

PO0000095108

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January 24, 2001

FILED  
01 FEB -6 PM 2:18  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

**VIA FEDERAL EXPRESS**

Secretary of State  
Division of Corporations  
409 East Gaines Street  
Tallahassee, Florida 32399

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**Re: Articles of Merger**

Dear Sir/Madam:

Enclosed please find an original and one (1) copy of Articles of Merger for Netmerchants, Inc. and Merkatum Corporation, along with this firm's check in the amount of \$70.00, made payable to the Florida Secretary of State, representing the \$35.00 filing fee for each of these two (2) Florida for profit corporations, pursuant to Chapter 607 of the *Florida Statutes*.

Please return a filed copy of the Articles of Merger to the undersigned counsel in the enclosed, self-addressed and prepaid Federal Express envelope at your earliest convenience. Thank you in advance for your assistance in this matter.

Very truly yours,



Michael J. Ioannou

MJI/af  
Enclosures (Check)

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merger

T. LEWIS FEB 8 2001



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

February 1, 2001

MICHAEL J. IOANNOU, ESQ.  
MATTLIN & MCCLOSKEY LAW OFFICES  
2300 GLADES ROAD, SUITE 400, EAST TOWER  
BOCA RATON, FL 33431

SUBJECT: NETMERCHANTS INC.  
Ref. Number: P98000004211

We have received your document for NETMERCHANTS INC. and check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

For each corporation, the document must contain the date of adoption of the plan of merger or share exchange by the shareholders or by the board of directors when no vote of the shareholders is required.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6905.

Thelma Lewis  
Corporate Specialist Supervisor

Letter Number: 401A00006224

RECEIVED  
01 FEB -6 AM 10:58  
DIVISION OF CORPORATIONS



**FLORIDA DEPARTMENT OF STATE**  
Katherine Harris  
Secretary of State

January 30, 2001

MICHAEL J. IOANNOU, ESQ.  
MATTLIN & MCCLOSKEY LAW OFFICES  
2300 GLADES ROAD, SUITE 400, EAST TOWER  
BOCA RATON, FL 33431

SUBJECT: NETMERCHANTS INC.  
Ref. Number: P98000004211

We have received your document for NETMERCHANTS INC. and check(s) totaling \$70.00. However, the enclosed document has not been filed and is being returned to you for the following reason(s):

The articles of merger you submitted were prepared in compliance with section 607.1109, Florida Statutes. Articles of Merger between two or more domestic profit corporations are filed pursuant to section 607.1105, Florida Statutes. Enclosed is a form for your convenience.

Our records indicate the correct name of the entity is as referenced above. Please correct the name throughout the document. There is no comma in the name.

Please return your document, along with a copy of this letter, within 60 days or your filing will be considered abandoned.

If you have any questions concerning the filing of your document, please call (850) 487-6905.

Thelma Lewis  
Corporate Specialist Supervisor

Letter Number: 001A00005417

ARTICLES OF MERGER  
Merger Sheet

MERGING: -----

NETMERCHANTS INC., a Florida entity, P98000004211.

INTO

**MERKATUM CORPORATION**, a Florida entity, P00000095108.

File date: February 6, 2001

Corporate Specialist: Thelma Lewis

## ARTICLES OF MERGER

The following Articles of Merger are being submitted pursuant to Section 607.1105, Florida Statutes, for the purpose of merging NETMERCHANTS INC., a Florida corporation (the "Disappearing Corporation") into MERKATUM CORPORATION, a Florida corporation (the "Surviving Corporation").

**FIRST:** The name, street address and jurisdiction of the surviving corporation are as follows:

Merkatum Corporation  
a Florida for profit corporation  
1200 Anastasia Avenue  
Biltmore Executive Center Suite 440  
Coral Gables, Florida 33134  
Florida Documents No. P00000095108

**SECOND:** The name, street address and jurisdiction of the merging corporation are as follows:

Netmerchants Inc.  
a Florida for profit corporation  
5203 N.W. 33<sup>rd</sup> Avenue  
Fort Lauderdale, Florida 33309  
Florida Documents No. P98000004211

**THIRD:** The Agreement and Plan of Merger ("Plan of Merger") is attached hereto and incorporated herein as Exhibit A, meets the requirements of Section 607.1105, Florida Statutes and any other applicable sections of the Florida Business Corporation Act, and was approved by each domestic corporation that is a party to the merger.

**FOURTH:** The Plan of Merger was approved by written consent of the directors and shareholders of the Disappearing Corporation, and by the written consent of the directors and shareholders of the Surviving Corporation in accordance with Chapter 607, Florida Statutes.

**FIFTH:** The date of adoption of the Plan of Merger by the directors and shareholders of the Disappearing Corporation, and by the directors and shareholders of the Surviving Corporation was December 8, 2000.

FILED  
01 FEB -6 PM 2:18  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

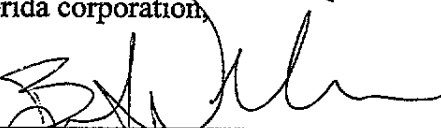
**SIXTH:** The merger shall become effective as of the earliest date permitted by law, whether the filing of these Articles of Merger or the date of the merger.

**SEVENTH:** These Articles of Merger comply and were executed in accordance with the laws of the State of Florida.

**EIGHTH:** The signatures of each party to these Articles of Merger are as follows:


**The Disappearing Corporation:**

NETMERCHANTS, INC.  
a Florida corporation,

By:   
Brent Williams, President

**The Surviving Corporation:**

MERKATUM CORPORATION  
a Florida corporation,

By:   
José Luqué, President

MERGER AGREEMENT

BY AND AMONG

NETMERCHANTS, INC.  
(a Florida Corporation)

AND

MERKATUM CORPORATION  
(a Florida Corporation)

DATED AS OF DECEMBER 8, 2000

## AGREEMENT AND PLAN OF MERGER

(MKT) Dec. 8  
October 8 2000 This Agreement and Plan of Merger ("Agreement") is made and entered into as of 2000 by and between Netmerchants, Inc., a Florida corporation ("Netmerchants") and Merkatum Corporation, a Florida corporation ("Merkatum").

### RECITALS

A. Netmerchants is a corporation duly organized and existing under the laws of the State of Florida and, on the date hereof, has authorized capital stock which consists of (i) shares of Common Stock, of which 1,000 shares are outstanding, par value \$1.00 per share ("Netmerchants Common Stock") as of December 8, 2000 (collectively, "Netmerchants Capital Stock").

B. Merkatum is a corporation duly organized and existing under the laws of the State of Florida and, on the date hereof, has authorized capital stock which consists of (i) shares of Common stock, of which 4,000 shares are outstanding, par value \$1.00 per share ("Merkatum Common Stock") as of December 8, 2000 (collectively, Merkatum Capital Stock").

C. The Boards of Directors of Netmerchants and Merkatum deem it advisable and to the advantage and in the best interests of both entities and their respective shareholders that Netmerchants be merged with and into Merkatum pursuant to this Agreement.

D. The Boards of Directors of Netmerchants and Merkatum and their respective shareholders have approved and consented to this Agreement and the Merger embodied herein, as required by applicable law.

E. It is intended that the Merger will qualify as a reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended ("Code").

