the beneficial and record owner of the shares of Company Stock identified on Section 2.3 of the Disclosure Schedule as being owned by such Company Stockholder and all such shares of Company Stock are free and clear of any liens, claims, pledges, charges, claims, encumbrances, third party rights, security interests or other restrictions (collectively, "Liens") of any nature whatsoever.

2.4. Validity of Contemplated Transactions

Subject to the exceptions contained in Sections 3.4 and 3.5 of this Agreement, the execution, delivery and performance of this Agreement by such Company Stockholder does not and will not violate, conflict with or result in the breach of any term, condition or provision of, or require the consent of any other person under (a) any existing law, ordinance, or governmental rule or regulation to which such Company Stockholder is subject, (b) any judgment, order, writ, injunction, decree or award of any Governmental Entity (as defined in Section 3.5) which is applicable to such Company Stockholder, or (c) any mortgage, indenture, agreement, contract, commitment, lease, plan or other instrument, document or understanding, oral or written, to which such Company Stockholder is a party, by which such Company Stockholder may have rights

or by which any of the properties or assets of such Company Stockholder may be bound or affected, or give any party with rights thereunder the right to terminate, modify, accelerate or otherwise change the existing rights or obligations thereunder.

2.5. Consents and Approvals

Except for spousal consents, neither the execution and delivery by such Company Stockholder of this Agreement or the other agreements contemplated hereby, nor the performance of the transactions contemplated hereby and thereby, require the consent or approval of any person nor constitute (with or without notice or lapse of time or both) a default or cause any payment obligation to arise under (a) any law or court order to which such Company Stockholder is subject, (b) any Contract (as defined in Section 3.8) or other document to which such Company Stockholder is a party or by which the properties or other assets of such Company Stockholder may be subject.

2.6. Accounts and Notes Receivable, etc

There are no outstanding Company receivables from or advances to such Company Stockholder. There is no contest, claim, counterclaim, defense or right of set-off with respect to any amounts owing from such Company Stockholder to the Company.

2.7. Related Parties

Such Company Stockholder does not holds nor has such Company Stockholder held, directly or indirectly, any interest that corresponds to, or is convertible into, 1% or more of the outstanding equity interests of any entity that conducts or has conducted business, or any entity that is or has been a party to an agreement, with the Company.

2.8. Litigation

There is no action, claim, suit or proceeding pending or, to the knowledge of such Company Stockholder, threatened by or against or affecting such Company Stockholder or such Company Stockholder's Company Stock and, to the knowledge of such Company Stockholder, there is no investigation pending or threatened against or affecting the Company Stockholder or his or her Company Stock, in each case before any court or governmental or regulatory authority or body, that could reasonably be expected to have an adverse effect on the consummation of the transactions contemplated by this Agreement. There are no writs, decrees, injunctions or orders of any court or governmental or regulatory agency, authority or body outstanding against such company Stockholder with respect to his Company Stock.

2.9 Investment Representations

(a) Access to Other Information. Such Company Stockholder acknowledges that Parent has made available to such Company Stockholder the opportunity to examine such additional documents from the Parent and to ask questions

of, and receive full answers from, the Parent concerning, among other things, the Parent, its financial condition, its management, its prior activities and any other information which such Company Stockholder considers relevant or appropriate in connection with entering into this Agreement.

(b) Risks of Investment. Such Company Stockholder acknowledges that the shares of Parent Common Stock to be issued as Merger Consideration have not been registered under the Securities Act. Such Company Stockholder is familiar with the provisions of Rule 144 and understands that in the event all of the applicable requirements of Rule 144 are not satisfied, registration under the Securities Act or some other exemption from the registration requirements of the Securities Act will be required in order to dispose of such shares of Parent Common Stock and that such Company Stockholder may be required to hold such shares of Parent Common Stock for a significant period of time prior to reselling them. Such Company Stockholder is capable of assessing the risks of an investment in such shares of Parent Common Stock and is fully aware of the economic risks thereof.

(c) Investment Representation. Such Company Stockholder is acquiring such shares of Parent Common Stock for his, her or its own account and not with a view to distribution in violation of any securities laws. Such Company Stockholder has no present intention to sell such shares of Parent Common Stock in violation of federal or state securities laws and such Company Stockholder has no present arrangement (whether or not legally binding) to sell such shares of Parent Common Stock to or through any person or entity; provided, however, that by making the representations herein, such Company Stockholder does not agree to hold such shares of Parent Common Stock for any minimum or other specific term and reserves the right to dispose of such shares of Parent Common Stock at any time in accordance with federal and state securities laws applicable to such disposition.

(d) Restricted Securities. Such Company Stockholder acknowledges and understands that the terms of issuance have not been reviewed by the SEC or by any state securities authorities and that the Parent Common Stock has been issued in reliance on the certain exemptions for non-public offerings under the Securities Act, which exemptions depend upon, among other things, the representations made and information furnished by such Company Stockholder, including the bona fide nature of such Company Stockholder's investment intent as expressed above.

(e) Ability to Bear Economic Risk. Such Company Stockholder (i) is able to bear the economic risk of its investment in the Parent Common Stock, (ii) is able to hold such shares of Parent Common Stock for an indefinite period of time, (iii) can afford a complete loss of its investment in such shares of Parent Common Stock and (iv) has adequate means of providing for his, her or its current needs.

(f) No Public Solicitation. At no time was such Company Stockholder presented with or solicited by any general mailing, leaflet, public promotional meeting, newspaper or magazine article, radio or television advertisement, or any other form of

general advertising or general solicitation in connection with the issuance of such shares of Parent Common Stock.

(g) Reliance by the Company. Such Company Stockholder understands that such shares of Parent Common Stock are being issued in reliance on a transactional exemptions from the registration requirements of federal and state securities laws and that the Company is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings of such Company Stockholder set forth herein in order to determine the applicability of such exemptions and the suitability of such Company Stockholder to acquire such shares of Parent Common Stock

ARTICLE III

JOINT AND SEVERAL REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE COMPANY STOCKHOLDERS REGARDING THE COMPANY

Except as disclosed in writing in the Disclosure Schedule, which Disclosure Schedule shall identify the specific sections or subsections in this Agreement to which each such disclosure relates, the Company and the Company Stockholders hereby, jointly and severally, represent and warrant to Parent as follows:

3.1. Organization

The Company is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has all requisite power and authority to own, lease and operate its properties and to carry on it business as now being conducted. The Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except for such failures to be so duly qualified or licensed and in good standing that, individually or in the aggregate, would not have a material adverse effect on the business, financial condition or results of operations of the Company (a "Company Material Adverse Effect"). Section 3.1 of the Disclosure Schedule sets forth a list of all jurisdictions where the Company is qualified to do business. The Company has previously delivered to Parent true, correct and complete copies of its articles of incorporation and by-laws (or equivalent governing instruments) and all amendments thereto, as currently in effect.

3.2. Capitalization

(a) The authorized capital stock of the Company consists of 1,000 shares of Company Stock. As of the date hereof, there were 500 shares of Company Stock issued and outstanding. The Company has not granted or otherwise promised or undertaken to grant any options or other rights that are convertible into, or exercisable for, Company Stock or other ownership rights of the Company, nor has the

Company or any Company Stockholder made representations that are convertible into, or exercisable for, Company Stock or other ownership rights of the Company, nor has it adopted any stock option or stock purchase plan relating to the Company Stock or other ownership rights of the Company, nor has it adopted, granted or entered into any equity-based compensation plans or other arrangements. All issued and outstanding shares of Company Stock have been duly authorized and are validly issued, fully paid, nonassessable and free of preemptive rights. The Company does not have outstanding any subscription, option, put, call, warrant or other right or commitment to issue or any obligation or commitment to redeem or purchase, any of its authorized capital stock or any securities convertible into or exchangeable for any of its authorized capital stock. There are no shareholder agreements, voting agreements, voting trusts or other similar arrangements to which the Company is a party which have the effect of restricting or limiting the transfer, voting or other rights associated with the capital stock of the Company. Section 3.2 of the Disclosure Schedule contains a true, accurate and correct shareholders' list, setting forth the number of shares of Company Stock owned beneficially and of record by each stockholder of the Company as of the date of this Agreement.

(b) The Company has no Subsidiaries (as defined in Section 9.1). The Company does not own, directly or indirectly, any equity interest in any corporation, partnership, joint venture, business, trust or entity.

3.3. Authorization; Binding Agreement

The Company has all requisite corporate power and authority to execute and deliver this Agreement and all agreements and documents contemplated hereby. The execution and delivery of this Agreement and all agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby have been unanimously approved by the board of directors of the Company and duly and validly authorized by all necessary corporate action on the part of the Company and, where applicable, the Company Stockholders. This Agreement constitutes, and all agreements and documents contemplated hereby to which the Company is, or will be, a party constitute, legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

3.4. Noncontravention

Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (a) conflict with or result in any breach of any provision of the articles of incorporation, as amended, or by-laws, as amended, of the Company, (b) except as set forth on Section 3.4 of the Disclosure Schedule, require any consent, approval or notice under or conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, or

impair invalidate or otherwise affect, any of the terms, conditions or provisions of any Real Property Lease (as defined in Section 3.8), Contract (as defined in Section 3.8), Future Contract (as defined in Section 3.8), Indebtedness (as defined in Section 3.8), any IP Contract (as defined in Section 3.20(a)) or other items or rights identified on Section 3.20(b) of the Disclosure Schedule, or any other note, bond, mortgage, indenture, license, agreement or other instrument or obligation (the "Other Agreements") to which the Company is a party or by which it or any portion of its properties or assets may be bound or (c) violate any order, judgment, writ, injunction, determination, award, decree, law, statute, rule or regulation (collectively, "Legal Requirements") applicable to the Company or any portion of its properties or assets, except with respect to clauses (b) and (c) such matters that, individually or in the aggregate, have not had and could not reasonably be expected to have a Company Material Adverse Effect.

3.5. Governmental Approvals

No consent, approval or authorization of, or declaration or filing, with any foreign, federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality (each, a "Governmental Entity") on the part of the Company that has not been obtained or made is required in connection with the execution or delivery by the Company of this Agreement or the consummation by the Company of the transactions contemplated hereby, other than (a) the filing of the Articles of Merger with the Secretary of State of the State of Georgia, and (b) consents, approvals, authorizations, declarations or filings that, if not obtained or made, would not, individually or in the aggregate, have a Company Material Adverse Effect or prevent the Company from consummating the transactions contemplated hereby.

3.6. Financial Statements

Section 3.6 of the Disclosure Schedule sets forth true, correct and complete copies of the unaudited balance sheets and statements of income for the fiscal years ended December 31, 1998 and December 31, 1999, unaudited balance sheets as of June 30, 2000 and August 31, 2000 and unaudited statements of income for the three-month period ending March 30, 2000, the three-month period ending June 30, 2000 as well as for the two-month period ending August 31, 2000 (collectively, the "Company Financial Statements"). Except as set forth in Section 3.6 of the Disclosure Schedule, the Company Financial Statements, including the related notes, have been prepared from and are in accordance with the books and records of the Company and are true, complete and accurate and fairly present in all material respects the financial position, results of operations and changes in financial position of the Company as of the dates and for the periods indicated (subject in the case of unaudited statements, to normal year-end audit adjustments which would not be material in amount or effect).

3.7. No Undisclosed Liabilities

Except as set forth in Section 3.7 of the Disclosure Schedule, the Company has no liabilities or obligations (whether absolute, accrued, contingent or otherwise) which are not reflected in the Company Financial Statements except for

liabilities and obligations incurred in the ordinary course of business since August 31, 2000, none of which, individually or in the aggregate, have had or could reasonably be expected to have a Company Material Adverse Effect.

