



Merger Agreement (Domestic corporations)

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AGREEMENT AND PLAN OF MERGER

BETWEEN

[COMPANY 1]
A [STATE] CORPORATION

AND

[COMPANY 2]
A [STATE] CORPORATION

This AGREEMENT AND PLAN OF MERGER (the “**Agreement**”), dated as of the ____ day of _____, 200__ is made by and between [COMPANY 1], a [STATE] corporation (“**Target**”) and [COMPANY 2], a [STATE] corporation (“**[COMPANY 2]**” also known as the “**Surviving Entity**”).

W I T N E S S E T H

WHEREAS, the Board of Directors of [COMPANY 2] deems it advisable and in the best interests of [COMPANY 2] and its stockholders that Target be merged with and into [COMPANY 2] as permitted by the [CITE MERGER LAWS OF THE STATE] (the “**[STATE] Laws**”) and pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the Board of Directors of Target deems it advisable and in the best interests of Target and its stockholders that Target be merged with and into [COMPANY 2] as permitted by the [STATE] Laws and pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, immediately prior to the Effective Time (as hereinafter defined), Target shall have an authorized capitalization consisting of Common Stock, par value \$_____ per share (the “**Target Common Stock**”), of which [NUMBER] (_____) shares shall be issued and outstanding.

WHEREAS, immediately prior to the Effective Time (as hereinafter defined), [COMPANY 2] shall have an authorized capitalization consisting of Common Stock, \$_____ par value per share (the “**[Company 2] Common Stock**”), of which [NUMBER] (_____) shares shall be issued and outstanding.

WHEREAS, the stockholders and directors of Target and the stockholders and directors of [COMPANY 2] have approved this Agreement [at a meeting duly held for this purpose] [by written consent];

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants herein contained and in accordance with the applicable provisions of the [STATE] Laws, the parties hereto have agreed and covenanted, and do hereby agree and covenant, as follows:

[COMPANY 1]
[COMPANY 2]
MERGER AGREEMENT

1. Terms and Conditions of Merger. At the Effective time (as hereinafter defined), Target shall be merged with and into [COMPANY 2] pursuant to the provisions of the [STATE] Laws (the “**Merger**”), and [COMPANY 2] shall be the Surviving Entity.

The date and hour on which the Merger occurs and becomes effective is hereinafter referred to as the “**Effective Time**”. The Merger shall occur and be effective on the hour and on the date that a [NAME OF CERTIFICATE OF MERGER] has been filed with the Secretary of State of the State of [STATE] as provided in the [STATE] Laws, which shall take place as soon as practicable following the approval of this Agreement by the stockholders and directors of [COMPANY 2] and the stockholders and directors of Target.

2. Name, Charter, Bylaws, Directors and Officers. From and after the Effective Time:

2.1 The name of the Surviving Entity shall be: [COMPANY 2].

2.2 The current [NAME OF CHARTER] of [COMPANY 2] shall be the [NAME OF CHARTER] of the Surviving Entity.

2.3 The current Bylaws of [COMPANY 2] shall be the Bylaws of the Surviving Entity.

2.4 The directors and officers of [COMPANY 2] at the Effective Time shall be unchanged and remain the directors and officers from and after the Effective Time until the expiration of their current terms and until their successors are elected and qualify, or prior resignation, removal or death, subject to the [NAME OF CHARTER] and Bylaws of the Surviving Entity.

3. Succession. On the Effective Date, [COMPANY 2] shall succeed Target in the manner and as more fully set forth in [STATE] Laws and specifically as follows:

(a) The separate corporate existence of Target shall cease, and the Surviving Entity shall possess all the rights, privileges, powers and franchises of a public and private nature and be subject to all the restrictions, liabilities and duties of Target;

(b) All and singular rights, privileges, powers and franchises of Target and all property, real, personal and mixed, and all debts due to Target on whatever account, as well as for share and note subscriptions and all other things in action or belonging to Target shall be vested in the Surviving Entity;

(c) All property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Entity as they were of Target, and the title to any real estate vested by deed or otherwise, under the laws of the State of [STATE], or of any of the other states of the United States, in Target shall not revert or be in any way impaired by reason of the Merger; but all rights of creditors and all liens upon any property of Target shall be preserved unimpaired;

(d) All debts, liabilities and duties of Target shall thenceforth attach to the Surviving Entity and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it;

(e) All corporate acts, plans, policies, agreements, arrangements, approvals and authorizations of Target, its stockholders, Board of Directors and committees thereof, officers and agents which were valid and effective immediately prior to the Effective Time, shall be taken for all purposes as the acts, plans, policies, agreements, arrangements, approvals and authorizations of the Surviving Entity and shall be as effective and binding thereon as the same were with respect to Target;

4. Further Assurances. From time to time, when and as required by [COMPANY 2] or its successors and assign, there shall be executed and delivered on behalf of Target such deeds and other instruments, and there shall be taken or caused to be taken by or on behalf of Target such further and other action, as shall be appropriate or necessary to vest, perfect or confirm, of record or otherwise in [COMPANY 2], the title to and possession of all the property, interests, assets, rights, privileges, immunities, powers, franchises and authority of Target, and otherwise to carry out the purposes of this Agreement, and the officers and the directors of [COMPANY 2] are fully authorized by and on behalf of Target to take any and all such action to execute and deliver any and all such deeds and other instruments.

5. Stock and Stock Certificates. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof;

[(a) Each share of Target common stock outstanding immediately prior to the Effective Time shall be cancelled.]

OR

[(a) Each share of Target common stock 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 share for share, into fully-paid and non-assessable shares of the Surviving Entity as of the Effective Time.]

(b) Each share of Target common stock held in treasury immediately prior to the Effective Time shall be cancelled, and no shares of other securities of the Surviving Entity shall be issued in respect thereof.

[(c) All of the options and warrants to acquire shares of Common Stock of Target or of Common Stock of the [COMPANY 2] held by any person shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted, share for share, into options and warrants, respectively of the Surviving Entity.]

[(c) (d)] From and after the Effective Time, all of the outstanding certificates which immediately prior to the Effective Time represented shares of Common Stock of [COMPANY 2] shall be deemed for all purposes to evidence ownership of, and to represent, shares of Common Stock, \$____ par value per share, of the Surviving Entity

into which the shares of [COMPANY 2] Common Stock formerly represented by such certificates have been converted as herein provided. The registered owner on the books and records of [COMPANY 2] of any such outstanding stock certificates shall, until such certificates shall have been surrendered for transfer or otherwise accounted for to the Surviving Entity have and be able to exercise any voting and other rights with respect to and receive any dividend or other distributions upon the Common Stock, \$____ par value per share of the Surviving Entity evidenced by such outstanding certificates as provided.

6. Amendment and Termination. Subject to applicable law, this Agreement may be amended by written agreement of the parties hereto at any time prior to the Effective Time. Subject to applicable law, this Agreement may be terminated by the Board of Directors of [COMPANY 2] or the Board of Directors of the Target at any time prior to the Effective Time.

7. Miscellaneous. For the convenience of the parties and to facilitate any filing and recording of this Agreement, any number of counterparts hereof may be executed each of which shall be deemed to be an original of this Agreement but all of which together shall constitute one and the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties of this Agreement, pursuant to the approval and authority duly given by resolutions adopted by their respective Board of Directors have caused this Agreement to be executed by the President as of the day and year first above written.

SURVIVING COMPANY:

[COMPANY 2]

By: _____
Its:

TARGET:

[COMPANY 1]

By: _____
Its: