SECURITIES AND EXCHANGE COMMISSION

FORM 10-Q/A

Quarterly report pursuant to sections 13 or 15(d) [amend]

Filing Date: **2001-05-11** | Period of Report: **2001-03-31**
SEC Accession No. 0000927016-01-500926

(HTML Version on secdatabase.com)

FILER

PERITUS SOFTWARE SERVICES INC

CIK:**1011632**| IRS No.: **043126919** | State of Incorp.:**MA** | Fiscal Year End: **1231**
Type: **10-Q/A** | Act: **34** | File No.: **000-22647** | Film No.: **1630545**
SIC: **7371** Computer programming services

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 10-Q/A

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2001**

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE TRANSITION PERIOD FROM TO**

COMMISSION FILE NUMBER 000-22647

PERITUS SOFTWARE SERVICES, INC.
(Exact Name of Registrant as Specified in Its Charter)

Massachusetts	**04-3126919**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification No.)**
112 Turnpike Road, Suite 111, Westborough, Massachusetts	**01581-2860**
(Address of Principal Executive Offices)	**(Zip Code)**

(508) 870-0963
(Registrant's Telephone Number, Including Area Code)

Not Applicable
(Former Name, Former Address and Former Fiscal Year, If Changed Since Last Report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date:

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Title of Class	Shares outstanding at May 10, 2001
Common Stock, $.01 par value	27,319,903

PERITUS SOFTWARE SERVICES INC.
FORM 10-Q
FOR THE QUARTERLY PERIOD ENDED MARCH 31, 2001

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From time to time, information provided by the Company or statements made by its employees may contain "forward-looking" statements, as that term is defined in the Private Securities Litigation Reform Act of 1995. For this purpose, any statements contained herein that are not statements of historical fact may be deemed to be forward-looking statements. Without limiting the foregoing, the words "believes", "anticipates", "plans", "expects", and similar expressions are intended to identify forward-looking statements.

This Quarterly Report on Form 10-Q may contain forward looking statements which involve risks and uncertainties. The Company's actual results could differ materially from the results discussed in such statements. Certain factors that could cause such a difference include, without limitation, the risks specifically described in the Company's Annual Report on Form 10-K for the year ended December 31, 2000 and other public documents, filed by the Company with the Securities and Exchange Commission (the "Commission"), which factors are incorporated herein by reference and the factors listed below in "Factors That May Affect Future Results." The Company' s forward looking statements generally do not reflect the impact of any future transactions or strategic alliances. From time to time, the Company may also provide oral or

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written forward-looking statements in other materials it releases to the public. The Company does not assume any obligation to update any of the forward-looking statements it makes.

Explanatory Note:

This amendment to the registrant's Form 10-Q filed yesterday is being filed to correct an error in the table contained within Note 4 to the unaudited consolidated financial statements on segment, geographic and product information. The $644,000 of license revenue in 2000 was inadvertently shown as foreign revenue rather than United States revenue. The correction of this error is the only change to this Form 10-Q.

PART I. FINANCIAL INFORMATION

Item 1. ***Financial Statements***

PERITUS SOFTWARE SERVICES, INC.
CONSOLIDATED BALANCE SHEET
(In thousands, except share-related data)

(Unaudited)

ASSETS	March 31, 2001	December 31, 2000
Current assets:		
Cash and cash equivalents	$ 3,652	$ 3,716
Short-term investments	1,411	1,411
Accounts receivable, net of allowance for doubtful accounts of $25	108	565
Costs and estimated earnings in excess of billings on uncompleted contracts	–	8
Prepaid expenses and other current assets	206	196
Total current assets	5,377	5,896
Long-term investments	1,000	1,000
Property and equipment, net	139	217
	$ 6,516	$ 7,113
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Current portion of capital lease obligations	$ 13	$ 13
Accounts payable	6	34
Customer advances	289	289
Billings in excess of costs and estimated earnings on uncompleted contracts	33	158
Other accrued expenses and current liabilities	360	377
Total current liabilities	701	871
Capital lease obligations	9	12
Total liabilities	710	883
Commitments and contingencies	–	–

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Stockholders' equity:		
Common stock, $.01 par value; 50,000,000 shares authorized; 27,319,903 shares issued and outstanding at March 31, 2001 and December 31, 2000, respectively	273	273
Additional paid-in capital	113,208	113,208
Accumulated deficit	(107,661)	(107,237)
Accumulated other comprehensive loss	(14)	(14)
Total stockholders' equity	5,806	6,230
	$ 6,516	$ 7,113

The accompanying notes are an integral part of these unaudited consolidated financial statements.