In consideration of the terms, the mutual covenants and agreements set forth below, Netmerchants and Merkatum do hereby agree to merge on the terms, conditions and provisions contained herein:

### ARTICLE I - THE MERGER

#### 1.1 THE MERGER

Upon the terms and conditions of this Agreement, on the Effective Date (hereinafter defined) Netmerchants shall be merged with and into Merkatum in accordance with the applicable laws of the State of Florida ("Merger"). Thereupon, the separate existence of Netmerchants shall cease and become inactive, and Merkatum shall be the surviving corporation ("Surviving Corporation") and shall be governed by the laws of the State of Florida.

#### 1.2 THE CLOSING

Upon the terms and conditions of this Agreement, the closing of the Merger hereof ("Closing") shall take place on the earliest practicable business day ("Closing Date") following the satisfaction or waiver of the conditions set forth herein at 10:00 a.m. local time at the offices of Mattlin &



McClosky, 2300 Glades Road, Suite 400 East, Boca Raton, Florida, or such other date, time or location as Netmerchants and Merkatum shall mutually agree.

### 1.3 EFFECTIVE DATE AND TIME

On the Closing Date and subject to the terms and conditions hereof, Netmerchants and Merkatum shall cause the appropriate certificates ("Articles of Merger") which comply with the applicable provisions of the Florida Business Corporation Act and Florida common law ("Florida Law") to be properly executed and filed with the Secretary of State, Division of Corporations of the State of Florida ("Florida Secretary of State"). The Merger shall become effective on the date ("Effective Date") and at the time ("Effective Time") of executing this Agreement and filing of the Articles of Merger or at such other time as may be specified in the Articles of Merger or as required by Florida law. If the Florida Secretary of State requires any changes in the Articles of Merger as a condition to filing or to issuing its certificate to effectuate the Merger, Netmerchants and Merkatum shall forthwith execute any and all necessary documents incorporating such changes, provided such changes are not inconsistent with and do not result in any material change in the terms of this Agreement.

### 1.4 ARTICLES OF INCORPORATION OF SURVIVING CORPORATION

Prior to the Effective Date, the Articles of Incorporation of Merkatum shall be amended and restated in its entirety to conform to the terms of the Merger in the form attached hereto. At the Effective Time, the amended and restated Articles of Incorporation of Merkatum shall become the Articles of Incorporation of the Surviving Corporation. Thereafter, the Articles of Incorporation of the Surviving Corporation may be amended in accordance with their terms and as provided by Florida Law.

### 1.5 BYLAWS OF SURVIVING CORPORATION

Prior to the Effective Date, the Bylaws of Merkatum shall be prepared and/or amended and restated in their entirety to conform to the terms of the Merger in the form attached hereto. At the Effective Time, the Bylaws of Merkatum shall become the Bylaws of the Surviving Corporation. Thereafter, the Bylaws may be amended or repealed in accordance with their terms and as provided by Florida Law.

### 1.6 DIRECTORS AND OFFICERS

At the Effective Time, the directors of the Surviving Corporation shall be Brent Williams, José Luqué and Roger Portela. Williams shall be designated as the initial Chairman of the Board of Directors. The officers of the Surviving Corporation shall be (i) José Luqué, as its President and Chief Executive Officer, (ii) Brent Williams, as its Chief Technology Officer, and (iii) Roger Portela, as its Executive Vice President. Prior to the Effective Date, a Shareholders Agreement shall be prepared and/or amended and restated in its entirety to conform to the terms of the Merger in the form attached hereto. At the Effective Time, the Shareholders Agreement of Merkatum shall become the Shareholders Agreement of the Surviving Corporation. Such directors and officers shall hold office in accordance with and subject to the Articles of Incorporation, Bylaws and Shareholders Agreement of the Surviving Corporation to be executed simultaneously herewith in connection with the Merger. The parties agree to vote their shares so as to appoint the persons identified above as Directors and Officers in accordance with the Articles of Incorporation, Bylaws, Shareholders Agreement and any other related agreements of the Surviving Corporation.

## ARTICLE II -- CONVERSION OF SHARES

### 2.1 SURVIVING CORPORATION CAPITAL STOCK

At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, each share of Netmerchants Common Stock outstanding immediately prior thereto shall be automatically changed and converted into a fully paid and nonassessable issued and outstanding shares of the common stock of the Surviving Corporation. In addition, at the Effective Time, each share of Netmerchants Series A, B and C Preferred Stock outstanding immediately prior thereto shall be automatically changed and converted into a fully paid and nonassessable, issued and outstanding share of Series A, B and C Preferred Stock of the Surviving Corporation.

### 2.2 OPTIONS

At the Effective Time, the Surviving Corporation shall assume and continue the rights and obligations of Netmerchants under each then outstanding option to purchase Netmerchants Capital Stock, if any, and the outstanding and unexercised portions of all options and rights to buy Netmerchants Capital Stock shall become options for the same number of shares of the Surviving Corporation's stock, and at the Effective Time, the Surviving Corporation hereby assumes the outstanding and unexercised portions of such options and rights and the obligations of Netmerchants with respect thereto, unless the parties agree to terminate all outstanding options to purchase Netmerchants Capital Stock or as otherwise agreed by the parties.

### 2.3 EXCHANGE OF CERTIFICATES

Each person who becomes entitled to receive the Surviving Corporation's stock by virtue of the Merger shall be entitled to receive from the Surviving Corporation, as promptly as practicable after the Effective Date, a certificate or certificates representing the number of shares to which such person is entitled pursuant to the Merger.

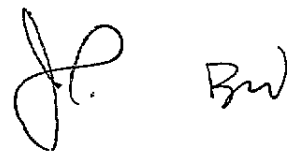
### 2.4 NO FRACTIONAL SHARES

No certificates or scrip representing fractional shares of the Surviving Corporation's stock shall be issued by virtue of the Merger, and no dividend, stock split or other distribution with respect to the Surviving Corporation's stock shall relate to any such fractional interest, and any such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder.

## ARTICLE III - EFFECT OF THE MERGER

### 3.1 RIGHTS, PRIVILEGES, ETC.

On the Effective Date, the Surviving Corporation, without further act, deed or other transfer, shall retain or succeed to, as the case maybe, and shall own, possess and be vested with all the rights, privileges, immunities, powers, franchises and authority, of a public as well as of a private nature, of Netmerchants in and to, including but not limited to, its business operations, tangible and intangible property and assets, whether real, personal or mixed, such as bank accounts, cash contained therein, account receivables, equipment, machinery, furniture, fixtures, improvements, vehicles, patents, copyrights, trademarks, trade secrets, proprietary information, technology, technical data, product development, computer software and applications including all source code, development tools, files, records and data, customer lists, databases, Internet and Worldwide Web addresses, sites and domain names, contracts, agreements, licenses, leases, security interests, insurance, debts, liabilities and other



obligations, which shall hereafter be taken and deemed to be held by or transferred to, as the case may be, or invested in the Surviving Corporation. In addition, title to any real estate, or any interest therein vested in Netmerchants, shall not revert or in any way be impaired by reason of this Merger; and all of the rights of creditors of Netmerchants shall be preserved unimpaired, and all liens upon the property of Netmerchants shall be preserved unimpaired. All debts, liabilities and obligations of the respective corporations shall thenceforth remain with or be attached to, as the case may be, the Surviving Corporation and may be enforced against it to the same extent as if all of said debts, liabilities, obligations and duties had been incurred or contracted by it.

