



## **Closing Agenda for Mergers**

**Document 1394A**

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[CORPORATE NAME]

AGREEMENT AND PLAN OF MERGER  
AND RELATED TRANSACTIONS

[DATE]

CLOSING AGENDA

	Responsibility /Status
<b>1. <u>BASIC AGREEMENTS</u></b>	
1.1 Agreement and Plan of Merger dated as of the [Date] (the “ <b>Merger Agreement</b> ”) by and between [list Holding Company], a _____ [corporation] (the “ <b>Holding</b> ”), [Name of Buyer], a _____ corporation (the “ <b>Buyer</b> ”, together with Holding and Buyer, the “ <b>Buying Parties</b> ”) and [Name of Seller], a _____ [corporation] (the “ <b>Company</b> ”) and [list stockholders], as holders of all of the outstanding shares of capital stock (the “ <b>Shares</b> ”) of the Company (the Company and Stockholders are referred to herein, collectively, as the “ <b>Sellers</b> ”)	
1.1.1 Exhibits to the Merger Agreement.	
1.1.2 Disclosure Schedules of the Company	
1.1.3 Disclosure Schedules of the Buyer	
1.2 Escrow Agreement dated as of the Closing Date by and among the Buying Parties, the Sellers and _____, as Escrow Agent.	
1.3 Amended and Restated Stockholders Agreement dated as of the Closing Date by and among the Buying Parties, the Sellers and certain other stockholders.	
1.4 Registration Rights Agreement dated as of the Closing Date by and among the Buying Parties, the Sellers and certain other stockholder	
1.5 Employment and Non-Competition Agreement dated as of the Closing Date by and between the Surviving Company and _____.	
1.6 Distribution Agreement dated as of the Closing Date by and between the Surviving Company and _____.	
1.7 Lease Agreement dated as of the Closing Date by and between the Surviving Company and _____, as Landlord.	
<b>2. <u>CLOSING UNDER THE MERGER AGREEMENT</u></b>	
2.1 Payment of \$_____ to Escrow Agent pursuant to Section ___ of the Merger Agreement.	
2.2 Payment of \$_____ as Merger Consideration to Sellers’	

	<b>Responsibility /Status</b>
[Representative] on behalf of Sellers pursuant to Section ___ of the Merger Agreement.	
2.3 Stock Certificates marked “canceled” representing _____ shares of Common Stock of the Company held by each of the following Sellers: 2.3.1 [list of stockholders – number of shares]	
2.4 Warrants marked “canceled” representing _____ shares of Common Stock in the Company held by each of the following: 2.4.1 [List of Warrant holders]	
2.5 Canceled Promissory Notes of _____ to pay _____ in the amount of \$_____.	
2.6 Termination Agreements.	
2.6.1 Evidence of termination of the _____ Agreement dated as of [DATE] among the Company and [list parties]	
2.6.2 Evidence of termination of the Employment Agreement dated as of [DATE] among the Company and [list parties]	
2.6.3 Evidence of termination of the Shareholders’ Agreement dated as of [DATE] among the Company and [list parties]	
2.7 Funds Flow Memorandum	
<b>3. <u>CLOSING CERTIFICATES</u></b>	
3.1 Officer’s Certificate of Holdings as to representations and warranties and performance of conditions pursuant to Section ___ of the Merger Agreement.	
3.2 Officer’s Certificate of the Company as to representations and warranties and performance of conditions pursuant to Section ___ of the Merger Agreement.	
3.3 Officer’s Certificate of the Buyer as to representations and warranties and performance of conditions pursuant to Section ___ of the Merger Agreement.	
3.4 Bring Down Certificates:	
3.4.1 Certificate of Officer of Buyer delivered pursuant to Section ___ of the Merger Agreement.	
3.4.2 Certificate of Officer of Sellers delivered pursuant to Section ___ of the Merger Agreement.	
3.5 Assignment of Trademarks and Service Marks by and between [parties] assignment all trademarks and service mark applications and registrations held by the Sellers, for filing with the U.S. Patent Trademark Office (including those listed on	

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Schedule __ hereto).	
3.6 Assignment and Assumption Agreements.	
3.6.1 Assignment and Assumption Agreement dated as of the Closing Date by and between the Surviving Corporation and [_____] pursuant to Section __ of the Merger Agreement.	
<b>4 <u>REQUIRED CONSENTS AND ASSIGNMENTS</u></b>	
4.1 [Landlord Consents, if any]	
4.2 License Agreements. 4.2.1 [List if any]	
4.3 Leases: 4.3.1 [List if any]	
<b>5. <u>HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976</u></b>	
5.1 Buyer HSR Filing.	
5.2 Seller HSR Filing.	
5.3 Letters from Federal Trade Commission dated [DATE], confirming early termination of the waiting period under the HSR Act.	
<b>6. <u>SECURITIES AND EXCHANGE COMMISSION (“SEC”) FILINGS AND CORRESPONDENCE</u></b>	
6.1 Proxy Statement/Prospectus dated [DATE] and accompanying letters to the Stockholders of _____.	
6.2 Proxy Cards for the Special Meeting	
6.3 Certificate of Secretary of [the Company] re: actions taken at Special Meeting.	
6.4 Registration Statement of the Company on Form [S-4] (the “Registration Statement”) as filed with the SEC on [DATE] with Exhibits.	
6.5 Commission’s Order declaring the Registration Statement on Form S-4 effective on [DATE].	
6.6 Form 8-K filed as of [DATE].	
<b>7 <u>LEGAL OPINIONS</u></b>	
7.1 [List legal opinions]	
<b>8. <u>ORGANIZATION AND EXISTENCE, QUALIFICATION AND</u></b>	

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	<b><u>AUTHORIZATION</u></b>	
8.1	[Holdings Name] (“Holdings”)	
8.1.1	Certificate of Tax Good Standing of recent date of the Department of Revenue of the State of _____.	
8.1.2	Certificate of recent date of the [STATE] Secretary of State listing all charter documents of Holdings on file in such office and certifying that Holdings is duly organized, validly existing and in good standing under [STATE] law.	
8.1.3	Copy, certified by the [STATE] Secretary of State of all charter documents of Holdings listed in item [8.1.2].	
8.1.4	Certificate of Tax Good Standing of recent date of the Department of Revenue of the State of _____.	
8.1.5	Certificate of the Secretary of Holdings as to (a) certificate of incorporation as filed with the Secretary of State of the State of [STATE] together with all amendments, (b) by-laws, (c) resolutions authorizing the execution of the Merger Agreement and the other Transaction Documents to which Holdings is a party and the transactions contemplated thereby, (d) incumbency and signatures of signing officers, (e) no change in charter documents or good standing.	
8.1.6	Certificates of recent date of the Secretary of State of the following jurisdictions as to the qualification of Holdings as a foreign corporation in each jurisdiction:  8.1.6.1 [List States]	
8.2	[Company Name] (the “Company”)	
8.2.1	Certificate of Tax Good Standing of recent date of the Department of Revenue of the State of _____.	
8.2.2	Certificate of recent date of the [STATE] Secretary of State listing all charter documents of the Company on file in such office and certifying that the Company is duly organized, validly existing and in good standing under [STATE] law.	
8.2.3	Copy, certified by the [STATE] Secretary of State of all charter documents of the Company listed in item [8.2.2].	
8.2.4	Certificate of the Secretary of the Company as to (a) certificate of incorporation as filed with the Secretary of State of the State of [STATE] together with all amendments, (b) by-laws, (c) resolutions authorizing the execution of the Merger Agreement and the other Transaction Documents to	

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	which the Company is a party and the transactions contemplated thereby, (d) incumbency and signatures of signing officers, (e) no change in charter documents or good standing.	
8.2.5	Certificates of recent date of the Secretary of State of the following jurisdictions as to the qualification of the Company as a foreign corporation in each jurisdiction: 8.2.5.1 [List States]	
8.3	[Company Name] (the “Buyer”)	
8.3.1	Certificate of recent date of the [STATE] Secretary of State listing all charter documents of the Company on file in such office and certifying that the Buyer is duly organized, validly existing and in good standing under [STATE] law.	
8.3.2	Certificate of the Secretary of the Buyer as to (a) certificate of incorporation as filed with the Secretary of State of the State of [STATE] together with all amendments, (b) by-laws, (c) resolutions authorizing the execution of the Merger Agreement and the other Transaction Documents to which the Buyer is a party and the transactions contemplated thereby, (d) incumbency and signatures of signing officers, (e) no change in charter documents or good standing.	
8.3.3	Copy, certified by the [STATE] Secretary of State of all charter documents of the Buyer listed in item [8.3.1].	
8.3.4	Certificates of recent date of the Secretary of State of the following jurisdictions as to the qualification of the Buyer as a foreign corporation in each jurisdiction: 8.3.4.1 [List States]	
<b>9.</b>	<b><u>CONSUMMATION OF MERGER</u></b>	
9.1	Certificate of Merger dated as of the Closing Date as filed with and certified by the [STATE] Secretary of State.	
9.2	Certificate of Merger dated as of the Closing Date as filed with and certified by the [STATE] Secretary of State.	
9.3	Evidence of Compliance with _____, from each of the Company and the Sellers.	

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<b>10. <u>BENEFITS MATTERS</u></b>	
10.1 Form 5500's filed in accordance with Section ____ of the Merger Agreement.	
<b>11. <u>MISCELLANEOUS</u></b>	
11.1 Certificate of Non-Foreign Status of Individuals under Section 1445 of the Internal Revenue Code of 1986, as amended:	
11.1.1 [Stockholders]	