PERITUS SOFTWARE SERVICES, INC.
CONSOLIDATED STATEMENT OF OPERATIONS
(In thousands, except per share related data)

(unaudited)

	ThreeMonths Ended March 31,	
	2001	2000
Revenue:		
Outsourcing services	$ 541	$809
License	–	644
Other services	37	112
Total revenue	578	1,565
Cost of revenue:		
Cost of outsourcing services	319	510
Cost of license	–	–
Cost of other services	14	70
Total cost of revenue	333	580
Gross profit	245	985
Operating expenses:		
Sales and marketing	82	57
Research and development	265	325
General and administrative	415	472
Gain on sale of assets	–	(24)
Total operating expenses	762	830

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Profit (Loss) from operations	(517)	155
Interest income, net	93	35
Cost of strategic investment	–	4,000
Net loss	$ (424)	$(3,810)
Basic and Diluted Loss per share	$ (0.02)	$(0.21)
Weighted average shares outstanding -basic and diluted	27,320	17,746

The accompanying notes are an integral part of these unaudited consolidated financial statements.

PERITUS SOFTWARE SERVICES, INC.

CONSOLIDATED STATEMENT OF CASH FLOWS

(In thousands)

(Unaudited)

	Three Months Ended March 31,	
	2001	2000
Increase (Decrease) in Cash and Cash Equivalents		
Cash flows from operating activities:		
Net loss	$(424)	$ (3,810)
Adjustments to reconcile net loss to net cash provided by (used for) operating activities:		
Depreciation and amortization	79	153
Gain on asset sale	–	(24)
Cost of strategic investment	–	4,000
Changes in assets and liabilities:		
Accounts receivable	457	226
Costs and estimated earnings in excess of billings on uncompleted contracts	8	91
Prepaid expenses and other current assets	(10)	72
Other assets	–	13
Accounts payable	(28)	36
Billings in excess of costs and estimated earnings on uncompleted contracts	(125)	(56)
Deferred revenue	–	(68)
Other accrued expenses and current liabilities	(17)	(323)
Net cash provided by (used for) operating activities	(60)	310
Cash flows from investing activities:		

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Proceeds from sale of property and equipment	–	57
Purchases of property and equipment	(1)	–
Net cash provided by (used for) investing activities	(1)	57
Cash flows from financing activities:		
Principal payments on capital lease obligations	(3)	(4)
Proceeds from exercise of stock options	–	28
Proceeds from issuance of common stock, net of issuance costs	–	4,000
Net cash provided by (used for) financing activities	(3)	4,024
Effects of exchange rates on cash and cash equivalents	–	–
Net increase (decrease) in cash and cash equivalents	(64)	4,391
Cash and cash equivalents, beginning of period	3,716	2,475
Cash and cash equivalents, end of period	$3,652	$ 6,866
Supplemental disclosure of cash flows:		
Cash paid for income taxes	$–	$ –
Cash paid for interest	–	–

The accompanying notes are an integral part of these unaudited consolidated financial statements.

PERITUS SOFTWARE SERVICES, INC.

NOTES TO UNAUDITED CONSOLIDATED FINANCIAL STATEMENTS

1. Basis of Presentation and Current Financial Condition

The accompanying unaudited consolidated financial statements include the accounts of Peritus Software Services, Inc. and its subsidiaries ("Peritus" or the "Company") and have been prepared by the Company without audit in accordance with the Company's accounting policies, as described in the Company's Annual Report on Form 10-K for the year ended December 31, 2000, as filed with the Securities and Exchange Commission ("SEC"). In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments, consisting only of those of a normal recurring nature, necessary for a fair presentation of the Company's financial position, results of operations and cash flows at the dates and for the periods indicated. While the Company believes that the disclosures presented are adequate to make the information not misleading, these financial statements should be read in conjunction with the consolidated financial statements and related notes included in the Company's 2000 Annual Report on Form 10-K. The operating results for the three months ended March 31, 2001 are not necessarily indicative of the results to be expected for the full year ending December 31, 2001.