3.8. Validity of Leases and Contracts

The Company owns no real property. Section 3.8 of the Disclosure Schedule sets forth a list of every (a) lease of real property and all other leased interests in real property that are used by the Company (a "Real Property Lease"), (b) all material leases, licenses, contracts, agreements, purchase or sales orders, employee secrecy or confidentiality agreements, undertakings, indentures and written commitments to which the Company is a party or by which any of its assets is bound, including all ongoing agreements, licenses, written commitments or other engagements and other instruments of any kind, including all agreements by any person or entity with the Company with respect to non-competition or non-disclosure that relate to the Company or any of its assets, but excluding Company Plans (as defined in Section 3.15(a)) (collectively, the "Contracts"), (c) any written proposal, quotation or bid made or received by the Company in connection with its business that, if accepted, would lead to a contract for the provision of services by the Company (a "Future Contract") and (d) any note, debenture, bond, equipment trust agreement, letter of credit, loan agreement or other contract or commitment for the borrowing or lending of money or agreement or arrangement for a line of credit or guarantee, pledge or undertaking of the indebtedness of any other person (collectively, "Indebtedness"). To the Company's knowledge, each Real Property Lease or Contract pursuant to which the Company leases real or personal property and each other Contract, Future Contract or Indebtedness, is valid, legally binding and enforceable in accordance with its terms and the Company is not in default under any provision of any such lease, contract, agreement or instrument, except for such defaults that have not had and could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. After obtaining the consents identified on Section 3.4 of the Disclosure Schedule, assuming that each party to each such agreement other than the Company has duly and validly executed such agreement and upon the completion of the transactions contemplated by this Agreement, each such agreement will be valid, legally binding and enforceable by the Surviving Corporation in accordance with its terms, except as such enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally. To the knowledge of the Company, any party from whom the Company leases real property or which is a party to any Contract, Future Contract or Indebtedness, is not, and will not (with due notice or lapse of time or both), be in default under any provision of any such Real Property Lease, Contract, Future Contract or Indebtedness. The Company is not a party to any oral agreements, undertakings or commitments with respect to any of the matters listed in this Section 3.8 except for ordinary non-material business arrangements.

3.9. Absence of Certain Changes or Events

Except as disclosed on Section 3.9 of the Disclosure Schedule, since August 31, 2000, the Company has conducted business in the ordinary and usual course and, without limiting the generality of the foregoing:

(a) There have been no changes, developments, events, conditions or state of affairs which, individually or in the aggregate, have had or could reasonably be expected to have a Company Material Adverse Effect;

(b) Except as contemplated by the transactions described in this Agreement, there has not been any split, combination or reclassification of Company Stock or any issuance, or authorization of the issuance, of any securities in respect of, in lieu of, or in substitution for the capital stock of the Company or any declaration, setting side or payment of any dividend or other distribution (whether in cash, securities, property or otherwise) in respect of the capital stock of the Company;

(c) Except as contemplated by the transactions described in this Agreement, the Company has not purchased, redeemed or otherwise acquired or committed itself to acquire, directly or indirectly, any of the capital stock of the Company;

(d) The Company has not sold, assigned, conveyed or otherwise transferred any Owned Property (as defined in Section 3.20(b));

(e) The Company has not sold, assigned, conveyed or otherwise transferred any properties or assets of the Company, except for sales, assignment, conveyances and other transfers made in the ordinary course of business;

(f) The Company has not mortgaged, pledged or subjected to any Lien any assets of the Company;

(g) The Company has not cancelled, terminated, entered into or modified any Contract, Future Contract or Real Property Lease;

(h) The Company has not waived any right of the Company with respect to the business of the Company, whether or not in the ordinary course of business, where such waiver has had or could reasonably be expected to have a Company Material Adverse Effect;

(i) The Company has not has incurred any liability or loss with respect to any of the assets or operations of the Company, except for liabilities incurred in the ordinary course of business, consistent with past practices, which do not result in a Company Material Adverse Effect;

(j) The Company has not incurred any capital expenditure or executed any lease or other agreement with respect to any assets of the Company or any aspect of the business of the Company, or incurred any liability therefor, requiring any payment or payments in excess of $10,000 individually or $25,000 in the aggregate;

(k) The Company has not received any cancellation, threat of cancellation or notice of cancellation from any supplier, customer or contractor of the Company with respect to the business of the Company, except for cancellations that have not had and could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(l) The Company has not effected any amendment or supplement to, or extension of, any Company Plan;

(m) The Company has not (i) granted to any director or executive officer of, or consultant to, the Company any increase in compensation, except for (A) increases in cash compensation in the ordinary course of business consistent with prior practice, (B) as required under any employment agreements or plans in effect as of August 31, 2000, (ii) agreed to any granting by the Company to any such director, executive officer or consultant of any increase in severance or termination pay, except as was required under any employment, severance or termination agreements or plans in effect as of August 31, 2000, (iii) except as permitted by Section 5.1, after the date of this Agreement, agreed to any entry by the Company into, or any amendment of, any employment, consulting, deferred compensation, indemnification, severance or termination agreement with any such director, executive officer or consultant or (iv) agreed to, or taken any action to, accelerate the vesting of any Company Option or other equity-based compensation;

(n) The Company has not made any change in accounting methods or principles used for financial or regulatory reporting purposes materially affecting the consolidated assets, liabilities or results of operations; and

(o) The Company has not entered into any agreement or arrangement or otherwise agreed to do any of the foregoing.

3.10. Litigation, Judgments, No Default, Etc.

(a) (i) There is no action or proceeding pending or, to the knowledge of the Company, threatened against or affecting the Company, the outcome of which, individually or in the aggregate, could reasonably be expected to result in a Company Material Adverse Effect, (ii) there is no judgment, decree, injunction, rule or order (collectively, "Orders") of any court, arbitrator or Governmental Entity outstanding against the Company, and (iii) to the knowledge of the Company, there are no facts that could reasonably be expected to result in any such action or proceeding which could reasonably be expected to have a Company Material Adverse Effect.

3.11. Compliance Except as disclosed on Section 3.11 of the Disclosure Schedule, the Company is not in default or violation of any term, condition or provision of (a) its articles of incorporation, as amended, or by-laws, as amended (or equivalent

governing instruments), or (b) any Real Property Lease, Contract, Indebtedness or Other Agreements to which it is a party or by which it or any portion of its properties or assets may be bound; except with respect to the foregoing clause (b) such matters that, individually or in the aggregate, have not had and could not reasonably be expected to have a Company Material Adverse Effect.

3.12. Accounts Receivable; Equipment and Assets

(a) Section 3.12(a) of the Disclosure Schedule sets forth a complete list of the accounts receivable of the Company as of August 31, 2000. The accounts receivable of the Company arose out of the ordinary course of business of the Company, have been billed or invoiced in the ordinary course of business in accordance with all applicable laws, regulations and administrative rulings and procedures represent bona fide indebtedness of the applicable debtor of the Company, not subject to defense, set-off or counterclaim and are collectible in full within 120 days of closing, net of the reserves set forth in the books of the Company.

(b) All assets of the Company consisting of equipment, whether reflected in the Company Financial Statements or otherwise, are well maintained and in good operating condition, except for ordinary wear and tear and except for items which have been written down in the Company Financial Statements to a realizable market value or for which adequate reserves have been provided in the Company Financial Statements. The present quantity of all such equipment is sufficient for and not in excess (other than such equipment as has been fully depreciated on the Company Financial Statements) of the Company's requirements for the operation of its business as presently conducted by the Company. Except as set forth on Section 3.12(b) of the Disclosure Schedule, all of such equipment (except for leased equipment for which the lessors have valid security interest) is free and clear of any lien or security interest or other encumbrance.

3.13. Tax Matters "Taxes", as used in this Agreement, means any federal, state, county, local or foreign taxes, charges, fees, levies, or other assessments, including, without limitation, all net income, gross income, sales, use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipt, capital stock, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, alternative minimum, severance or withholding taxes or charges imposed by any Governmental Entity, whether foreign or domestic, and includes any additions to tax, interest and penalties. "Tax Return", as used in this Agreement, means a report, return, statement, declaration or other information required to be supplied with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

(a) Filing of Timely Tax Returns. Except for Tax Returns that are currently subject to an extension that has been properly obtained, all Tax Returns required to be filed by the Company under applicable law have been filed on a timely basis. All such Tax Returns were and are true, complete and correct.

(b) Payment of Taxes. Except as disclosed on Section 3.13(b) of the Disclosure Schedule, the Company has, within the time and in the manner prescribed by law, paid all Taxes that are currently due and payable. No written claim (and no other claim) has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation in that jurisdiction.

(c) Tax Reserves. The Company has established (and until the Closing Date will maintain) on its books and records, including the Company Financial Statements and the Closing Financial Statements (as defined in Section 5.3) (i) reserves adequate to pay all Taxes and all deficiencies in Taxes asserted, proposed or threatened against the Company and (ii) reserves for deferred income taxes.

(d) Tax Liens. There are no Tax liens upon the assets of the Company except liens for Taxes not yet due.

(e) Withholding Taxes. The Company has complied in all respects with the provisions of the Code relating to the withholding of Taxes, including, without limitation, the withholding and reporting requirements under Sections 1441 through 1464, 3401 through 3406, and 6041 through 6049 of the Code, as well as any similar provisions under any other laws, and have, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper governmental authorities all amounts required.

(f) Waivers of Statute of Limitations. The Company has not executed any outstanding waivers or comparable consents regarding the application of the statute of limitations with respect to any Taxes or Tax Returns.

(g) Expiration of Statute of Limitations; Deficiencies. Section 3.13(g) of the Disclosure Schedule contains a list of all Taxes and Tax Returns relating to taxable periods with respect to which the statute of limitations has not expired or been closed. No deficiency for any Taxes has been proposed, asserted, assessed or, to the Company's knowledge, threatened against the Company that has not be resolved and paid in full or previously disclosed by the Company to the Parent. Section 3.13(g) of the Disclosure Schedule lists all open years with respect to Taxes and Tax Returns.

(h) Audit, Administrative and Court Proceedings. No audits or other administrative proceedings or court proceedings are presently pending with regard to any Taxes or Tax Returns of the Company. Neither the Company nor any Company Stockholder has knowledge of any threatened action, audit or administrative or court proceeding with respect to any such Taxes or Tax Returns. Further, to the best of the Company's and the Company Stockholders' knowledge, no state of facts exists or has existed which would constitute grounds for the assessment of any liability for Taxes with respect to the periods which have not been audited by the Internal Revenue Service (the "IRS") or other taxing authority.

(i) Tax Rulings. The Company has not received a Tax Ruling (as defined below) or entered into a Closing Agreement (as defined below) with any taxing authority that could have a Company Material Adverse Effect. "Tax Ruling", as used in this Agreement, shall mean a written ruling of a taxing authority relating to Taxes. "Closing Agreement", as used in this Agreement, shall mean a written and legally binding agreement with a taxing authority relating to Taxes.

(j) Availability of Tax Returns. To the extent not previously made available to the Parent, as soon as practicable after the date hereof, the Company will make available to the Parent complete and accurate copies of such of the following materials as the Parent may reasonably request: (i) Tax Returns filed by the Company since the Company's incorporation, (ii) audit reports received from any taxing authority relating to any Tax Return filed by the Company and (iii) Closing Agreements entered into by the Company with any taxing authority.

(k) Tax Sharing Agreements. The Company is not a party to any Tax allocation or sharing or similar agreement or arrangement with any person.