### 3.2 CONTINUE BUSINESS ENTERPRISE

The Surviving Corporation shall carry on Netmerchants' business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, and, to the extent consistent with such business, use its commercially reasonable efforts to preserve intact Netmerchants' present business organizations, keep available the services of Netmerchants' present officers and key employees and preserve Netmerchants' relationships with customers, advertisers, suppliers, distributors, licensors, licensees, and others having business dealings with it, all with the goal of preserving unimpaired Netmerchants' goodwill and ongoing business at the Effective Time, as agreed upon by the Board of Directors of the Surviving Corporation and unless so changed by such Board.

### 3.3 FURTHER ASSURANCES

From time to time as and when required by the Surviving Corporation or by its successors and assigns, there shall be executed and delivered on behalf of Netmerchants such deeds and other instruments, and there shall be taken or caused to be taken by it such further and other action, as shall be appropriate or necessary in order to vest or perfect in or to conform of record or otherwise in the Surviving Corporation the title to and possession of all the property, interest, assets, rights, privileges, immunities, powers, franchises and authority of Netmerchants and otherwise to carry out the purposes of this Agreement, and the officers and directors of the Surviving Corporation are fully authorized in the name and on behalf of Netmerchants or otherwise to take any and all such action and to execute and deliver any and all such deeds and other instruments.

### 3.4 TAX FREE REORGANIZATION

Except as otherwise required by the Internal Revenue Service ("IRS") or by applicable law, the parties shall not take a position on any tax returns inconsistent with the treatment of the Merger for tax purposes as a reorganization within the meaning of Section 368(a) of the Code. In addition, Netmerchants and Merkatum represent, now and as of the Closing Date, that they presently intend to continue the historic business or use a significant portion of their business assets in business in a manner that satisfies the continuity of business enterprise requirement set forth in Treasury Regulation Section 1.368-1(d); provided however, that nothing contained herein shall constitute a representation by either Netmerchants or Merkatum regarding the tax consequences of the Merger or the transactions contemplated herein. It is further intended that the Surviving Corporation's stock to be issued in the Merger will be issued in a transaction exempt for registration under the Securities Act of 1933 and the qualification requirements of state "blue sky" laws, if applicable.

## ARTICLE IV -- REPRESENTATIONS AND WARRANTIES OF NETMERCHANTS

Netmerchants hereby represents and warrants to Merkatum as of the Effective Time as follows:

Handwritten signature and initials, possibly "J. Bw", in the bottom right corner of the page.

#### 4.1 ORGANIZATION

Netmerchants is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Netmerchants has the corporate power to own its properties and to carry on its business as now being conducted and to consummate the Merger or the other transactions contemplated herein. The operations now being conducted by Netmerchants have not been conducted under any other name. Netmerchants has made available to Merkatum a true and correct copy of its Articles of Incorporation, Bylaws and Shareholders Agreement, as amended. The directors and officers of Netmerchants are as follows: (i) Brent Williams, (ii) Roger Portela, Robert Bonachea and Liza Kappukattil.

#### 4.2 ENFORCEABILITY

Netmerchants has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement and each of the other certificates, instruments and documents executed or delivered by it pursuant to the terms of this Agreement. All corporate action on the part of the Board of Directors of Netmerchants necessary for the authorization, execution, delivery and performance of this Agreement or other related documents, the consummation of the Merger, and the performance of all Netmerchants' obligations under this Agreement has been or will be taken as of or prior to the Effective Time. All corporate action on the part of the shareholders of Netmerchants necessary for the authorization, execution, delivery and performance of this Agreement and other related documents to which Netmerchants is a party has been taken or will be taken as of or prior to the Effective Time. This Agreement and each of the other related documents to which Netmerchants is a party is a legal, valid and binding obligation of Netmerchants, enforceable against Netmerchants in accordance with its terms.

#### 4.3 CAPITALIZATION

Netmerchants Capital Stock is held by the persons and in the amounts set forth in the Netmerchants Disclosure Schedule attached hereto. All outstanding shares of Netmerchants Company Capital Stock are duly authorized, validly issued, fully paid and nonassessable. There are no declared or accrued unpaid dividends with respect to any shares of Netmerchants Capital Stock. Netmerchants has no other capital stock authorized, issued or outstanding.

#### 4.4 AUTHORITY

Netmerchants has all requisite power and authority to enter into this Agreement and the related agreements to which it is a party and to consummate the transaction contemplated herein. The execution and delivery of this Agreement and any related agreements to which it is a party and the consummation of the transactions contemplated herein have been duly authorized by all necessary corporate action on the part of Netmerchants, and no further action is required on the part of Netmerchants to authorize this Agreement, any related agreements to which it is a party and the transactions contemplated herein. This Agreement, the Merger and any related agreements to which Netmerchants is a party have been unanimously approved by the Board of Directors and shareholders of Netmerchants. As of the Effective Time, Netmerchants will have all requisite power and authority to enter into any certificates, agreements or other instruments to consummate the transactions contemplated herein.

#### 4.5 NO CONFLICT

The execution and delivery of this Agreement and any related agreements to which Netmerchants is a party do not, and, the consummation of the transactions contemplated herein will not,

conflict with, or result in any violation of, or default under or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (i) any provision of the Articles of Incorporation, Bylaws and Shareholders Agreement of Netmerchants, (ii) any mortgage, indenture, lease, contract, agreement, instrument, permit, concession, franchise or license to which Netmerchants or any of its properties or assets are subject, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Netmerchants or its properties or assets.

#### 4.6 CONSENTS

No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other federal, state, county, local or other foreign governmental authority, instrumentality, agency or commission or any third party, including a party to any agreement with Netmerchants, is required by Netmerchants in connection with the execution and delivery of this Agreement and any related agreements to consummate the transactions contemplated herein, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws, (ii) the filing of Articles of Merger with the Florida Secretary of State, (iii) the approval of the Merger by Netmerchants' Board of Directors and shareholders, and (iv) any other filings or approvals as may be required under Florida Law.

#### 4.7 GOVERNMENTAL AUTHORIZATION

Netmerchants has obtained all necessary consents, licenses, permits, grants or other authorizations necessary to operate or conduct its business as currently conducted or hold any interest in its properties or assets. Netmerchants has complied with, in all material respects, is not in violation of, and has not received any notices of violation with respect to, any foreign, federal, state or local statute, law or regulation.

#### 4.8 FINANCIAL STATEMENTS

Netmerchants has made available to Merkatum a true and correct copy of Netmerchants' current unaudited statements of income and liabilities for 1998, 1999 and 2000 (collectively, the "Financials"). Netmerchants warrants that the Financials are correct in all material respects and have been prepared in accordance with GAAP, applied on a basis consistent throughout the periods indicated and consistent with each other. The Financials present fairly the financial condition and operating results of Netmerchants as of the dates and during the periods indicated therein, subject to normal year-end adjustments, which will not be material in amount or significance.