The Company's consolidated financial statements have been presented on the basis that it is a going concern, which contemplates continuity of operations, realization of assets and the satisfaction of liabilities in the ordinary course of business. The Company experienced net losses of $424,000 for the quarter ended March 31, 2001 and net losses of $4,166,000 and $2,583,000 in the years ended December 31, 2000 and 1999, respectively. Based on the Company's current forecasted cash expenditures and its cash on hand, the Company expects to have sufficient cash to finance its operations through the year 2001. The Company's future beyond the year 2001 is dependent upon its ability to execute some form of organizational transaction, achieve break-even cash flow, or raise additional financing. There can be no assurances that the Company will be able to do so.

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On March 27, 2000, Rocket Software, Inc. ("Rocket"), a privately held company, invested $4,000,000 in the Company in exchange for 10,000,000 shares ($.40 per share) of restricted common stock (37% of outstanding stock after the investment). The Company granted Rocket certain registration rights with respect to the shares. The Company recorded a $4,000,000 non-cash charge related to the investment in the quarter ended March 31, 2000. The charge represented the difference between the quoted market price on the commitment date and the price paid by Rocket. Under certain sections of the Internal Revenue Code, a change in ownership of greater than 50% within a three-year period places an annual limitation on the Company's ability to utilize its existing net operating loss and research and development tax credit carry-forwards. The investment by Rocket triggered the limitation.

On October 16, 2000, the Company announced that it retained The Catalyst Group, LLC to render financial advisory and investment banking services in connection with exploring strategic alternatives, including the potential sale of the Company.

On March 28, 2001, the Company announced that it had received a non-binding offer from Rocket to acquire the Company. Rocket currently owns 10,000,000 shares of the Company's common stock representing 36.6% of the total outstanding shares of 27,319,903.

On April 18, 2001, the Company announced it had executed an Agreement and Plan of Merger with Rocket and Rocket Acquisition Company, Inc. Under the terms of the Agreement, Rocket Acquisition Company, Inc., a subsidiary of Rocket, would be merged into Peritus with Peritus as the surviving corporation. If the merger is completed, all Peritus shareholders other than Rocket, certain affiliates of Rocket and dissenting stockholders would be paid $0.19 per share in cash in exchange for their Peritus shares. Outstanding options to purchase Peritus' common stock, with a per share exercise price less than $0.19, unless exercised, will be converted into the right to receive, upon the surrender of the instrument evidencing the stock option, a cash payment equal to the product of (1) the number of shares underlying the option and (2) the difference between $0.19 and the per share exercise price of the options. Such options will then be cancelled. All other outstanding options to purchase Peritus' common stock will be cancelled. In general, each of the parties has the right to terminate the agreement of merger, if the merger is not completed on or before June 30, 2001. The Agreement also provides that the Company must have at least $4,810,000 in cash at closing after subtraction of the lesser of $840,000 or the actual transaction costs. Completion of the transaction is subject to approval by the holders of a majority of Peritus' outstanding common stock, obtaining the requisite third party and governmental consents and other customary closing conditions. The Company filed a preliminary proxy statement relating to the proposed merger with the SEC on April 27, 2001.

2. Legal Proceedings

The Company is from time to time subject to legal proceedings and claims which arise in the normal course of its business. In the opinion of management, the amount of ultimate liability with respect to these actions, currently known, will not have a material adverse effect on the Company's financial position or results of operations.

3. Comprehensive Income (Loss)

Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. It includes all changes in equity during a period except those resulting from investments by owners and distributions to owners.

For the three months ended March 31, 2001 and 2000, the Company's comprehensive loss was equal to its net loss.