(l) Affiliated Groups; Liability for Others. The Company has never been a member of an affiliated group of corporations filing consolidated, combined or unitary Tax Returns other than an affiliated group in which the Company was the common parent. The Company has no liability for Taxes of any other person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or otherwise.

(m) Section 341(f). The Company has not filed a consent pursuant to Section 341(f) of the Code and has not agreed to have Section 341(f)(2) of the Code apply to any disposition of a subsection (f) asset (as that term is defined in Section 341(f)(4) of the Code) owned by the Company.

(n) Section 168. No property of the Company is property that the Company or any party to this transaction is or will be required to treat as being owned by another person pursuant to the provisions of Section 168(f)(8) of the Code (as in effect prior to its amendment by the Tax Reform Act of 1986) or is "tax-exempt use property" within the meaning of Section 168 of the Code.

(o) Section 481 Adjustments. The Company is not required to include in income any adjustment pursuant to Section 481(a) of the Code by reason of a voluntary change in accounting method initiated by the Company, and the IRS has not proposed any such adjustment or change in accounting method.

(p) Section 453. The Company has not disposed of any property in a transaction being accounted for under the installment method pursuant to Section 453 of the Code.

(q) Section 280G. The Company is not a party to any agreement, contract, or arrangement that could result, either directly or indirectly, on account of the transactions contemplated hereunder, separately or in the aggregate, in the

payment of any "excess parachute payments" within the meaning of Section 280G of the Code.

(r) Real Property Holding Corporation. The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii).

3.14. Intentionally omitted

3.15. Employee Benefit Plans

(a) Section 3.15(a) of the Disclosure Schedule sets forth a true and correct list of each deferred compensation plan, stock option plan, incentive compensation plan, equity compensation plan, "welfare plan" (within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")); "pension plan" (within the meaning of Section 3(2) of ERISA); each employment, termination or severance agreement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to or required to be contributed to by the Company or by any trade or business, whether or not incorporated, which together with the Company would be deemed a "single employer" within the meaning of Section 4001 of ERISA (an "ERISA Affiliate") for the benefit of any employee or former employee of the Company. Such plans are referred to collectively herein as the "Company Plans".

(b) The Company has heretofore made available to Parent with respect to each of the Company Plans true and correct copies of each of the following documents, if applicable: (i) the Company Plan document; (ii) the actuarial report for such Company Plan for each of the last two years, (iii) the most recent determination letter from the IRS for such Company Plan, (iv) the most recent summary plan description and related summaries of material modifications and (v) the Form 5500 tax forms for each of the last two years.

(c) Each Company Plan is in material compliance with its terms and the applicable provisions of the Code and ERISA; each Company Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a determination letter from the IRS that the Company Plan is qualified and the Company knows of no condition or event that could reasonably be expected to adversely affect such status; neither the Company nor any ERISA Affiliate has or at any time in the past has had (i) any liability, contingent or otherwise, under Title IV of ERISA or Section 412 of the Code, (ii) an obligation to contribute to any "multiemployer plan" (as defined in Section 3(37) of ERISA); and there are no pending, or to the knowledge of the Company, threatened or anticipated disputes, law suits, investigations, audits, complaints or claims (other than routine claims for benefits) by, on behalf of or against any of the Company Plans or any trusts related thereto.

(d) The Company has no current or projected liability in respect of post-employment or post-retirement health or medical or life insurance benefits for retired, former or current employees of the Company, except as required to avoid excise tax under Section 4980B of the Code and to comply with Section 601 of ERISA.

(e) The execution of, and performance of the transactions contemplated in this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Company Plan, trust or loan that will or may result in any material payment (whether of severance pay or otherwise), acceleration, forgiveness of indebtedness, vesting, distribution, increase in benefits or obligation to fund benefits with respect to any current or former employee, executive or director of the Company.

(f) With respect to each Company Plan, there has not occurred, and no person or entity is contractually bound to enter into, any nonexempt "prohibited transaction" within the meaning of Section 4975 of the Code or Section 406 of ERISA, nor any transaction that would result in a civil penalty being imposed under Section 409 or 502(i) of ERISA, except for any such transactions which, individually or in the aggregate, could not reasonably be expected to have a Company Material Adverse Effect.

(g) The Company is in compliance with all applicable federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, wages, hours and withholding.

3.16. Finders and Investment Bankers

Except as set forth on Section 3.16 of the Disclosure Schedule, neither the Company nor any of its employees, officers or directors has employed any investment banker, financial advisor, broker or finder in connection with the transactions contemplated by this Agreement, or incurred any liability for any investment banking, business consultancy, financial advisory, brokerage or finders' fees or commissions in connection with the transactions contemplated hereby.

3.17. Collective Bargaining Agreements; Employment Matters

(a) The Company is not a party to or subject to any collective bargaining agreement with any labor union. There are no labor controversies pending or, to the knowledge of the Company, threatened against the Company.

(b) There are no pending collective bargaining negotiations relating to the employees of the Company. There are no agreements with, or pending petitions for recognition of, a labor union or association as the exclusive bargaining agent for any or all of the employees of the Company, no such petitions have been pending within the past five years and there has not been any general solicitation of representation cards by any union seeking to represent the employees of the Company as their exclusive bargaining agent at any time within the past five years. There is no unfair labor practice, charge or complaint or other proceeding pending or, to the knowledge of the Company, threatened against the Company before the National Labor Relations Board or any other

Governmental Entity. There is no labor strike, slowdown or stoppage pending or threatened, against or affecting the Company, nor has there been any such activity within the past two years.

(c) There are no pending claims by any current or former personnel against the Company,

(d) There are no pending claims against the Company arising out of any statute, ordinance or regulation relating to employment practices or occupational or safety and health standards.

3.18. Insurance

The Company carries insurance with insurers that are, to the knowledge of the Company, solvent, in amount and types of coverage which, to the knowledge of the Company', are customary in the industry and insure against risks and losses which are usually insured against by persons holding or operating similar properties and similar businesses. No material claims have been asserted under any of such insurance policies or relating to the properties, assets or operations of the Company. Section 3.18 of the Disclosure Schedule sets forth a complete and accurate list of each insurance policy and the corresponding insurance carrier of the Company.

3.19. No Conflict of Interest

No present or former officer, director, affiliate or associate of the Company has or claims to have (a) any interest in the property, real or personal, tangible or intangible, including, without limitation, licenses, inventions, technology, processes, designs, computer programs, know-how and formulae used in or pertaining to the business of the Company, or (b) any contract, commitment, arrangement or understanding, including, without limitation, loan arrangement, with the Company. No present officer or director of the Company, and no affiliate thereof have any ownership or stock interest in any other enterprise, firm, corporation, trust or any other entity which is engaged in any line or lines of business which are the same as, or similar to, or competitive with, the line or lines of business of the Company. For purposes of this representation, ownership of not more than one percent of the voting stock of any publicly held company whose stock is listed on any recognized securities exchange or traded over the counter shall be disregarded.

3.20. Intellectual Property

(a) For purposes of this Section 3.20, "Intellectual Property" shall mean, collectively: (x) all U.S. and foreign registered, unregistered and pending (i) trade names, trade dress, trademarks, service marks, assumed names, business names and logos, internet domain names and all registrations and applications therefor, together with all goodwill symbolized thereby, web sites and web pages and related items (and all intellectual property and proprietary rights incorporated therein), (ii) computer software, data files, source and object codes, user interfaces, manuals and other specifications and documentation and all know-how relating thereto (collectively, the "Computer

Software"), (iii) copyrights (including, without limitation, those in Computer Software, and all registrations and applications therefor), (iv) utility and design patents, registered designs and invention disclosures (including, without limitation, those relating to Computer Software), and all grants, registrations and applications therefor (collectively, the "Patents"), (v) trade secrets, inventions, processes, formulae, know-how, concepts, ideas, research and development, designs, business plans, strategies, marketing and other information and customer lists (collectively, the "Trade Secrets"), and (vi) other intellectual property, including, without limitation, adequate research and development facilities; and (y) all Contracts relating to any of the items set forth in clause (x) above (collectively, the "IP Contracts").

(b) Section 3.20(b) of the Disclosure Schedule sets forth a complete and accurate list of (i) all material Intellectual Property in which the Company has an ownership interest, indicating the owner thereof, and all applications, registrations and grants with respect thereto (collectively, the "Owned Property"), (ii) all material Intellectual Property (other than the Owned Property) which is used in or relates to the business of the Company, indicating the owner or licensor thereof, and (iii) all IP Contracts with respect to the Intellectual Property referred to in clauses (i) and (ii) above. The Intellectual Property included in clauses (i) and (ii) above is collectively referred to herein as the "Company Property".

(c) The Company is the sole and exclusive owner of the Owned Property, and is listed in the records of the appropriate U.S. and/or foreign governmental agencies as the sole and exclusive owner of record for each registration, grant and application listed in Section 3.20(b) of the Disclosure Schedule.

(d) No act has been done or omitted to be done by the Company, or, to the knowledge of the Company, any licensee thereof, which has had or could have the effect of impairing or dedicating to the public, or entitling any U.S. or foreign Governmental Entity or any other person to cancel, forfeit, modify or consider abandoned, any Company Property, or give any person any rights with respect thereto (other than pursuant to an IP Contract listed on Section 3.20(b) of the Disclosure Schedule), and, to the Company's knowledge, all of the Company's rights in the Company Property are valid, enforceable and free of defects, except for such defects that could not reasonably be expected to result in a Material Adverse Effect and except as such enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally. The Company has no knowledge of any facts or claims which cause or would cause any Company Property to be invalid or unenforceable in any material respect, and the Company has not received any notice that any person may bring such a claim.

(e) The Company owns or otherwise has the valid right to use through an IP Contract listed on Section 3.20(b) of the Disclosure Schedule any and all Intellectual Property that is used in or is necessary or advisable for the conduct of the Company's business as currently conducted and as contemplated to be conducted, free and clear of any lien, encumbrance, royalty or other payment obligations (except for

royalties payable in respect of off-the-shelf Computer Software at standard commercial rates) and otherwise on commercially reasonable terms.

(f) Except for such conflicts, violations or infringements as could not reasonably be expected to result in a Company Material Adverse Effect, neither the Company nor its business as currently conducted or as contemplated to be conducted, is in conflict with or in violation or infringement of, or has violated or infringed, nor has the Company received any notice of any conflict with or violation or infringement of, nor are proceedings or claims pending, nor have any such proceedings or claims been instituted or asserted in writing against the Company, nor, to the Company's knowledge, are any proceedings threatened, alleging any violation, nor, to the Company's knowledge, is there any valid basis for any such proceeding or claim, of any rights or asserted rights of any other person with respect to any Intellectual Property of such other person.

(g) No proceedings or claims in which the Company alleges that any person is infringing upon, or otherwise violating, any Company Property are pending, and none have been served by, instituted or asserted by the Company, nor are any proceedings threatened alleging any such violation or infringement, nor does the Company know of any valid basis for any such proceeding or claim.

(h) To the Company's knowledge, the Company has not, prior to the date hereof, divulged, furnished to or made accessible to any person, any Trade Secrets included in the Company Property without prior thereto having obtained an enforceable agreement of confidentiality from such person, and all such confidentiality agreements are listed on Section 3.20(h) of the Disclosure Schedule. Except as set forth on Section 3.20(h) of the Disclosure Schedule, all key personnel employed by the Company have signed agreements of confidentiality which are, to the best of the Company's knowledge, enforceable.