#### 4.9 NO CHANGES

Within thirty (30) days of the Effective Time, there has not been, occurred or arisen any: (a) amendments or changes to the Articles of Incorporation, Bylaws or Shareholders Agreement of Netmerchants, (b) capital expenditure or commitment by Netmerchants, either individually exceeding \$50,000 or in the aggregate exceeding \$100,000; (c) destruction of, damage to or loss of any material assets, business or customer of Netmerchants (whether or not covered by insurance); (d) labor trouble or claim of wrongful discharge or other unlawful labor practice or action; (e) change in accounting methods or practices by Netmerchants; (f) revaluation by Netmerchants of any of its assets; (g) declaration setting aside or payment of a dividend or other distribution with respect to Netmerchants Capital Stock or any direct or indirect redemption, purchase or other acquisition by Netmerchants Capital Stock; (h) increase in the salary or other compensation payable or to become payable by Netmerchants to any of its officers, directors, employees or advisors, or the declaration, payment or commitment or obligation of any kind for the payment, by Netmerchants, of a bonus or other additional salary or compensation to any such person; (i) any agreement, contract, covenant, instrument, lease, license or commitment to which Netmerchants is

a party or by which it or any of its assets are bound other than in the ordinary course of Netmerchants' business; (j) sale, lease, license or other disposition of any of the assets or properties of Netmerchants or any creation of any security interest in such assets or properties other than in the ordinary course of Netmerchants' business, consistent with past practice; (k) loan by Netmerchants to any person or entity, incurring by Netmerchants of any indebtedness, guaranteeing by Netmerchants of any indebtedness, issuance or sale of any debt securities of Netmerchants or guaranteeing of any debt securities of others; (l) incurrence by Netmerchants of any liability in excess of \$50,000 individually or \$100,000 in the aggregate; (m) waiver or release of any right or claim of Netmerchants including any write-off or other compromise of any account receivable of Netmerchants; (n) the commencement or notice or threat of any lawsuit or proceeding or investigation against Netmerchants or its affairs; (o) notice of any claim or potential claim of ownership by any person to Netmerchants' Intellectual Property (hereinafter defined) or of infringement by Netmerchants any of any other person's Intellectual Property; (p) issuance or sale, or contract to issue or sell, by Netmerchants of any shares of Netmerchants Capital Stock or securities exchangeable, convertible or exercisable therefor, or any securities, warrants, options or rights to purchase any of the foregoing; (q) (i) selling or entering into any material license agreement with respect to Netmerchants' Intellectual Property with any third party or (ii) buying or entering into any material license agreement with respect to the Intellectual Property of any third party; (r) any event or condition of any character that has had a material adverse effect on Netmerchants; or (s) negotiation or agreement by Netmerchants or any officer thereof to do any of the things described in the preceding clauses (a) through (s) (other than negotiations with Merkatum regarding the transactions contemplated by this Agreement).

#### 4.10 TAX MATTERS

For the purposes of this Agreement, "Taxes" means (i) any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts; and any liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements with any other person.

Netmerchants has made available to Merkatum a copy of all foreign, federal and state income and all state sales and use returns for Netmerchants filed the past three (3) years. As of the Effective Time, Netmerchants will have prepared and timely filed all required federal, state, local and foreign returns, estimates, information statements and reports ("Returns") relating to all Taxes concerning or attributable to Netmerchants or its operations and such Returns are true and correct and have been completed in accordance with applicable law (other than Taxes not yet due for which adequate reserves may have been established on the Financials). As of the Effective Time, Netmerchants will have paid all Taxes it is required to pay and will have withheld with respect to its employees all federal and state income taxes, Federal Insurance Contribution Act ("FICA"), Federal Unemployment Tax Act ("FUTA") and other Taxes required to be withheld (other than Taxes not yet due for which adequate reserves may have been established on the Financials). Netmerchants has not been delinquent in the payment of any Taxes nor are there any Taxes outstanding, assessed or proposed against Netmerchants, nor has Netmerchants executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Taxes. No adjustment relating to any Returns filed by Netmerchants has been proposed formally or informally by any tax authority to Netmerchants or any representative thereof. Netmerchants has no liabilities for unpaid federal, state, local and foreign Taxes which have not been accrued or reserved against in accordance with GAAP on the Financials, whether asserted or unasserted, contingent or otherwise. There are no liens, pledges, charges, claims, restrictions on transfer, mortgages,

security interests or other encumbrances of any sort (collectively, "Liens") on the assets of Netmerchants relating to or attributable to Taxes other than Liens for Taxes not yet due and payable.

#### 4.11 RESTRICTIONS ON BUSINESS ACTIVITIES

Except as set forth in the Netmerchants Disclosure Schedule attached hereto, there is no agreement, commitment, judgment, injunction, order or decree to which Netmerchants is a party or otherwise binding upon Netmerchants which has or may have the effect of prohibiting or impairing any business practice of Netmerchants, any acquisition of property (tangible or intangible) by Netmerchants or the conduct of business as currently run by Netmerchants. Without limiting the foregoing, Netmerchants has not entered into any agreement under which Netmerchants is restricted from selling, licensing or otherwise distributing any of its technology or products to or providing services to, customers or potential customers or any class of customers, in any geographic area, during any period of time or in any segment of the market.

#### 4.12 PROPERTY

Netmerchants does not own any real property. The only real property currently leased by Netmerchants is located at 5203 N.W. 33<sup>rd</sup> Ave., Fort Lauderdale, Broward County, Florida ("Netmerchants Real Property") pursuant to that certain lease agreement dated Jun-1<sup>st</sup> 2000 a true copy of which including any amendments thereto ("Netmerchants Lease") has been made available to Merkatum. The Lease is in full force and effect, valid and effective in accordance with its terms, and there is no existing default or event of default. In addition, the Netmerchants Disclosure Schedule attached hereto contains a complete and accurate list of all material items of personal property owned or leased by Netmerchants ("Netmerchants Personal Property"). The Netmerchants Personal Property is (i) adequate for the conduct of the business of Netmerchants as currently conducted and (ii) in acceptable operating condition, regularly and properly maintained, subject to normal wear and tear. Netmerchants has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of Netmerchants Real Property, Personal Property, Intellectual Property, used or held for use in its business, free and clear of any liens, encumbrances, mortgages, pledges, deeds of trust, security interests, charges, encumbrances and other adverse claims or interests of any kind ("Encumbrance"), except for any Lien related to Taxes not yet due and payable, or to the acquisition, use or possession of Netmerchants Real Property, Personal Property or Intellectual Property (collectively, "Permitted Encumbrance") set forth in the Netmerchants Disclosure Schedule attached hereto. Netmerchants Real Property and Netmerchants Personal Property include all material property and assets used in the business of Netmerchants, other than the technology and intellectual property rights.

#### 4.13 INTELLECTUAL PROPERTY.

For the purposes of this Agreement, "Intellectual Property" means any or all of the following and all rights in, arising out of, or associated therewith: (i) all United States and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (ii) all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data and customer lists, and all documentation relating to any of the foregoing; (iii) all copyrights, copyrights registrations and applications therefor and all other rights corresponding thereto throughout the world; (iv) all mask works, mask work registrations and applications therefor; (v) all industrial designs and any registrations and applications therefor throughout the world; (vi) all trade names, logos, common law trademarks and service marks; trademark and service mark registrations and applications therefor and all goodwill

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associated therewith throughout the world; (vii) all databases and data collections and all rights therein throughout the world; (viii) all computer software including all source code developed by Netmerchants, object code developed by Netmerchants, firmware, development tools, files, records and data, all media on which any of the foregoing is recorded, all Internet and Worldwide Web addresses, sites and domain names; (ix) any similar, corresponding or equivalent rights to any of the foregoing; and (x) all documentation related to any of the foregoing. The Intellectual Property referred to herein shall include all Intellectual Property that is owned by or exclusively licensed to Netmerchants.