4. Segment, Geographic, and Product Information

The Company operates in one reportable segment under SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information," due to its centralized structure and single industry segment: software maintenance, tools and services. The Company currently derives its revenue from software maintenance outsourcing services, software and methodology licensing and other services.

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Information by geographic area for the three months ended March 31, 2001 and 2000 is summarized below (in thousands):

	Outsourcing Services		License Revenue		Other Services Revenue		Long-lived
	Unaffiliated	Affiliated	Unaffiliated	Affiliated	Unaffiliated	Affiliated	Assets
March 31, 2001							
United States	$ 541	–	$ –	–	$ 37	–	$ 139
Foreign	–	–	–	–	–	–	–
	$ 541	–	$ –	–	$ 37	–	$ 139
March 31, 2000							
United States	$ 809	–	$ 644	–	$ 112	–	$ 516
Foreign	–	–	–	–	–	–	–
	$ 809	$ –	$ 644	–	$ 112	–	$ 516

The geographic classification of revenue is determined based on the country in which the legal entity providing the services is located. Revenue from no single foreign country was greater than 10% of the consolidated revenues of the Company in quarters ended March 31, 2001 and 2000.

5. Employment Agreement

Under the terms of an employment agreement with Mr. John Giordano, President, Chief Executive Officer, and Chief Financial Officer of Peritus, if

Mr. Giordano's employment is terminated by Peritus without cause (as defined) or terminates upon a change of control of Peritus, he will be entitled to receive:

a severance payment of approximately $200,000; and

benefits in accordance with Peritus' then current policies until the earlier of the date of one year following the termination date or the date Mr. Giordano commences employment or consulting with a third party.

On February 26, 2001, Peritus provided Mr. Giordano with a letter agreement establishing the goals for his bonus for the year 2001. Pursuant to this letter agreement, Mr. Giordano will receive a bonus equal to approximately $100,000 for the year 2001 if certain financial results for Peritus are achieved. In addition, the letter agreement provides that Mr. Giordano will receive a bonus of $100,000 in lieu of the above bonus if a merger, or any sale of substantially all of the assets, of Peritus occurs on or prior to June 30, 2001. If such change of control occurs after July 1, 2001 through and including December 31, 2001, the letter agreement provides that Mr. Giordano will be paid a bonus of $50,000 in lieu of the above bonuses.

6. Catalyst Agreement

On October 16, 2000, the Company announced that it retained The Catalyst Group, LLC to render financial advisory and investment banking services in connection with exploring strategic alternatives, including the potential sale of the Company. The Catalyst Agreement, dated October 16, 2000 and amended on April 9, 2001, provides for the Company to pay Catalyst a fixed fee of $50,000 for a fairness opinion on the merger contemplated by the Agreement and Plan of Merger dated April 18, 2001 entered into by and among Peritus, Rocket and Rocket Acquistion Company, Inc.

Item 2. ***Management's Discussion And Analysis Of Financial Condition And Results Of Operations***

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Overview and Current Financial Condition

Peritus was incorporated in Massachusetts in August 1991. The Company provides solutions consisting of software products and services that enable organizations to improve the productivity, quality and effectiveness of their information technology, systems maintenance, or "software evolution" functions. The Company derives its revenue from software maintenance outsourcing services, software and methodology licensing, and other services.

In the second half of 1998 and in 1999, the overall market for the year 2000 tools and services of the Company contracted dramatically, resulting in substantial financial losses. In response, the Company substantially reduced its workforce in September and December of 1998 and again in April of 1999. During the second and third quarters of 1999, the Company also settled its leases for its facilities in Cincinnati, Ohio, Lisle, Illinois and Billerica, Massachusetts and took other efforts to reduce its fixed costs. As a result of the Company's degraded financial condition, the Company began encountering major obstacles in obtaining new outsourcing business. Since most outsourcing engagements are multi-year and involve critical applications, prospective new clients, although interested in the capabilities and technology of the Company, were reluctant or unwilling to commit to contracts. Despite the significant reduction in the overall cost structure as a result of the foregoing actions, the Company was unable to achieve a cash flow break-even position in the years ended December 31, 1999 and 2000.