(i) Except as set forth on Section 3.20(i) of the Disclosure Schedule, the Company has obtained from all individuals who participated in any respect in the invention or authorship of any material Owned Property (as employees of the Company, as consultants, as employees of consultants or otherwise) effective waivers of any and all ownership rights of such individuals in such Owned Property, and assignments to the Company of all rights with respect thereto, other than from such individuals whose copyrightable works the Company hereby represent to be "works made for hire" within the meaning of Section 101 of the Copyright Act of 1976. To the Company's knowledge (after due inquiry or each such person), no officer or employee of the Company is subject to any agreement with any other person or entity which requires such officer or employee to assign any interest in inventions or other intellectual property or keep confidential any trade secrets, proprietary data, customer lists or other business information or which restricts such officer or employee from engaging in competitive activities or solicitation of customers.

(j) To the Company's knowledge, the Company has taken all commercially reasonable efforts to safeguard and maintain its proprietary rights in the Owned Property.

3.21. Compliance with Laws

To the Company's knowledge, the businesses of the Company has been conducted in all respects in accordance with all Legal Requirements applicable to the Company (excluding ERISA, which is covered by Section 3.15 hereof), except to the extent such failures have not had and could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has not received any written notice of alleged material violations of any of the foregoing, and there are no presently existing circumstances which would result or be likely to result in material violations of any of the foregoing, nor are there any pending or, to the best knowledge of the Company, threatened hearings or investigations with respect to alleged material violations of any of the foregoing.

3.22. Licenses and Permits

To the Company's knowledge, the Company has obtained all licenses, permits, consents, approvals, orders, certificates, authorizations, declarations and filings required by applicable law for the conduct of the businesses and operations of the Company as now conducted or as planned to be conducted (collectively, the "Required Licenses"). To the Company's knowledge, the Company is in material compliance with all Required Licenses, except to the extent the failure to be in compliance has not had and could not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no proceedings pending or, to the Company's knowledge, threatened which may result in the revocation, cancellation or suspension, or any materially adverse modification, of any such Required License.

3.23. Copies of Documents

The Company has previously delivered to Parent true and complete copies of (or, in the case of any oral agreements or arrangements, true, correct and complete written summaries thereof) all of the agreements, arrangements or other documents in respect of items identified on any schedule to this Agreement which is prepared by or for the Company, as well as:

(a) all Required Licenses; and

(b) all written results of any examinations of the Company or its business by any Governmental Entity in the past five years.

All books of account, financial and accounting records and other data of the Company relating to the Company or its business, including the Company Financial Statements, customers' and suppliers' lists, all payroll, personnel and other employee records and any minute books, have been maintained in all material respects in accordance with good business practices and completely and accurately reflect the business of the Company, its assets and the results of its operations, as applicable, as of the dates or for the periods represented thereby.

3.24. No Existing Discussions

As of the date hereof, the Company is not engaged, directly or indirectly, in any discussions or negotiations with any other party with respect to a Takeover Proposal (as defined in Section 5.5(b)).

3.25. Year 2000

All internal computer systems that are material to the business, finances or operations of the Company ("Material Systems") are (i) able to receive, record, store, process, calculate, manipulate and output dates from and after January 1, 2000, time periods that include January 1, 2000 and information that is dependent on or relates to such dates or time periods, in the same manner and with the same accuracy, functionality, data integrity and performance as when dates or time periods prior to January 1, 2000 are involved and (ii) able to store and output date information in a manner that is unambiguous as to century ("Year 2000 Compliant").

3.26. Disclosure

This Agreement and the schedules hereto do not and will not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements herein and therein not misleading in light of the circumstances in which they were made.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as disclosed in writing in the Disclosure Schedules being delivered at or prior to the execution of this Agreement, which Disclosure Schedules shall identify the specific sections or subsections in this Agreement to which each such disclosure relates, Parent and Merger Sub hereby represent and warrant to the Company as follows:

4.1. Organization

Parent and Merger Sub are corporations duly incorporated, validly existing and in good standing under the laws of their jurisdiction of incorporation and have all requisite power and authority to own, lease and operate their properties and to carry on their businesses as now being conducted. Parent is duly licensed or qualified to do business as a foreign corporation and is in good standing under the laws of any other state of the United States in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except where the failure to be so qualified or to be in good standing would not have a material adverse effect on the business, results of operations or financial condition of Parent and its Subsidiaries taken as a whole (a "Parent Material Adverse Effect"). Parent is not aware of any facts or circumstances with respect to the existence, good standing, power, authority or qualification of any subsidiary of Parent that would be reasonably likely to give rise to a Parent Material Adverse Effect. Merger Sub is a newly-formed, wholly-owned subsidiary of Parent and, except for activities incident to the acquisition of the

Company, Merger Sub has not engaged in any business activities of any type or kind whatsoever.

4.2. Capitalization

(a) The authorized capital stock of Parent consists of 90,000,000 shares of Parent Common Stock and 1,000,000 shares of preferred stock, par value $.01 per share (the "Parent Preferred Stock"). As of October 27, 2000, there were approximately 24,835,194 shares of Parent Common Stock and no shares of Parent Preferred Stock issued and outstanding. As of September 30, 2000 options to acquire 4,099,201 shares of Parent Common Stock were outstanding. Except as set forth on Section 4.2(a) of the Disclosure Schedule, as of the date hereof Parent has no outstanding bonds, debentures, warrants, stock appreciation rights, notes or other obligations whereby the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter. All such issued and outstanding shares of Parent Common Stock are duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights. Except as contemplated by this Agreement, as of the date hereof, there are no existing options, warrants, calls subscriptions, convertible securities, or other rights, agreements or commitments, other than pursuant to the Parent Option Plans, which obligate Parent or any of its Subsidiaries to issue, transfer or sell any shares of capital stock of Parent or of any of its Subsidiaries.

(b) The authorized capital stock of Merger Sub consists of 100 shares of common stock, par value $.01 per share ("Merger Sub Common Stock"), all of which shares are issued and outstanding and owned by Parent. Notwithstanding any provisions to the contrary, Parent may, in its sole discretion, increase or decrease the number of shares of authorized Merger Sub Common Stock and the number of shares of Merger Sub Common Stock issued and outstanding owned by Parent. Merger Sub has not engaged in any activities other than in connection with the transactions contemplated by this Agreement.

(c) The shares of Parent Common Stock to be issued as a portion of the Merger Consideration have been duly authorized by all necessary corporate action or Parent and, upon issuance, will be validly issued, fully paid and nonasessable.

4.3. Authorization; Binding Agreement

Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement and all agreements and documents contemplated hereby. The consummation by Parent and Merger Sub of the transactions contemplated hereby has been approved by the board of directors of Parent and duly and validly authorized by all necessary corporate action. This Agreement constitutes, and all agreements and documents contemplated hereby (when executed and delivered pursuant hereto for value received) will constitute legal, valid and binding obligations of Parent and Merger Sub, as the case may be, enforceable against Parent and Merger Sub in accordance with their respective terms, except as such enforcement may be limited by general principles of equity whether applied in a court of law or a court of equity and by

bankruptcy, insolvency and similar laws affecting creditors' rights and remedies generally.

4.4. Noncontravention

Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (a) conflict with or result in any breach of any provision of the certificate of incorporation, articles of incorporation or by-laws or equivalent governing instruments of Parent or Merger Sub, (b) require any consent, approval or notice under or conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Contracts and Other Agreements to which the Parent is a party or by which any of them or any portion of their properties or assets may be bound or (c) violate any Legal Requirements applicable to the Parent or any portion of Parent's properties or assets, except with respect to clauses (b) and (c) such matters that, individually or in the aggregate, have not had and could not reasonably be expected to have a Parent Material Adverse Effect.

4.5. SEC Filings; Financial Statements

(a) As of their respective dates, each registration statement, report, proxy statement or information statement (as defined in Regulation 14C under the Securities Exchange Act of 1934, as amended (the "Exchange Act") of Parent prepared by it since its initial public offering (including, without limitation, the Registration Statement on Form S-1 with respect to its initial offering), in the form (including exhibits and any amendments thereto) filed with the U.S. Securities and Exchange Commission (the "SEC") (collectively, the "Parent Reports") (i) complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act, and the rules and regulations thereunder and (ii) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading, except that information as of a later date shall be deemed to modify information as of an earlier date. Each of the consolidated balance sheets included in or incorporated by reference into the Parent Reports (including the related notes and schedules) fairly presents the consolidated financial position of Parent as of its date, and each of the consolidated statements of income, retained earnings and cash flows included in or incorporated by reference into the Parent Reports (including any related notes and schedules) fairly presents the results of operations, retained earnings or cash flows, as the case may be, of Parent for the periods set forth therein (subject, in the case of unaudited statements, to normal year-end audit adjustments), in each case in accordance with GAAP consistently applied throughout the periods indicated, except as may be noted therein. Except as disclosed in writing to the Company or otherwise publicly disclosed by Parent, since the date of the most recent Parent Report, there has not been a Parent Material Adverse Effect.

(b) Parent has no liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) except (i) liabilities or obligations reflected on, or reserved against in, a balance sheet of Parent or in the notes thereto, prepared in accordance with generally accepted accounting principles consistently applied and included in the Parent Reports and (ii) liabilities or obligations incurred in the ordinary course of business which are not material in amounts.

4.6. Governmental Approvals

No consent, approval or authorization of, or declaration or filing with, any Governmental Entity on the part of Parent of any of its Subsidiaries that has not been obtained or made is required in connection with the execution or delivery by Parent or Merger Sub of this Agreement or the consummation by Parent or Merger Sub of the transaction contemplated hereby, other than (a) the filing of the Articles of Merger with the Secretary of State of the State of Georgia, (b) filings and other applicable requirements under the Exchange Act, (c) such filings and approvals as are required to be made or obtained under the securities or "blue sky" laws of various states in connection with the issuance of Parent Common Stock contemplated under this Agreement, and (d) consents, approvals, authorizations, declarations or filings that, if not obtained or made, would not, individually or in the aggregate, results in a Material Adverse Effect on Parent or prevent Parent or Merger Sub from consummating the transactions contemplated hereby.