The Netmerchants Disclosure Schedule attached hereto contains a complete and accurate list of all items of Intellectual Property owned by Netmerchants. Netmerchants has rights to such Intellectual Property used in connection with the operation or conduct of the business of Netmerchants free and clear of any liens and enable Netmerchants to conduct its business as the business is currently conducted, including the sale of any products or technology or the provision of any services by Netmerchants (other than with respect to products acquired from third parties). Netmerchants owns exclusively, and has good title to, all copyrighted works that are Netmerchants' products or other works of authorship that Netmerchants otherwise purports to own. Netmerchants has not transferred ownership of or granted any license of or right to use or authorized the retention of any rights to use any Intellectual Property to any other person. To Netmerchants' knowledge, the operation of the business of Netmerchants as it currently is conducted, including but not limited to Netmerchants' design, development, use, import, manufacture and sale of Netmerchants' website, if any, and Netmerchants' products, technology or services (including portions of Netmerchants' website or Netmerchants' products, technology or services currently under development, if any) does not infringe or misappropriate any Intellectual Property of any person, violate the rights of any person or constitute unfair competition or trade practices under the laws of any jurisdiction.

#### 4.14 CONTRACTS

The Netmerchants Disclosure Schedule attached hereto contains a complete and accurate list of all contracts, agreements and understandings, oral or written, to which Netmerchants is a party as of the date of this Agreement or by which Netmerchants is currently bound providing for potential future payments by Netmerchants, including, without limitation, security agreements, license agreements, software development agreements, distribution agreements, joint venture agreements, reseller agreements, credit agreements and instruments relating to the borrowing of money. All contracts identified in the Netmerchants Disclosure Schedule attached hereto are valid, binding and enforceable in accordance with their terms against Netmerchants and, neither Netmerchants nor any other party thereto is in default thereunder, nor is there any event which with notice or lapse of time, or both, would constitute a default by Netmerchants. A true and complete copy of each such written contract has been made available to Merkatum. Except as set forth in the Netmerchants Disclosure Schedule attached hereto, Netmerchants has no currently binding (a) contracts with directors, officers, stockholders, employees, agents, consultants, advisors, salespeople, sales representatives, distributors or dealers that cannot be canceled by Netmerchants within 30 days notice without liability, penalty or premium, providing for the payment of any bonus or commission based on sales or earnings, or any compensation agreement or arrangement affecting or relating to former employees of Netmerchants; (b) employment agreement or any other agreement for services that contains severance or termination pay liabilities or obligations; (c) non-competition agreement or other arrangement that would prevent Netmerchants from carrying on its business anywhere in the world; (d) notice that any party to a contract listed herein intends to cancel, terminate or refuse to renew such contract (if such contract is renewable); (e) material dispute with any of its suppliers, customers, distributors, resellers, licensors or licensees; (f) product distribution agreement, development agreement, or license agreement as licensor or licensee; (g) joint venture contract or



arrangement or any other agreement that involves a sharing of profits with other persons; (h) instrument evidencing indebtedness of Netmerchants for borrowed money by way of a direct loan, sale of debt securities, purchase money obligation, conditional sale or guarantee, or otherwise; and (i) agreements or commitments of Netmerchants to provide indemnification.

#### 4.15 LIABILITIES

The Netmerchants Disclosure Schedule attached hereto contains a complete and accurate list of all liabilities, obligations and indebtedness by which Netmerchants is bound as of the date of this Agreement. Except as set forth in the Netmerchants Disclosure Schedule attached hereto, Netmerchants has no liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise.

#### 4.16 LITIGATION

There is no action, suit or proceeding of any nature pending nor has Netmerchants received notice (oral or written) of any actions, suits or proceedings threatened against Netmerchants, its properties or any of its officers or directors, nor to Netmerchants' knowledge as of the date of this Agreement is there any reasonable basis therefor. To Netmerchants' knowledge, there is no investigation pending or threatened against Netmerchants, its properties or any of its officers or directors by or before any governmental entity, nor to Netmerchants' knowledge as of the date of this Agreement is there any reasonable basis therefor.

#### 4.17 ACCOUNTS RECEIVABLE

All accounts receivable of Netmerchants which arise in the ordinary course of business are carried at values determined in accordance with GAAP consistently applied and are collectible, except to the extent of reserves therefor. No person has any lien, encumbrance or other similar right with respect to any of such accounts receivable and no request or agreement for deduction or discount has been made with respect to any of such accounts receivable.

#### 4.18 BANK ACCOUNTS

The Netmerchants Disclosure Schedule attached hereto contains a complete and accurate list of the names, locations and account numbers of all accounts held at any banks, trust companies, savings and loan associations and other financial institutions at which Netmerchants maintains safe deposit boxes or accounts of any nature and the names of all persons authorized to draw thereon, make withdrawals therefrom or have access thereto. The designated Netmerchants bank accounts may remain open for a period of sixty (60) days or a shorter or longer time as agreed by the parties to allow an accurate and smooth transition of funds from the Netmerchants accounts to the Merkatumi account(s).

#### 4.19 ENVIRONMENTAL MATTERS

Netmerchants has not transported, stored, used, manufactured, disposed of, released or exposed its employees or others to hazardous materials in violation of any law in effect on or before the Effective Time, nor has Netmerchants disposed of, transported, sold, or manufactured any product containing a hazardous material in violation of any rule, regulation, treaty or statute promulgated by any governmental entity in effect prior to or as of the date hereof. No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending nor has Netmerchants received

notice (oral or written) of any action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim threatened concerning any environmental permit, hazardous material or any hazardous materials activity of Netmerchants, if any.

#### 4.20 EMPLOYEE BENEFIT PLANS

The Netmerchants Disclosure Schedule attached hereto sets forth a complete and accurate list and description of all retirement, pension, profit sharing, deferred compensation, savings, bonus, incentive, cafeteria, flexible benefits, medical, dental, vision, hospitalization, life insurance, group insurance, medical expense reimbursement, dependent care assistance, tuition reimbursement, disability, accident, sick pay, holiday, vacation, severance, stock purchase, stock option, stock appreciation rights, fringe benefit and other employee benefit plans, funds, policies, programs, contracts, arrangements and payroll practices (including, but not limited to, all "employee benefit plans," as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and all employment, consulting and personal service contracts and agreements sponsored, maintained or contributed to by Netmerchants, (b) covering or benefiting any current or former officer, employee, agent, director or independent contractor of Netmerchants (or any dependent or beneficiary of any such individual) with respect to, or as a result of, such, individual's relationship with Netmerchants, or (c) with respect to which Netmerchants has (or could have) any obligation or liability (such plans, funds, policies, programs, contracts, arrangements and payroll practices are hereinafter referred to collectively as "Employee Benefit Plans" and each individually as an "Employee Benefit Plan"). Netmerchants has made available to Merkatum a true, correct and complete copy of all Employee Benefit Plans and any amendments thereto. With respect to such Employee Benefit Plan, (a) such Employee Benefit Plan is, and at all times since its inception has been, maintained, administered and operated in all material respects in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, and all requirements prescribed thereby, including, but not limited to, ERISA and the Code; (b) all returns, reports and other disclosures relating to such Employee Benefit Plan required to be filed with any governmental entity or agency or furnished to any participant or beneficiary have been properly completed or prepared and timely filed or furnished in accordance with applicable law; and (c) neither the Company, nor to the knowledge of the Company or the Shareholder, any other fiduciary of such Employee Benefit Plan has engaged in any transaction or acted or failed to act in a manner that violates the fiduciary requirements of ERISA or any other applicable law. Each Employee Benefit Plan that constitutes a "group health plan," as defined in Section 607(1) or 733(a)(1) of ERISA or Section 4980B(g)(2) of the Code, has been maintained, administered and operated at all times since its inception in compliance in all material respects with the requirements of Parts 6 and 7 of Subtitle B of Title I of ERISA, Section 4980B(f) of the Code, any regulations under such ERISA and Code sections and any other applicable federal, state, local or foreign law regarding the provision or continuation of health insurance coverage or other welfare benefits (within the meaning of Section 3(1) of ERISA). All contributions, premiums and other payments due or required to be made to such Employee Benefit Plan under the terms of such Employee Benefit Plan, ERISA, the Code or other applicable law have been timely paid. In addition, Netmerchants has never maintained, established, sponsored, participated in, or contributed to, any Pension Plan which is subject to Title IV of ERISA or Section 412 of the Code. Also, no Netmerchants employee plan provides, or reflects or represents any liability to provide, retiree life insurance, retiree health or other retiree employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable statute, and Netmerchants has not, prior to the Effective Time, violated any of the health care continuation requirements of COBRA, the requirements of FMLA or any similar provisions of state law applicable to its employees where such violation could result in material liability to Netmerchants. The execution of this Agreement and the consummation of the transactions contemplated hereby will not constitute an event under any employee plan, employee

agreement, trust or loan that will or may result in any 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 employee.

#### 4.21 EMPLOYMENT AND LABOR MATTERS.

Netmerchants (i) is in material compliance in all respects with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to employees; (ii) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees; (iii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing; and (iv) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees. There are no pending, or threatened or reasonably anticipated claims or actions against Netmerchants under any worker's compensation policy or long-term disability policy. In addition, there are no actions, suits, claims, labor disputes or grievances pending or threatened or reasonably anticipated against Netmerchants relating to any labor, safety or discrimination matters involving any employee, including, without limitation, charges of unfair labor practices or discrimination complaints, which, if adversely determined, would result in any liability to Netmerchants or the Surviving Corporation. Netmerchants has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act.

#### 4.22 INSURANCE.

The Netmerchants Disclosure Schedule attached hereto contains a complete and accurate list of all policies of insurance and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of Netmerchants. There is no claim pending under any insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of Netmerchants as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid, and Netmerchants and any covered parties are otherwise in compliance with the terms of such policies and bonds.

#### 4.23 DISCLOSURE

No information furnished by Netmerchants to Merkatum or its representatives in connection with this Agreement (including, but not limited to, the Financial Statements and all information herein and other exhibits attached hereto or referenced herein) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made or information so delivered not misleading in light of all the circumstances in which they were made or delivered.

### ARTICLE V -- REPRESENTATIONS AND WARRANTIES OF MERKATUM

Merkatum represents and warrants to Netmerchants as of the Effective Time as follows:

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## 5.1 ORGANIZATION

Merkatum is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. Merkatum has the corporate power to own its properties and to carry on its business as now being conducted and to consummate the Merger or the other transactions contemplated herein. Merkatum has not conducted business under any other name. The sole director and officer of Merkatum is José Luqué.

## 5.2 ENFORCEABILITY

Merkatum has all necessary corporate power and authority to execute, deliver and perform its obligations under this Agreement and each of the other certificates, instruments and documents executed or delivered by it pursuant to the terms of this Agreement. All corporate action on the part of the Board of Directors of Merkatum necessary for the authorization, execution, delivery and performance of this Agreement or other related documents, the consummation of the Merger, and the performance of all Merkatum's obligations under this Agreement has been taken or will be taken as of or prior to the Effective Time. All corporate action on the part of the shareholders of Merkatum necessary for the authorization, execution, delivery and performance of this Agreement and other related documents to which Merkatum is a party has been taken or will be taken as of or prior to the Effective Time. This Agreement and each of the other related documents to which Merkatum is a party is a legal, valid and binding obligation of Merkatum, enforceable against Merkatum in accordance with its terms.

## 5.3 MERGER SHARES

The shares of Merkatum Capital Stock to be issued pursuant to the Merger will be duly authorized, validly issued, fully paid, non-assessable and will be issued in compliance with all applicable federal and state securities laws to the extent applicable.

## 5.4 AUTHORITY

Merkatum has all requisite power and authority to enter into this Agreement and any related agreements to which it is a party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement and any related agreements to which it is a party and the consummation of the transactions contemplated herein have been duly authorized by all necessary corporate action on the part of Merkatum, and no further action is required on the part of Merkatum to authorize this Agreement, any related agreements to which it is a party or the transactions contemplated herein. Merkatum has duly executed and delivered this Agreement and, as of the Effective Time, this Agreement, the Merger and any related agreements to which Merkatum is a party have been unanimously approved by the Board of Directors and shareholders of Merkatum. As of the Effective Time, Merkatum will have all requisite power and authority to enter into any certificates, agreements or other instruments to which it is a party and to consummate the transactions contemplated herein.

## 5.5 NO CONFLICT

The execution and delivery of this Agreement and any related agreement to which Merkatum is a party, do not, and the consummation of the transactions contemplated herein will not, conflict with, or result in any violation of, or default or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under (i) any provision of the Articles of Incorporation, Bylaws and Shareholders Agreement of Merkatum, (ii) any mortgage, indenture, lease,

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contract, other agreement, instrument, permit, concession, franchise or license to which Merkatum or any of their respective properties or assets are subject and that has been filed as an exhibit to Merkatum, or (iii) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Merkatum or their respective properties or assets.

#### 5.6 CONSENTS

No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other federal, state, county, local or other foreign governmental authority, instrumentality, agency or commission or any third party, including a party to any agreement with Merkatum, is required by Merkatum in connection with the execution and delivery of this Agreement and any related agreements to consummate the transactions contemplated herein, except for (i) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws, (ii) the filing of Articles of Merger with the Florida Secretary of State, (iii) the approval of the Merger by the Merkatum's Board of Directors and shareholders, and (iv) any other filings or approvals as may be required under Florida Law.

#### 5.7 GOVERNMENTAL AUTHORIZATION

Merkatum has obtained all necessary consents, licenses, permits, grants or other authorizations necessary to operate or conduct its business as currently conducted or hold any interest in its properties or assets. Merkatum has complied with, in all material respects, is not in violation of, and has not received any notices of violation with respect to, any foreign, federal, state or local statute, law or regulation.

#### 5.8 TAX MATTERS

As of the Effective Time, Merkatum will have paid all Taxes it is required to pay and will have withheld with respect to any employees all federal and state income taxes, FICA, FUTA and other taxes required to be withheld. Merkatum has no liabilities for unpaid federal, state, local and foreign Taxes which have not been accrued or reserved against in accordance with GAAP, whether asserted or unasserted, contingent or otherwise. There are no liens, pledges, charges, claims, restrictions on transfer, mortgages, security interests or other encumbrances of any sort (collectively, "Liens") on the assets of Merkatum relating to or attributable to Taxes other than Liens for Taxes not yet due and payable.