On March 27, 2000, Rocket invested $4,000,000 in the Company in exchange for 10,000,000 shares ($.40 per share) of restricted common stock (37% of outstanding stock after the investment). The Company granted Rocket certain registration rights with respect to the shares. The Company recorded a $4,000,000 non-cash charge related to the investment in the quarter ended March 31, 2000. The charge represented the difference between the quoted market price on the commitment date and the price paid by Rocket. Under certain sections of the Internal Revenue Code, a change in ownership of greater than 50% within a three-year period places an annual limitation on the Company's ability to utilize its existing net operating loss and research and development tax credit carry-forwards. The investment by Rocket triggered the limitation.

On October 16, 2000, the Company announced that it retained The Catalyst Group, LLC to render financial advisory and investment banking services in connection with exploring strategic alternatives, including the potential sale of the Company.

On February 8, 2001, the Company announced that it was reducing its workforce by nine employees effective February 23, 2001.

On March 28, 2001, the Company announced that it had received a non-binding offer from Rocket to acquire the Company. Rocket currently owns 10,000,000 shares of the Company's common stock representing 36.6% of the total outstanding shares of 27,319,903.

On April 18, 2001, the Company announced it had executed an Agreement and Plan of Merger with Rocket and Rocket Acquisition Company, Inc. Under the terms of the Agreement, Rocket Acquisition Company, Inc., a subsidiary of Rocket, would be merged into Peritus with Peritus as the surviving corporation. If the merger is completed, all Peritus shareholders other than Rocket, certain affiliates of Rocket and dissenting stockholders would be paid $0.19 per share in cash in exchange for their Peritus shares. Outstanding options to purchase Peritus' common stock, with a per share exercise price less than $0.19, unless exercised, will be converted into the right to receive, upon the surrender of the instrument evidencing the stock option, a cash payment equal to the product of (1) the number of shares underlying the option and (2) the difference between $0.19 and the per share exercise price of the options. Such options will then be cancelled. All other outstanding options to purchase Peritus' common stock will be cancelled. In general, each of the parties has the right to terminate the agreement of merger, if the merger is not completed on or before June 30, 2001. The Agreement also provides that the Company must have at least $4,810,000 in cash at closing after subtraction of the lesser of $840,000 or the actual transaction costs. Completion of the transaction is subject to approval by the holders of a majority of Peritus' outstanding common stock, obtaining the requisite third party and governmental consents and other customary closing conditions. The Company filed a preliminary proxy statement relating to the proposed merger with the SEC on April 27, 2001.

The Company experienced net losses of $424,000 for the quarter ended March 31, 2001, and net losses of $4,166,000 and $2,583,000 in the years ended December 31, 2000 and 1999, respectively. Based on the Company's current forecasted cash expenditures and its cash on hand, the Company expects to have sufficient cash to finance its operations through the year 2001. The Company's future beyond the year 2001 is dependent upon its ability to execute some form of organizational transaction, achieve break-even cash flow, or raise additional financing. There can be no assurances that the Company will be able to do so.

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The Company's primary strategy is to seek some form of organizational transaction. Beyond that, the Company intends to continue to service its existing outsourcing customer and to convince the customer to continue to purchase services after December 31, 2001. At the same time, the Company is pursuing new business through:

the licensing of, and associated consulting and training for, its software maintenance methodology (technology transfer services), its SAM Relay tool and selectively its CodeNine tool

the provision of various service offerings including, without limitation, general software consulting.

Since its receipt of a non-binding offer letter from Rocket, the Company's primary focus has been the negotiation, evaluation and preparation of the agreement of merger, and once executed, the performance of that agreement and the satisfaction of the various conditions to closing that agreement.

Three Months Ended March 31, 2001 Compared To Three Months Ended March 31, 2000

Revenue

Total revenue decreased 63.1% to $578,000 in the three months ended March 31, 2001 from $1,565,000 in the three months ended March 31, 2000. This decrease in revenue was primarily due to a decrease in the licensing of the Company's software, products and tools, and to a lesser extent, decreases in outsourcing and other services revenue.