ARTICLE V

COVENANTS

5.1. Conduct of Business of the Company

Except as otherwise contemplated by this Agreement, from the date of this Agreement to the earlier of the termination of this Agreement or the Effective Time, the Company shall, and the Company Stockholders shall cause the Company to, conduct its business in the usual, regular and ordinary course in substantially the same manner as previously conducted, and use all commercially reasonable efforts to preserve intact its business organization, keep available the services of its current officers and employees and keep its relationships with customers, suppliers, licensors, licensees and employees and others with which it has business relationships. Without limiting the generality of the foregoing, and except as otherwise expressly provided in this Agreement or as set forth on Section 5.1 of the Disclosure Schedule, from the date of this Agreement to the Effective Time, the Company shall not do any of the following without the prior written consent of the Parent:

(a) (i) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock, (ii) split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock or (iii) purchase, redeem or

otherwise acquire any shares of capital stock of the Company or any other securities thereof or any rights, warrants or options to acquire any such shares or other securities;

(b) issue, sell, grant, pledge, deliver, otherwise encumber or subject to any Lien (i) any shares of its capital stock, (ii) any securities convertible into or exchangeable for, or any options, warrants or rights to acquire, any such shares, voting securities or convertible or exchangeable securities, or (iii) any "phantom" stock, "phantom" stock rights, stock appreciation rights or stock-based performance units;

(c) amend its articles of incorporation or by-laws (or equivalent governing instruments), except as required by the terms of this Agreement;

(d) acquire or agree to acquire (i) by merging or consolidating with, or by purchasing assets of, or by any other manner, any equity interest in or portion of any business of any corporation, partnership, company, limited liability company, joint venture, association or other business organization or division thereof or (ii) any assets that, individually, are in excess of $10,000 or, in the aggregate, are in excess of $25,000;

(e) enter into any joint venture agreement or strategic alliance or similar agreement or arrangement with any person or entity;

(f) sell, lease (as lessor), license, mortgage or otherwise encumber or subject to any Lien or otherwise dispose of any material properties or material assets;

(g) sell, lease, assign, transfer, convey, deliver or otherwise dispose of, or divest, or purchase or acquire, or enter into any material agreement with any person with respect to, any Owned Property, except in the ordinary course of business consistent with prior practice;

(h) (i) grant to any officer or director of the Company any increase in compensation, except to the extent required under employment agreements in effect as of the date hereof and set forth on Section 3.15 of the Disclosure Schedule, (ii) grant to any employee, officer or director of the Company any increase in severance or termination pay, except to the extent required under any agreement or plan in effect as of the date hereof and set forth on Section 3.14(a) of the Disclosure Schedule, (iii) enter into any employment, consulting, deferred compensation, indemnification, severance or termination agreement with any such employee, officer or director, (iv) establish, adopt, enter into or amend in any material respect any collective bargaining agreement or Company Plan, (v) with respect to or under any Company Plan, take any action to accelerate any rights or benefits, or make any material determinations not in the ordinary course of business consistent with prior practice or (vi) take any action to accelerate, or, where the Company has reserved the unilateral discretion to prevent such acceleration, fail to take any action to prevent the acceleration of, the vesting of any Company Options or other equity-based compensation;

(i) make any change in accounting methods, principles or practices materially affecting the reported consolidated assets, liabilities or results of

operations of the Company, except insofar as may be required by a change in GAAP, except as disclosed on Section 5.1(i) of the Disclosure Schedule;

(j) (i) incur any indebtedness for borrowed money, increase any indebtedness for borrowed money, guarantee any such indebtedness of another person, issue or sell any debt securities or warrants or other rights to acquire any debt securities of the Company, guarantee any debt securities of another person, enter into any "keep well" or other agreement to maintain any financial statement condition of another person or enter into any arrangement having the economic effect of any of the foregoing, or (ii) make any loans, advances, capital contributions to, or investments in, any other person, other than to or in the Company;

(k) (i) pay, discharge, settle or satisfy any claims, liabilities, obligations or litigation (absolute, accrued, asserted or unasserted, contingent or otherwise) in excess of $10,000 individually or $25,000 in the aggregate, other than (x) the payment, discharge, settlement or satisfaction, in the ordinary course of business consistent with prior practice or in accordance with their terms, of liabilities reflected or reserved against in, or contemplated by, the Company's financial statements (or the notes thereto) dated as of the last day of the month ending prior to the date hereof, which have previously been provided to Parent, and (y) with respect to Taxes, (ii) cancel any indebtedness or waive any claims or rights of substantial value or (iii) waive the benefits of, or agree to modify in any manner, any confidentiality, standstill or similar agreement to which the Company is a party;

(l) engage in any transaction or enter into any agreement or arrangement with any shareholder or affiliate of the Company;

(m) enter into any other agreements, commitments or contracts that are material to the Company taken as a whole, other than in the ordinary course of business consistent with past practice, except as disclosed on Section 5.1(m) of the Disclosure Schedule;

(n) except as contemplated by this Agreement, take or cause to be taken any action described in clauses (b) through (g) of Section 3.9 above;

(o) take any action that is intended or may reasonably be expected to result in any of its representations and warranties set forth in this Agreement being or becoming untrue, or in any of the conditions to the Merger set forth in Article VI not being satisfied;

(p) make or rescind any material election with respect to Taxes, make a request for a Tax Ruling or enter into a Closing Agreement with respect to Taxes, settle or compromise any material Tax matter, or, with respect to any material Tax matter, change any method of accounting or reporting;

(q) establish, adopt, enter into, make any new rights or awards under, amend or otherwise modify any Company Plan, or increase the salary, wage, bonus or other compensation of any employee; or

(r) agree, commit or arrange to do any of the foregoing.

5.2. Conduct of Business of Parent and Merger Sub

Except as otherwise contemplated by this Agreement, from the date of this Agreement to the Effective Time, Parent shall not, and shall not permit any of its Subsidiaries to:

(a) take any action that is intended or may reasonably be expected to result in any of its representations and warranties set forth in this Agreement being or becoming untrue, or in any of the conditions to the Merger set forth in Article VI not being satisfied;

(b) take any action or enter into any agreement that could reasonably be expected to jeopardize or materially delay the receipt of any Requisite Regulatory Approval (as defined in Section 6.1(b));

(c) solely in the case of Parent, declare or pay any dividends on or make any other distributions in respect of any of its capital stock;

(d) change its methods of accounting in effect as of March 31, 2000, except in accordance with changes in GAAP or SAP as are concurred to by Parent's independent auditors; or

(e) agree, commit or arrange to do any of the foregoing.

5.3. Closing Financial Statements The Company Stockholders and the Company shall prepare unaudited balance sheets for the Company for the period ending on the last day of the calendar month prior to Closing and financial statements for the Company for the period between December 31, 1999 and the last day of the month preceding the month in which the Closing occurs (such date, the "Closing Balance Sheet Date" and such financial statements, the "Closing Financial Statements"), which financial statements shall be set forth on Section 5.3 of the Disclosure Schedule and shall identify the revenue and EBITDA for such period; provided, that if the Closing occurs on or before the fifteenth day of a month, the Closing Balance Sheet Date shall be the last day of the month that is two months prior to the month in which the Closing occurs and the Closing Financial Statements shall be for the period between December 31, 1999 and the adjusted Closing Balance Sheet Date. The Closing Financial Statements (i) shall have been prepared in accordance with the books and records of the Company, and shall be true, accurate, and complete, (ii) fairly present the financial condition and results of operations of the Company as of the date thereof and for the period covered therein and (iii) contain and reflect all necessary adjustments and accruals for a fair presentation of the financial condition and the results of operations of the Company as of the date thereof and for the period covered therein (subject in the case of unaudited statements, to normal year-end audit adjustments which would not be material in amount or effect).

5.4. Access and Information

The Company shall afford to Parent and its authorized representatives (including, but not limited to, its accountants, financial advisors and legal counsel) reasonable access during normal business hours to all of their properties, personnel, books and records and the Company shall furnish promptly to the Parent all information within their control or possession concerning their business, properties and personnel as Parent may reasonably request. All such information shall be kept confidential and shall not be disclosed or used by the recipient, other than for the purposes of the transaction contemplated by this agreement, without the prior written consent of the disclosing party.

5.5. No Solicitation.

(a) For five (5) years from the date hereof, the Company shall not authorize or permit any Company Stockholder or any officer, director, employee, representative or agent of the Company (collectively, "Representatives") to directly or indirectly solicit, initiate or encourage any inquiries relating to or that may reasonably be expected to lead to, or make any proposal which constitutes, a Takeover Proposal (as defined below), or recommend or endorse any Takeover Proposal, or participate in any discussions or negotiations, or provide third parties with any nonpublic information, relating to any such inquiry or proposal or otherwise facilitate any effort or attempt to make or implement a Takeover Proposal. The Company shall (i) advise Parent orally (within one day) and in writing (as promptly as practicable) of the receipt of any such inquiry or proposal by it, by any Company Subsidiary or by any of the Representatives and (ii) inform Parent orally and in writing, as promptly as practicable after the receipt thereof, of the material terms and conditions of any such inquiries or proposals (including the identity of the party making such inquiry or proposal) and shall keep Parent informed of the status thereof. The Company will immediately cease and cause to be terminated any activities, discussions or negotiations conducted prior to the date of this Agreement with any parties other than Parent with respect to any of the foregoing and require the return (or if permitted by the terms of the applicable confidentiality agreement, the certified destruction) of all confidential information previously provided to such parties.

(b) For purposes of this Agreement, "Takeover Proposal" shall mean any purchase, tender or exchange offer, proposal for a merger, consolidation or other business combination involving the Company or any proposal or offer to acquire in any manner a substantial equity interest in, or a substantial portion of the assets of the Company, other than the transactions contemplated or permitted by this Agreement.

5.6. Reasonable Efforts

(a) Upon the terms and subject to the conditions of this Agreement, each of the parties hereto shall cooperate and shall use all reasonable best efforts to take, or cause to be taken, all actions, and to do or cause to be done, and to assist and cooperate with the other party in doing, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement as promptly as practicable, including, but not limited to, (i) preparing and filing all forms, registrations and notices required to be filed to consummate the transactions contemplated by this Agreement, including filings

and submissions pursuant to the Exchange Act and the Corporation Act, (ii) taking such commercially reasonable actions as are necessary to obtain any requisite approvals, consents, orders, exemptions or waivers by any third party or Governmental Entity, (iii) using all reasonable best efforts to satisfy or cause the satisfaction of all conditions to Closing and (iv) using all reasonable best efforts to cause the Company Stockholders to be released from any personal guaranties that are in effect with respect to obligations of the Company, such actions to include Parent's agreeing to be substituted as guarantor of those obligations of the Company that are, prior to the Effective Time, guaranteed by any of the Company Stockholders. Each party shall promptly consult with the other with respect to, provide any necessary information with respect to and provide the other (or its counsel) copies of, all filings made by such party with any Governmental Entity or any other information supplied by such party to a Governmental Entity in connection with this Agreement and the transactions contemplated by this Agreement.

(b) Each party hereto shall promptly inform the other of any communication from any Governmental Entity regarding any of the transactions contemplated by this Agreement. If any party or affiliate thereof receives a request for additional information or documentary material from any such Governmental Entity with respect to the transactions contemplated by this Agreement, then such party will endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request.

5.7. Changes in Representation and Warranties; Notification of Certain Matters

Between the date of this Agreement and the Effective Time, the Company and the Company Stockholders shall give notice in writing to Parent, and Parent and Merger Sub shall give notice in writing to the Company, promptly upon becoming aware of (i) any information known to such party that indicates in the reasonable judgment of such party that any representation or warranty of such party contained herein will not be true and correct in a manner that results or would likely result in a failure of the condition specified in Section 6.2(a), in the case of a notice from the Company and the Company Stockholders, or Section 6.3(a), in the case of a notice from Parent and Merger Sub and (b) the occurrence of any event known to such party which in the reasonable judgment of such party will result, or has a reasonable prospect of resulting in, the failure by such party to satisfy a condition specified in Article VI; provided, however, that the delivery of any notice pursuant to this Section 5.7 shall not limit or otherwise affect the remedies available hereunder to the party receiving such notice.

5.8. Takeover Statutes

If any takeover statute is or may become applicable to the transactions contemplated hereby, the Board of Directors of the Company will grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and

otherwise act to eliminate the effects of any takeover statute on any of the transactions contemplated hereby.

5.9. Non-Disclosure; Public Announcements

(a) Neither the Company nor the Company Stockholders will at any time from and after the date of this Agreement divulge, furnish or make accessible to anyone any information or documentation regarding the transactions contemplated by this Agreement, any confidential or secret aspects of the Company or the Surviving Corporation or any financial or other information about the Company or the Surviving Corporation except as required by law and except for the press release contemplated by Section 5.9(b) hereof. Any information which at or prior to the time of disclosure was generally available to the public through no breach of this covenant shall not be deemed confidential information for purposes hereof, and the undertakings in this covenant with respect to confidential information shall not apply thereto.