#### 5.9 RESTRICTIONS ON BUSINESS ACTIVITIES

There is no agreement, commitment, judgment, injunction, order or decree to which Merkatum is a party or otherwise binding upon Merkatum which has or may have the effect of prohibiting or impairing any business practice of Merkatum, any acquisition of property (tangible or intangible) by Merkatum or the conduct of business as currently run by Merkatum.

#### 5.10 PROPERTY

Merkatum does not own any real property. The only real property currently leased by Merkatum is located at 1200 Anastasia Avenue, Suite 440, Coral Gables, Miami-Dade County, Florida ("Merkatum Real Property") pursuant to that certain lease agreement dated Oct. 5<sup>th</sup>, 2000, a true copy of which including any amendments thereto ("Merkatum Lease") has been made available to Netmerchants. The Lease is in full force and effect, valid and effective in accordance with its terms, and

there is no existing default or event of default. In addition, the Merkatum Disclosure Schedule attached hereto contains a complete and accurate list of all material items of personal property owned or leased by Merkatum ("Merkatum Personal Property"). The Merkatum Personal Property is (i) adequate for the conduct of the business of Netmerchants as currently conducted and (ii) in acceptable operating condition, regularly and properly maintained, subject to normal wear and tear. The Merkatum Real Property and the Merkatum Personal Property include all material property used in the business of Merkatum, other than the technology and intellectual property rights.

#### 5.11 INTELLECTUAL PROPERTY

The Merkatum Disclosure Schedule attached hereto contains a complete and accurate list of all items of Intellectual Property owned by Merkatum. Merkatum has rights to such Intellectual Property used in connection with the operation or conduct of the business of Merkatum free and clear of any liens and enables Merkatum to conduct its business as the business is currently conducted.

#### 5.12 CONTRACTS

The Merkatum Disclosure Schedule attached hereto contains a complete and accurate list of all contracts, agreements and understandings, oral or written, to which Merkatum is a party as of the date of this Agreement or by which Merkatum is currently bound providing for potential future payments by Merkatum, including, without limitation, security agreements, license agreements, software development agreements, distribution agreements, joint venture agreements, reseller agreements, credit agreements and instruments relating to the borrowing of money. All contracts identified in the Merkatum Disclosure Schedule attached hereto are valid, binding and enforceable in accordance with their terms against Merkatum and, neither Merkatum nor any other party thereto is in default thereunder, nor is there any event which with notice or lapse of time, or both, would constitute a default by Merkatum. A true and complete copy of each such written contract has been made available to Netmerchants. Except as set forth in the Merkatum Disclosure Schedule attached hereto, Merkatum has no currently binding (a) contracts with directors, officers, stockholders, employees, agents, consultants, advisors, salespeople, sales representatives, distributors or dealers that cannot be canceled by Merkatum within 30 days notice without liability, penalty or premium, any agreement or arrangement providing for the payment of any bonus or commission based on sales or earnings, or any compensation agreement or arrangement affecting or relating to former employees of Merkatum; (b) employment agreement, or any other agreement for services that contains severance or termination pay liabilities or obligations; (c) non-competition agreement or other arrangement that would prevent Merkatum from carrying on its business anywhere in the world; (d) notice that any party to a contract listed herein intends to cancel, terminate or refuse to renew such contract (if such contract is renewable); (e) material dispute with any of its suppliers, customers, distributors, resellers, licensors or licensees; (f) product distribution agreement, development agreement, or license agreement as licensor or licensee; (g) joint venture contract or arrangement or any other agreement that involves a sharing of profits with other persons; (h) instrument evidencing indebtedness of Merkatum for borrowed money by way of a direct loan, sale of debt securities, purchase money obligation, conditional sale or guarantee, or otherwise; and (i) agreements or commitments of Merchants to provide indemnification.

#### 5.13 LIABILITIES

The Merkatum Disclosure Schedule attached hereto contains a complete and accurate list of all liabilities, obligations and indebtedness by which Merkatum is currently bound as of the date of this Agreement. Except as set forth in the Merkatum Disclosure Schedule attached hereto, Merkatum has no

liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or otherwise.

#### 5.14 LITIGATION

There is no action, suit or proceeding of any nature pending nor has Merkatum received notice (oral or written) of any actions, suits or proceedings threatened against Merkatum, its properties or any of its officers or directors, nor to Merkatum's knowledge as of the date of this Agreement is there any reasonable basis therefor. To Merkatum's knowledge, there is no investigation pending or threatened against Merkatum, its properties or any of its officers or directors by or before any governmental entity, nor to Merkatum's knowledge as of the date of this Agreement is there any reasonable basis therefor.

#### 5.15 ACCOUNTS RECEIVABLE AND BANK ACCOUNTS

The Merkatum Disclosure Schedule attached hereto contains a complete and accurate list of (i) all accounts receivable, if any, derived from or which arose in the ordinary course of Merkatum's business, and (ii) the names, locations and account numbers of all accounts held at any banks, trust companies, savings and loan associations and other financial institutions at which Merkatum maintains safe deposit boxes or accounts of any nature and the names of all persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

#### 5.16 DISCLOSURE

No information furnished by Merkatum to Netmerchants or its representatives in connection with this Agreement (including, but not limited to all information herein and other exhibits attached hereto or referenced herein) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made or information so delivered not misleading in light of all the circumstances in which they were made or delivered.

### ARTICLE VI -- TERMINATION AND SEPARATION

#### 6.1 TERMINATION

The Merger shall immediately become effective upon execution of this Agreement and filing of the Articles of Merger, and shall continue to be effective and in full force for a minimum period of one (1) year from the Effective Date ("Initial Term"). In the event the event the Surviving Corporation raises Three Million Dollars (US \$3,000,000.00) by means of attracting new customers or by private capital funding within the Initial Term, unless a longer or shorter time is agreed upon, this Merger shall become remain effective and binding indefinitely unless otherwise decided by the Board of Directors and Shareholders of the Surviving Corporation. Unless otherwise provided in this Agreement or in any related agreement to be executed in connection with this Agreement, in the event the Surviving Corporation is unable, for whatever reason, to raise Three Million Dollars (US \$3,000,000.00) by means of attracting new customers or by private capital funding of the Surviving Corporation within the Initial Term in order to fund the Surviving Corporation's working capital or other financial needs, the Board of Directors of the Surviving Corporation shall have the option, in its sole discretion, to (i) extend the Initial Term; (ii) abandon the Merger and separate the Surviving Corporation back into Netmerchants and Merkatum; or (iii) take any other action it deems appropriate, desirable and in the best interests of the Surviving Corporation.