(b) The initial press release or releases with respect to the transactions contemplated by this Agreement shall be in the form satisfactory to Parent after consulting with the Company. For as long as this Agreement is in effect, the Company shall not, and shall cause its Affiliates not to, issue or cause the publication of any press release or any other announcement with respect to the Merger, this Agreement or the other transactions contemplated hereby without the consent of Parent, except where such release or announcement is required by applicable law, in which case the Company will consult with Parent and issue a release or announcement reasonably satisfactory in form and content to Parent.

5.10. Lock-up.

Each of the Company Stockholders hereby covenants and agrees with Parent that during the period between the Closing Date and ending 365 days following the Closing Date they shall not sell, transfer, assign or otherwise dispose of the Parent Common Stock which the Company Stockholders shall have received as Merger Consideration without the prior written consent of the Parent, which consent the Parent shall be entitled to withhold in its full discretion.

5.11. Taxes.

(a) The Company Stockholders shall be liable for and shall pay any and all Taxes of the Company attributable to any taxable period ending on or prior to the Closing Date and the allocable portion of any and all Taxes of the Company attributable to any partial period (through and including the Closing Date) of any taxable period beginning before and ending after the Closing Date to the extent that such Taxes are not reflected in the reserve for Taxes shown in the Closing Financial Statements. The Taxes attributable to any partial period shall be computed as if the taxable period ended on the Closing Date, except that any Taxes imposed on the ownership of real, personal or intangible property shall be allocated, pro rata on a daily basis, between the partial period ending on the Closing Date and the balance of the taxable period

5.12. Noncompetition. Commencing on the Closing Date and ending on the second anniversary thereof, neither Richard Warner nor Lynn LeBreton shall compete, directly or indirectly, with Parent or any of its affiliates in any line of business in the counties of Fulton, Dekalb, Gwinnett and Cobb in the State of Georgia that was a part of the business of the Company as of the Closing Date, and that, at the time of enforcement, is still being conducted by Parent or any of its affiliates (each such line of business, a "Restricted Business"). For purposes of this Section 5.12, (a) the term "compete" and "competition" shall mean, entering into or attempting to enter into any business offering goods and/or services which are substantially similar to or compete with the Restricted Business and (b) the words "directly or indirectly" as they modify the word "compete" shall mean: (i) performing executive, managerial, financial or sales services while acting as an agent, representative, consultant, officer, director, independent contractor or employee of any entity or enterprise, which is competing (as defined above) with any Restricted Business; (ii) participating in any such competing entity or enterprise, or the affiliate of such entity or enterprise, as an owner, partner, limited partner, joint venturer, creditor or stockholder (except as a stockholder holding less than a one percent interest in a corporation whose shares are actively traded on a regional or a national securities exchanged or in the over-the-counter market); or (iii) assisting any person to do any of the foregoing.

5.13. Unpaid Compensation. Parent and Surviving Corporation shall pay Richard Warner and Lynn LeBreton the amounts of $19,574.50 and $7,922.75 compensation, respectively, in full satisfaction of all unpaid wages due them. Such amounts shall be paid in six equal consecutive monthly installments commencing on the first day of December 2000. Such payments shall be subject to all required withholding.

ARTICLE VI

CONDITIONS

6.1. Conditions to Each Party's Obligations.

The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver at or prior to the Effective Time of each of the following conditions:

(a) no court or Governmental Entity of competent jurisdiction shall have enacted, issued, entered, promulgated or enforced any Legal Requirements prohibiting, restraining, enjoining or otherwise preventing the consummation of the Merger; and

(b) all consents, authorizations, orders and approvals of (or filings or registrations with) any Governmental Entity (each a "Requisite Regulatory Approval") required in connection with the execution and delivery of this Agreement and the performance of its terms shall have been obtained or made (as the case may be), except for filings in connection with the Merger and any other documents required to be filed after the Effective Time.

6.2. Conditions to Obligation of Parent and Merger Sub.

The obligation of Parent and Merger Sub to effect the Merger shall be subject to the fulfillment or waiver at or prior to the Effective Time of the following additional conditions:

(a) the representations and warranties of the Company and the Company Stockholders contained in this Agreement, regardless of whether such representations or warranties arise under Articles II or III hereof or pursuant to another provision of this Agreement, shall be true and correct in all material respects, except that representations and warranties qualified by materiality or "Company Material Adverse Effect" shall be true in all respects, as of the date of this Agreement and as of the Closing Date, as though made on and as of such time, except to the extent that any such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects, and those not qualified by materiality or Company Material Adverse Effect shall be true in all respects, on and as of such earlier date);

(b) the Company and the Company Stockholders shall have performed in all material respects the obligations required to be performed by them under this Agreement at or prior to the Closing Date;

(c) from the date of this Agreement through the Effective Time, there shall not have occurred a Company Material Adverse Effect;

(d) Parent shall have received a certificate signed by an executive officer of the Company to the effect of Sections 6.2(a), (b) and (c) hereof;

(e) Parent shall have received a certificate executed by each of the Company Stockholders to the effect of Sections 6.2(a), (b) and (c) hereof, which certificate will not have the effect of causing any Company Stockholder to affirm or jointly make any several representation or warranty of any other Company Stockholder under Article II hereof;

(f) the Company shall have provided Parent with evidence satisfactory to Parent that the Company has obtained all consents, waivers or approvals required for the assignment or transfer of all agreements and instruments identified on Section 3.8 of the Disclosure Schedule hereto;

(g) the Company shall have furnished Parent with an opinion, dated the Closing Date, of Smith, Gambrell & Russell, LLP, counsel to the Company, in the form attached hereto as Exhibit B in form and substance reasonably satisfactory to Parent;

(h) the Company Stockholders and the Company shall have provided Parent with a certified statement, pursuant to Section 1.1445-2(c)(3) of the Treasury Regulations, that the Company is not, and has not been within the last five years, a "United States real property holding corporation";

(i) no claim, action, suit, investigation or other proceeding shall be pending or threatened by any third party (including any governmental agency) before any court or administrative agency or otherwise relating to the transactions provided for herein or which may affect Parent or the Company in a manner which is materially adverse;

(j) the Company Stockholders shall have executed the Escrow Agreement;

(k) Richard Warner, Lynn LeBreton, and Hannah Hite shall have entered into employment arrangements with Parent in the form of Exhibit C;

(l) the Company and the Company Stockholders shall have furnished Parent with all other documents, certificates and other instruments reasonably requested by Parent;

(m) the Company Stockholders shall have paid all of the Specified Liabilities at or before the Closing, and shall have furnished Parent with evidence reasonably satisfactory to Parent that they have done so;

(n) Each of the Company Stockholders will have completed, executed and delivered to Parent an investor questionnaire in the form of Exhibit D; and

(o) Each of the Company employees will have executed and delivered to Parent a non-disclosure agreement in the form of Exhibit E.

(p) Richard Warner and Michael Casey shall have entered into a stock transfer agreement in the form of Exhibit F.

6.3. Conditions to Obligation of the Company and the Company Stockholders.

The obligation of the Company and the Company Stockholders to effect the Merger shall be subject to the fulfillment or waiver at or prior to the Effective Time of the following additional conditions:

(a) the representations and warranties of Parent and Merger Sub contained in this Agreement shall be true and correct in all material respects as of the Effective Time, except that representations and warranties qualified by materiality or Parent Material Adverse Effect shall be true in all respects, as of the date of this Agreement and as of the Closing Date, as though made on and as of such time and except to the extent that any such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects, and those not qualified by materiality or Parent Material Adverse Effect shall be true in all respects, on and as of such earlier date);

(b) Parent and Merger Sub shall have performed in all material respects their obligations required to be performed by them under this Agreement at or prior to the Closing Date;

(c) the Company shall have received a certificate signed by an executive officer of each of Parent and Merger Sub to the effect of Sections 6.3(a) and (b) hereof;

(d) Parent shall have executed the Escrow Agreement;

(e) Parent and the Company shall have mutually agreed upon a mutually acceptable Operating Plan; and

(f) Parent shall have entered into employment arrangements with Richard Warner, Lynn LeBreton, and Hannah Hite, in the form of Exhibit C.

6.4. Frustration of Closing Conditions.

Neither the Company nor Parent may rely on the failure of any condition set forth in Section 6.1, 6.2 or 6.3, as the case may be, to be satisfied if such failure was caused by such party's failure to use all reasonable efforts to consummate the Merger and the other transactions contemplated by this Agreement.

ARTICLE VII

NATURE AND SURVIVAL OF REPRESENTATIONS AND WARRANTIES, ETC.

All statements contained in any Exhibit or Disclosure Schedule hereto or in any certificate or instrument of conveyance delivered by or on behalf of the parties pursuant to this Agreement or in connection with the transactions contemplated hereby shall be deemed representations and warranties by the parties hereunder.

7.1. Survival of Representations, Warranties, Etc.

Except as otherwise provided herein, the representations and warranties contained in this Agreement or in any certificate or other instrument delivered pursuant to this Agreement, shall survive the Closing for a period of 24 months after the Closing Date; provided, however, that: (i) the representations and warranties contained in Section 3.13 hereof shall survive the Closing Date until 30 days after the expiration of the applicable statutes of limitations for the assessment of Taxes; (ii) if the giving of any representation or warranty contained in this Agreement is made with willful or knowing fraud, it shall survive the Closing Date for an unlimited period of time; (iii) any specific claim or action of which specific written notice setting forth with particularity the facts underlying such claim or action is given to the party which made such representation or warranty prior to the date on which such representation or warranty otherwise terminates as provided herein, may continue to be asserted and shall be indemnified against until the resolution thereof pursuant to this Article VII; and (iv) the representations and warranties

set forth in Sections 2.1, 2.2, 2.3 and 3.2 hereof shall survive the Closing without limitations.

7.2. Company Stockholders Agreement to Indemnify.

7.3.

(a) Subject to paragraphs (b), (c) and (d) of this Section 7.2, the Company Stockholders shall fully indemnify, defend and hold harmless, on an after-tax basis, Parent, Merger Sub and the Surviving Corporation and their officers, directors, employees, agents, representatives, and Affiliates and their successors and assigns against and in respect of any and all liabilities, losses, damages, claims, penalties, actions, fines, deficiencies, costs, taxes, loss of deductions or expenses (including, without limitation, the reasonable fees, expenses and disbursements of counsel) (collectively, "Losses") regardless of whether an action has been filed or asserted against Parent, Merger Sub, or the Surviving Corporation after the Closing Date, arising from, in connection with or resulting from (i) any misrepresentation, inaccuracy or breach of representation, warranty, covenant or agreement by the Company or the Company Stockholders made in this Agreement (including, without limitation, the Disclosure Schedules and Exhibits hereto and the certificates delivered hereunder) or as provided herein; (ii) the business, operations or assets of the Company prior to the Effective Time or the actions or omissions of the Company's directors, officers, shareholders, employees or agents prior to the Effective Time, other than Losses arising from matters expressly disclosed in the Company Financial Statements, this Agreement or the Disclosure Schedules to this Agreement, or incurred by the Company in the ordinary course of business in compliance with Section 5.1 hereof from the date of the execution of this Agreement through the Closing Date, (iii) any claims or litigation involving the Company which are pending or, to the knowledge of the Company, threatened prior to the Closing Date; (iv) each of the items included in Specified Liabilities, to the extent (other than in the case of unpaid wages and expenses) that the portion thereof not paid by the Company Stockholders exceeds the following amounts: investment banking fees incurred in connection with the transactions contemplated hereby: $60,000; legal fees incurred in connection with the transactions contemplated hereby: $25,000 (excluding the $5,000 retainer previously paid by the Company to Smith, Gambrell & Russell LLP, which will be applied to outstanding legal fees of the Company as of the Closing Date); the Company's Small Business Administration loan from SouthTrust Bank, N.A.: $15,000 plus interest accrued thereon after the date of the most recent Company Financial Statements; and back wages and reimbursements for expenses incurred in the regular course of the Company's business owed by the Company to Richard Warner and Lynn LeBreton: $55,000 (in payments of $38,739.09 and $16,260.91 for Richard Warner and Lynn LeBreton, respectively) and (v) all costs, expenses or other obligations resulting from professional services provided to the Company in connection with this Merger Agreement and the transaction contemplated hereby not otherwise included in Specified Liabilities; and (vi) the matter described in subsection (b) of Section 3.13 of the Disclosure Schedule. At the option of the Company Stockholders, up to $10,000 of the indemnification obligation of the Company Stockholders set forth in this Section 7.2(a) with respect to legal fees incurred in connection with the transactions contemplated

hereby may be satisfied by delivery to the Parent of shares of Parent Common Stock from the Escrow Fund, such shares of Parent Stock to be valued for these purposes at $8.00 per share. The parties acknowledge and agree that Parent Common Stock in the amount of $1,575.38 (197 shares) will not be delivered to the Escrow Agent as part of the Merger Consideration in accordance with Section 1.4 hereof, but will be retained by the Parent in satisfaction of a $1,575.38 indemnification obligation of the Company Stockholders in the preceding sentence. The parties hereto understand and agree that subject to, and as further described in, Section 7.1 of this Agreement, the indemnification obligations of the Company Stockholders shall be reduced to the extent that such Loss, when raised through a notice or claim, relates to a representation, warranty indemnification obligation or covenant that has expired pursuant to Section 7.1 hereof and all provisos therein.

(b) No obligation to indemnify, defend and hold harmless Parent, Merger Sub or the Surviving Corporation under this Section 7.2 shall arise unless and until the amount of Losses incurred exceeds $50,000 in the aggregate; provided, that in the case of aggregate Losses in excess of $50,000, the Company Stockholders shall be liable for the entire amount of such Loss or Losses, and further provided that such "threshhold" shall not apply to the Company Stockholders' obligations pursuant to subsections 7.2(a)(iii), 7.2(a)(iv) and 7.2(a)(v) and 7.2(a)(vi).

(c) Notwithstanding the provisions of the foregoing Section 7.2(b), the Company Stockholders shall fully indemnify, defend and hold harmless on an after-tax basis Parent, the Surviving Corporation, any of their Affiliates and their successors and assigns against and in respect of any and all Losses (including any fees, expenses and disbursements of counsel and other agents) arising from, in connection with or resulting from any misrepresentation, inaccuracy or breach with respect to Sections 3.13(c), 3.15, 5.1(p) and 5.13, and the provisions of Section 7.2(b) hereof shall not apply to limit the obligations of the Company Stockholders under this Section 7.2(c).

(d) Except with respect to the limitation set forth in Section 7.1 herein and in addition to the foregoing provisions of Section 7.2, the Company Stockholders agree that it shall not be necessary or required that Parent exercise any right, assert any claim or demand or enforce any remedy whatsoever against the Company before or as a condition to the obligations of the Company Stockholders hereunder. The indemnification liability of the Company Stockholders under the foregoing provisions of Section 7.2 shall be absolute and unconditional as if the Company Stockholders rather than the Company have made the representations and warranties herein irrespective of any right of set-off or counterclaim which may at any time be available to or asserted by the Company Stockholders against Parent or any Affiliates thereof.

(e) In addition, notwithstanding the foregoing provisions of this Section 7.2, the Company Stockholders will indemnify Parent for the costs of curing, on an emergency expedited basis, any failure of the equipment, hardware, software or systems used or intended to be used for or in connection with the Company's business (the "Equipment") and each component thereof to handle date information before, during and after January 1, 2000, including accepting date input, providing date output and

performing calculations on dates or portions of dates, functioning accurately and without interruption before, during and after January 1, 2000, without any change in operations associated with the advent of the year 2000 and the new century, responding to two-digit year input in a way that resolves the ambiguity as to century in a disclosed, defined and predetermined manner, recognizing the year 2000 as a leap year, processing two-digit year date information in ways that are similarly unambiguous as to century, and storing and provide output of date information in ways that are similarly unambiguous as to century.

(f) For purposes of this Section 7.2, the Company Stockholders shall be considered to be a single Indemnifying Party (as defined in Section 7.3).

(g) The Company Stockholders shall have the option of paying any indemnification liability of such Company Stockholders in cash, in shares of Parent Common Stock or in a combination of cash and shares of Parent Common Stock. For purposes of this Section 7.2(g), each share of Parent Common Stock which a Company Stockholder elects to apply to the satisfaction of his, her or its indemnification obligation shall be valued at $8.00.

(h) The provisions for indemnification provided in this Article VII shall be the sole and exclusive remedy available to Parent, Merger Sub and the Surviving Corporation and their officers, directors, employees, agents, representatives, and Affiliates and their successors and assigns with respect to any claim against the Compay Stockholders under this Agreement; provided that the Company Stockholders shall be personally liable for all claims of Parent, Merger Sub and the Surviving Corporation and their officers, directors, employees, agents, representatives, and Affiliates and their successors and assigns arising from their fraudulent or intentional acts; and further provided that the foregoing shall not limit any remedies available to Parent, Merger Sub and the Surviving Corporation by operation of law or in equity, including the right to specific performance or injunctive relief.

(i) The aggregate liability of the Company Stockholders for all claims of Parent, Merger Sub and the Surviving Corporation and their officers, directors, employees, agents, representatives, and Affiliates and their successors and assigns under or relating to this Agreement shall be limited to the Merger Consideration received by the Company Stockholders (with each share of Company Stock received by the Company Stockholders and delivered in satisfaction of any such obligation being valued at $8.00 per share).

(j) Within 90 days of the Closing Date, Parent shall obtain the release of all guarantees and collateral provided by the Company Stockholders with respect to the Company's line of credit from STI Credit Corporation (SunTrust Credit) and a loan to the Company from SunTrust Bank, N.A., pursuant to a promissory note dated November 6, 1997 (together, the "Guaranteed Loans"), and related agreements, whether by repayment of such loans or otherwise.

(k) Parent shall not, and shall not permit any of its affiliates to, increase the principal amount of the borrowings under the Company's line of credit with STI Credit Corporation (SunTrust Credit) to an amount in excess of $50,000.

(l) Parent and the Surviving Corporation, jointly and severally, shall fully indemnify, defend and hold harmless the Company Stockholders and their heirs, administrators, successors and assigns against and in respect of any and all Losses arising from, in connection with or resulting from the Guaranteed Loans or Parent's failure to comply with the covenants set forth in Sections 7.2 (j) and 7.2 (k).

7.3 Intentionally Omitted.

7.4

7.4. Procedures Relating to Indemnification.

Promptly after the receipt by any party hereto of notice of any claim, action, suit or proceeding of any third party for which it intends to seek indemnification hereunder, such party or parties (the "Indemnified Party") shall give written notice of such claim (a "Notice of Claim") to the party or parties obligated to provide indemnification hereunder (collectively, the "Indemnifying Party"), stating the nature and basis of such claim and the amount thereof, to the extent known. The failure of the Indemnified Party to so notify the Indemnifying Party shall not impair the Indemnified Party's ability to seek indemnification from the Indemnifying Party unless such failure has resulted in the loss of substantive rights with respect to the Indemnifying Party's ability to defend such claim, and then only to the extent of such loss or has resulted in additional damages, and then only to the extent of such additional damages. The Indemnifying Party shall be entitled to participate in the defense or settlement of such matter and the parties agree to cooperate in any such defense or settlement and to give each other full access to all information relevant thereto. The Indemnifying Party shall not be obligated to indemnify an Indemnified Party hereunder for any settlement entered into without the Indemnifying Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If any Notice of Claim relates to a claim by a person or persons (other than by federal, state or local income tax authorities or by Parent), and the amount of such claim is acknowledged by the Company Stockholders to be fully covered by the foregoing indemnity, the Company Stockholders may elect to defend against such claim at their expense, in lieu of Parent assuming such defense; provided, that Parent shall be entitled to participate in or monitor such defense at its expense and the Company Stockholders will fully cooperate with Parent and its counsel with respect thereto. If the Company Stockholders so elect to assume such defense, they shall retain counsel reasonably satisfactory to Parent. No compromise or settlement of such claim may be effected by either party without the other party's consent (which shall not be unreasonably withheld) unless (i) there is no finding or admission of any violation of law and no effect on any other claims that may be made against such other party and (ii) the sole relief provided is monetary damages that are paid in full by the party seeking the settlement.

ARTICLE VIII

TERMINATION

8.1. Termination.

This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time:

(a) By the mutual written consent of Parent, Merger Sub and the Company;

(b) By Parent and Merger Sub, on the one hand, or the Company, on the other hand, at any time on or after the later to occur of:

(i) 60 days after the date on which any request or application for a Requisite Regulatory Approval shall have been denied or withdrawn at the request or recommendation of the Governmental Entity which must grant such Requisite Regulatory Approval, unless within the 60-day period following such denial or withdrawal a petition for rehearing or an amended application has been filed with the applicable Governmental Entity; provided, however, that no party shall have the right to terminate this Agreement pursuant to this Section 8.1(b)(i) if such denial or request or recommendation for withdrawal shall be due to the failure of the party seeking to terminate this Agreement to perform or observe the covenants and agreements of such party set forth herein; and

(ii) 45 days following the date hereof, if the Effective Time shall not have occurred on or before that date and if any of the conditions to the obligation of the terminating party to close the Merger has not, at that time, been fulfilled; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(ii) shall not be available to any party whose failure to fulfill materially any covenant or obligation under this Agreement has been the cause of, or resulted in, either the failure of the Effective Time to occur on or before such date or the failure of fulfillment before such date of any of the conditions to such terminating party's obligation to close the Merger; or

(iii) at such time as a court of competent jurisdiction or other Governmental Entity shall have issued an Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the Merger and such Order or other action shall have become final and nonappealable;

(c) By Parent and Merger Sub, on the one hand, or the Company, on the other hand, (provided, that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach of any of the representations, warranties or covenants set forth in this Agreement on the part of the other party, which breach is not

cured within 30 days following written notice to the party committing such breach, or which breach, by its nature, cannot be cured prior to the Closing; provided, however, that neither party shall have the right to terminate this Agreement pursuant to this Section 8.1(c) unless the breach of representation, warranty or covenant would entitle the terminating party not to consummate the transactions contemplated hereby under Section 6.2(a) (in the case of a breach of representation or warranty by the Company) or Section 6.3(a) (in the case of a breach of representation or warranty by Parent and Merger Sub) or which breach, by its nature, cannot be cured prior to the Closing.

8.2. Procedure for and Effect of Termination.

In the event that this Agreement is terminated and the Merger is abandoned by Parent or Merger Sub, on the one hand, or by the Company, on the other hand, pursuant to Section 8.1, written notice of such termination and abandonment shall forthwith be given to the other parties and this Agreement shall terminate and the Merger shall be abandoned without any further action. If this Agreement is terminated as provided herein, no party hereto shall have any liability or further obligation to any other party under the terms of this Agreement except (i) with respect to the willful breach by any party hereto, and (ii) that this Section 8.2, Section 5.4, Section 9.2 and Section 9.3 shall survive the termination of this Agreement.