## 6.2 SEPARATION

In the event the Board of Directors decides it would be appropriate, desirable and in the best interests of the Surviving Corporation to abandon and terminate the Merger and separate the Surviving Corporation and all the assets and liabilities currently held by the Surviving Corporation and associated with the business thereof ("Separation"), the Surviving Corporation shall transfer, convey and assign all the assets and liabilities owned by and belonging to Netmerchants and Merkatum prior to the Effective Date of the Merger back to each entity. The parties shall execute and deliver all documents of transfer, assignments, substitutions, assumptions of liability, undertakings, agreements or other instruments and take such action as Netmerchants or Merkatum may reasonably deem necessary or desirable in order to effect the Separation and conveyance of title to all assets, rights and other things of value contemplated to be transferred to Netmerchants and Merkatum pursuant to the Separation, and to have Netmerchants and Merkatum unconditionally assume and discharge the liabilities contemplated to be assumed by each party under the Separation and to relieve the Surviving Corporation of any liability or obligation with respect thereto and evidence the same to third parties. With respect to all assets acquired and all liabilities incurred by the Surviving Corporation from and after the Effective Date of the Merger shall be shared or distributed equally between Netmerchants and Merkatum or as the principals for Netmerchants and Merkatum otherwise agree. It is contemplated that in conjunction with the Separation, Netmerchants will reincorporate in the State of Florida and resume its name Netmerchants. The parties intend that the Separation will qualify as a tax-free reorganization under the Code, and that the Separation is intended to be, and is hereby adopted as, a plan of reorganization under the Code.

## ARTICLE VII -- SURVIVAL AND INDEMNIFICATION

### 7.1 SURVIVAL

All representations and warranties contained in this Agreement or the related documents shall survive the Closing for a period of one (1) year after the Effective Time and shall not be deemed waived, provided however, that any claim based on unpaid delinquent Taxes shall survive until the end of the applicable statute of limitations. In addition, the covenants and agreements contained in this Agreement or the related documents shall survive the Closing and shall continue until all obligations with respect thereto shall have been performed or satisfied or shall have been terminated in accordance with their terms.

### 7.2 INDEMNIFICATION BY HOLDERS OF NET MERCHANT STOCK

From and after the Effective Date, each holder of Netmerchants Capital Stock prior to the Merger shall, jointly and severally, indemnify and hold Merkatum, its officers, directors, employees, representatives, agents, attorneys, successors, heirs or assigns ("Indemnified Parties") harmless from and against, and shall reimburse the Indemnified Parties for, any and all actual out-of-pocket losses, damages, debts, liabilities, obligations, judgments, orders, awards, injunctions, decrees, fines, penalties, taxes, costs or expenses (including, but not limited to, reasonable legal or accounting fees or expenses) arising under, caused by or related to (i) any inaccuracy or misrepresentation in, or breach of, any representation or warranty made by Netmerchants in this Agreement; (ii) any failure by Netmerchants to perform or comply, in whole or in part, with any covenant or agreement in this Agreement; and (iii) all liability for Taxes of Netmerchants assessed during or attributable to any taxable period ending on or prior to the Effective Date. An Indemnified Party shall give written notice of any claim for indemnification under this Article reasonably promptly after the assertion against an Indemnified Party of any claim by a third party ("Third Party Claim"), or, if such claim is not in respect of a Third Party Claim, reasonably promptly after



the discovery of facts upon which the Indemnified Party intends to base a claim for indemnification hereof.

### 7.3 REMEDIES

The indemnification provisions of this Article are not the sole and exclusive remedy of any party to this Agreement for a breach of any representation, warranty or covenant contained herein. Each of the parties acknowledges and agrees that the other parties hereto would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the parties hereto agrees that the other parties hereto shall be entitled to a preliminary and permanent injunction to prevent breaches of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof (including the indemnification provisions hereof) in any competent court having jurisdiction over the parties, in addition to any other remedy to which they may be entitled at law or in equity.

## ARTICLE VIII -- GENERAL PROVISIONS

### 8.1 AMENDMENT

This Agreement may be amended or modified by the parties hereto at any time before or after approval of Netmerchants' shareholders; but after such approval, however, no amendment will be made which by applicable law requires the further approval of Netmerchants' shareholders without obtaining such further approval.

### 8.2 WAIVER

At any time prior or after to the Effective Time, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties contained herein or in any document delivered pursuant hereto, or (c) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby.

### 8.3 EXPENSES

To the extent the Merger and other transactions contemplated by this Agreement are consummated, the parties agree that all professional fees and expenses incurred in connection with the negotiation, preparation and execution of this Agreement and the Merger (including legal and accounting fees and expenses) shall be an obligation of the Surviving Corporation. In the event that the Merger and other transactions contemplated by this Agreement are not consummated, for whatever reason, each party agrees to pay its own professional fees and expenses incurred in connection herewith. Should any action be brought related to this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and expenses.

### 8.4 NOTICES

Any notice or demand desired or required to be given hereunder shall be in writing given by personal delivery, confirmed facsimile transmission, or overnight courier service, in each case addressed as respectively set forth below or to such other address as any party shall have previously designated by such a notice. The effective date of any notice or request shall be the date of personal

delivery, the date on which successful facsimile transmission is confirmed or the date actually delivered by a reputable overnight courier service, as the case may be, in each case properly addressed as provided herein and with all charges prepaid.

To Netmerchants:

Attention: Brent Williams  
4540 Carambola Circle South  
Coconut Creek, Florida 33066

With a copy to:  
(Law Firm Address)

To Merkatum:

Attention: José Luqué  
Merkatum Corporation  
1200 Anastasia Avenue  
Biltmore Executive Center  
Suite 440  
Coral Gables, Florida 33134  
Tel. (305) 448-8070  
Fax. (305) 448-8084

With a copy to:

Attention: Michael J. Ioannou, Esquire  
Mattlin & McClosky  
2300 Glades Road  
Suite 400, East Tower  
Boca Raton, FL 33431  
Tel. (561) 368-9200  
Fax: (561) 395-7050

#### 8.5 SEVERABILITY

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated herein is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated herein be consummated as originally contemplated to the fullest extent possible.

Handwritten signature and initials in the bottom right corner of the page.

8.6 ENTIRE AGREEMENT

This Agreement and related documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof.

8.7 ASSIGNMENT

This Agreement shall not be assigned by operation of law or otherwise, unless agreed to by the parties hereto in writing, provided however, that Merkatum's rights and obligations may be assigned to and assumed by any other corporation wholly owned by Merkatum.

8.8 PARTIES IN INTEREST

This Agreement shall be binding upon and inure solely to the benefit of each party hereto and their respective successors and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement except as specifically provided.

8.9 HEADINGS

The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

8.10 GOVERNING LAW

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Florida.

8.11 COUNTERPARTS

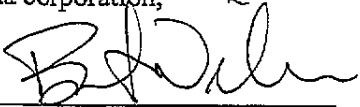
In order to facilitate the filing and recording of this Agreement, the same may be executed in any number of counterparts, each of which shall be deemed to be an original.

8.12 WAIVER OF JURY TRIAL

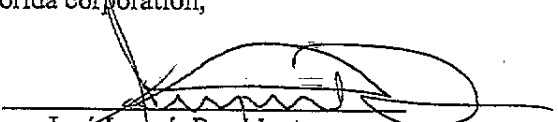
NETMERCHANTS AND MERKATUM HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SUCH PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

IN WITNESS WHEREOF, the parties hereto have entered into and signed this Agreement as of the date and year first written.

NETMERCHANTS, INC.,  
a Florida corporation,

By:   
Brent Williams, President

MERKATUM CORPORATION,  
a Florida corporation,

By:   
José Luqué, President

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