ARTICLE IX

MISCELLANEOUS

9.1. Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings ascribed to them in this Section 9.1:

(a) "Affiliate", with respect to any person, shall mean any person controlling, controlled by or under common control with such person;

(b) "Business Day" shall mean each day on which banking institutions in New York, NY are not authorized or required to close;

(c) "including" shall, unless the context clearly requires otherwise, mean including but not limited to the items or things following such term;

(d) "knowledge", "to the knowledge of", "best knowledge" and any similar language shall mean, with respect to the Company or any of its Subsidiaries, the actual knowledge, after due inquiry, of the Company Stockholders and of any other person who, on the date hereof, is an officer of the Company or any such Subsidiary;

(e) "person" shall mean and include an individual, a partnership, a joint venture, a limited liability company, a corporation, a trust, an unincorporated organization and a government or any department or agency thereof; and

(f) "Subsidiary", with respect to any corporation or other person, shall mean any corporation 50% or more of the outstanding voting power of which, or any partnership, joint venture, limited liability company or other entity 50% or more of the total equity interest of which is directly or indirectly owned by such person, and any other entity over which such corporation or other person has control as a result of ownership interests, any contract or other arrangement, or through any other means. For purposes of this Agreement, all references to "Subsidiaries" of a person shall be deemed to mean "Subsidiary" if such person has only one Subsidiary.

9.2. Amendment and Modification.

Subject to applicable law, this Agreement may be amended, modified or supplemented, whether before or after the Stockholder Approvals, only by a written agreement signed by each of the parties hereto at any time prior to the Effective Time with respect to any of the terms contained herein; provided, however, that after this Agreement is adopted by the Company's Stockholders, no such amendment or modification shall (a) alter or change the amount or kind of the consideration to be delivered to the stockholders of the Company, (b) alter or change any term of the articles of incorporation of the Surviving Corporation to be effected by the Merger or (c) alter or change any of the terms or conditions of this Agreement if such alteration or change would adversely affect the stockholders of the Company.

9.3. Waiver of Compliance; Consents.

Any failure of Parent or Merger Sub, on the one hand, or the Company, on the other hand, to comply with any obligation, covenant, agreement or condition herein may be waived by Parent, Merger Sub or the Company, respectively, only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 9.3.

9.4. Restrictive Legend.

Each certificate representing Parent Common Stock to be delivered to the holders of Company Stock hereunder shall, except as otherwise provided in this Section 9.4, be stamped or otherwise imprinted with a legend substantially in the following form:

"THIS SECURITY IS SUBJECT TO RESTRICTIONS REGARDING THE SALE THEREOF UNDER AN AGREEMENT AND PLAN OF MERGER DATED OCTOBER 31, 2000 BETWEEN THE HOLDER THEREOF AND PARENT CORPORATION, HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR UNDER ANY STATE SECURITIES LAWS, AND MAY NOT BE TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS IT HAS BEEN REGISTERED UNDER THAT ACT AND THE APPLICABLE STATE SECURITIES LAWS OR AN EXEMPTION FROM REGISTRATION IS AVAILABLE."

A certificate shall not bear such legend if in the opinion of counsel satisfactory to Parent the securities being sold thereby may be publicly sold without registration under the Securities Act or under the applicable state securities laws.

9.5. Notices.

All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in person, when sent by telecopier (with a confirmed receipt thereof), when sent registered or certified mail (postage prepaid, return receipt requested), and on the next business day when sent by overnight courier service, to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(1) if to Parent or Merger Sub:

AppliedTheory Corporation
1500 Broadway, Third Floor
New York, NY 10036
Attention: Daivd A. Buckel
Senior Vice President and Chief Financial Officer
Telecopier: (212) 398-7070

with a copy to:

AppliedTheory Corporation
224 Harrison St., 8th Floor
Syracuse, NY 13202
Attention: General Counsel
Telecopier: 315-479-0824

(2) if to the Company:

What's Up, Inc.
1200 Ashwood Parkway
Atlanta, GA 30338
Attention: President and CEO
Telecopier: 770-671-0110

with a copy to:

Smith, Gambrell & Russell, LLP
Suite 3100, Promenade II
1230 Peachtree Street, N.E.
Atlanta, GA 30338
Attention: John C. Ethridge, Jr., Esq.
Telecopier: 404-315-6934

(3) if to the Company Stockholders:

Richard Warner
Malenka Warner
What's Up, Inc.
1200 Ashwood Parkway
Suite 135
Atlanta, GA 30338
Facsimile: 770-671-0110

Steven Kelman
What's Up, Inc.
1200 Ashwood Parkway
Suite 135
Atlanta, GA 30338
Facsimile: 770-671-0110

Lynn LeBreton
What's Up, Inc.
1200 Ashwood Parkway
Suite 135
Atlanta, GA 30338
Facsimile: 770-671-0110

Barbara Stengard
What's Up, Inc.
1200 Ashwood Parkway
Suite 135
Atlanta, GA 30338
Facsimile: 770-671-0110

Richard and Barbara Warner
10 Hudson Common
Hudson, OH 44236

Bob and Jo Croom
721 Celebration Avenue
Celebration, FL 34747

Adam Brown
587 Virginia Avenue
#603
Atlanta, GA 30306

Carol Fort
2635 New Rutgers Walk
Cumming, GA 30041

Ashley Connell
1111 Pine Heights Drive
Atlanta, GA 30324

9.6. Assignment.

This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, representatives, affiliates, subsidiaries, successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties.

9.7. Expenses.

Subject to the provisions in Section 1.5(b), whether or not the Merger is consummated, all fees, charges and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees, charges or expenses.

9.8. Gender; Plurals, etc.

Whenever used herein, the singular number shall include the plural the plural the singular and the use of any gender shall be applicable to all genders.

9.9. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware applicable to agreements made and to be performed entirely within such State, without regard to the choice of law principles thereof.

9.10. Counterparts.

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

9.11. Interpretation.

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

9.12. Entire Agreement.

This Agreement (including the schedules, exhibits, documents or instruments referred to herein) and the Confidentiality Agreement embody the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and thereof and supersede all prior agreements and understandings, both written and oral, among the parties, or between any of them, with respect to the subject matter hereof and thereof.

9.13. No Third Party Beneficiaries.

Except as provided in Section 5.10 and 7.2(a), this Agreement is not intended to, and does not, create any rights or benefits of any party other than the parties hereto.

9.14. Severability.

Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

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

WHAT'S UP, INC.

By: _____
Name: RICHARD WARNER
Title: PRESIDENT

THE COMPANY STOCKHOLDERS:

_____
Richard T. Warner

_____
Steven R. Kelman

_____
Yashi Malenka Warner

_____
Lynn LeBreton

_____
Robert Croom

[SIGNATURES CONTINUED ON NEXT PAGE]

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

WHAT'S UP, INC.

By: _____
Name: _____
Title: _____

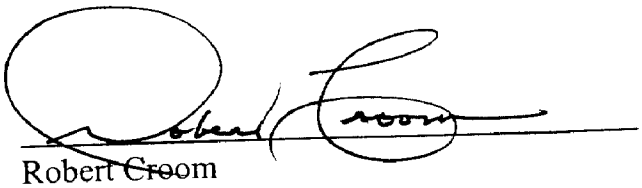
THE COMPANY STOCKHOLDERS:

_____
Richard T. Warner

_____
Steven R. Kelman

_____
Yashi Malenka Warner

_____
Lynn LeBreton



Robert Croom

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Michael Casey

Jo Croom

Carol Fort

Adam Brown

Ashley Connell

Barbara Stengard

Richard B. Warner

Barbara Warner

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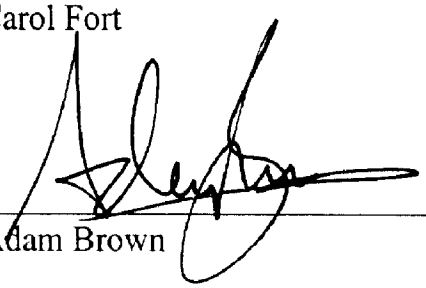

Adam Brown

Ashley Connell

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Richard B. Warner

Barbara Warner

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Barbara Stengard

Richard B. Warner

Barbara Warner

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Barbara Stengard

Richard B. Warner

Barbara Warner

APPLIEDTHEORY CORPORATION

By: _____

Name: Danny E. Stroud

Title: President & Chief Executive Officer

APPLIEDTHEORY GEORGIA ACQUISITION CORP.

By: _____

Name: Danny E. Stroud

Title: President & Chief Executive Officer

[Signature page to the Agreement and Plan of Merger]

Section 3.20

INTELLECTUAL PROPERTY

(b) The following is a list of all material Intellectual Property:

Trademarks:

- "What's Up", Registration No. 2,285,078
- "Trivialink", Registration No. 2,334,567
- "EZ Post", Registration No. 2,374,370
- "Viewerlink", Registration No. 2,311,546
- "Air Georgia", Registration No. 1,804,855
- "FirstFax", In process – reviewed by examiner
- "Cyber Cents", In process – pending examiner approval

Software:

The Company has computers running all of the following Operating Systems:

- Windows NT 4.x
- Windows 98
- Mac OS 8.x and 9.x

The following software is installed on one or more computers in the Company's office running under Windows, Mac or on both and is used in the normal course of the Company's business:

- Microsoft's Word, Excel, PowerPoint, FrontPage, Outlook, Publisher, Visio
- Quark's Xpress
- Adobe's Photoshop and Photoshop LE, Illustrator, Premiere, Acrobat, PhotoDeluxe, PageMaker
- Macromedia's Flash, Dreamweaver, Fireworks, Director
- FileMaker's FileMaker Pro
- Allaire's HomeSite
- Aladdin Systems' StuffIt Deluxe
- Bare Bones Software's BBEdit
- Farallon's Timbuktu Pro
- Copia International's fax server misc. software components (running on two dedicated NT fax servers)
- WebTrends Corporation's WebTrends
- Symantec's Norton Anti-virus, Norton Utilities, Norton System Works
- Miramar System's PC MACLAN
- Dantz Development's Retrospect

- Apple's AppleShare IP
- Presto's PageManager
- Quicken's Quickbooks Pro
- Peachtree Software's Complete Accounting
- Misc. freeware (free software downloaded or incorporated into the OS):
- Microsoft's Internet Explorer and Outlook Express
- Netscape's Navigator
- WSFTP, Fetch, NCSA Telnet
- Customized E-mail Solutions
- Enhanced Fax Communications

Domain Names:

- whatsup.com
- whatsupatlanta.com
- whatsupfax.com
- whatsupnow.net
- whatsupweb.com
- whatsupnews.com
- trivialink.com
- hotgossip.com
- foxstuff.com
- carpetdealers.com
- whatsupbigapple.com
- whatsupboston.net
- whatsupcleveland.com
- whatsupdallas.net
- whatsupdetroit.com
- whatsuphouston.net
- whatsupla.net
- whatsupminneapolis.com
- whatsupphiladelphia.com
- whatsupseattle.com
- whatsuptampa.com
- whatsupwindycity.com
- hairydawgs.com
- hairydogs.com

(h) Confidentiality Agreements - No, as to key personnel. No outside third party confidentiality agreements entered into to protect the Trade Secrets of the Company exist. The Company has entered into agreements with confidentiality provisions; however, such provisions were not intended to protect against the divulging of Company

Trade Secrets.

(i) Copyright Assignments - No, as to Employees; The following consultants have signed such agreements:

Michael Pridemore
Robert Kozicki
Michael Reyes
Paul Godley
Brad Anderson

In all instances these are individuals or very small firms doing independent contractor work for the Company. Some do the work under their own name and the Company pays them as individuals (and issues them a 1099 for tax purposes) and some the Company pays under a company name if they have a FEIN.