The Company anticipates that total revenue for the year 2001 will be substantially below the level achieved in 2000.

Outsourcing Services. Outsourcing services revenue decreased 33.1% to $541,000 in the three months ended March 31, 2001 from $809,000 in the three months ended March 31, 2000. As a percentage of total revenue, outsourcing services revenue increased to 93.6% in the three months ended March 31, 2001 from 51.7% for the three months ended March 31, 2000. The increase in outsourcing services revenue as a percentage of total revenue reflects the decreased contribution of license revenue to total revenue during the three months ended March 31, 2001 when compared to the same period in the prior year. The decrease in outsourcing revenue in absolute dollars in the three months ended March 31, 2001, compared to March 31, 2000, was attributable to recording lower amounts of revenue under existing outsourcing engagements due to reduced workload or contract terminations. During the first quarter of 2001, a contract with one client was terminated. During the first quarter of 2001, outsourcing revenue attributable to the client was $129,000. The Company did not sign any new outsourcing contracts during first quarter of 2001. The Company's only remaining outsourcing customer is Bull HN Information Systems, Inc. ("Bull"). The Bull contract expires on December 31, 2006 but is earlier cancelable by Bull or Peritus. The Company expects Bull to cancel the contract effective January 1, 2002. Future outsourcing revenue is dependent upon signing new customers which the Company has not been able to do in the last two years.

License. License revenue was zero dollars in the three months ended March 31, 2001 compared to $644,000, or 41.2% of total revenue, in the three months ended March 31, 2000. The $644,000 of license revenue in the quarter ended March 31, 2000 was attributable to paid-up license revenue for two customers. The Company will continue to pursue licenses of its software maintenance methodology and SAM Relay product and selectively pursue licenses for its CodeNine tool. Future revenue is dependent on the success of such efforts. The Company has not recorded any license revenue since the third quarter of 2000.

Other Services. Other services revenue decreased 67.0% to $37,000 in the three months ended March 31, 2001 from $112,000 in the three months ended March 31, 2000. As a percentage of total revenue, other services revenue decreased to 6.4% in the three months ended March 31, 2001 from 7.2% in the three months ended March 31, 2000. The decrease in other services revenue in absolute dollars was primarily attributable to the cessation of maintenance revenue associated with the Company's year 2000 products. Future revenue from other services is dependent on the Company's success in licensing its methodolgy, and its SAM Relay and CodeNine products which would generate maintenance, consulting and training revenue.

Cost of Revenue

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Cost of Outsourcing Services Revenue. Cost of outsourcing services revenue consists primarily of salaries, benefits and overhead costs associated with delivering outsourcing services to clients. The cost of outsourcing services revenue

decreased 37.5% to $319,000 in the three months ended March 31, 2001 from $510,000 for the three months ended March 31, 2000. Cost of outsourcing services revenue as a percentage of outsourcing services revenue decreased to 59.0% in the three months ended March 31, 2001 from 63.0% in the three months ended March 31, 2000. The decrease in cost of outsourcing revenue both in percentage of outsourcing revenue and in absolute dollars was primarily due a reduction in staffing expenses.

Cost of License Revenue. Cost of license revenue consists primarily of salaries, benefits and related overhead costs associated with license-related materials packaging and freight. Cost of license revenue was zero dollars in both the three months ended March 31, 2001 and the three months ended March 31, 2000.

Cost of Other Services Revenue. Cost of other services revenue consists primarily of salaries, benefits, subcontracting costs and related overhead costs associated with delivering other services to clients. Cost of other services revenue decreased 80.0% to $14,000 in the three months ended March 31, 2001 from $70,000 in the three months ended March 31, 2000. Cost of other services revenue as a percentage of other services revenue decreased to 37.8% in the three months ended March 31, 2001 from 62.5% in the three months ended March 31, 2000. The reduction in the cost of other services revenue in absolute dollars was primarily the result of a reduction in the Company's warranty reserve.

Operating Expenses

Sales and Marketing. Sales and marketing expenses consist primarily of salaries, commissions and related overhead costs for sales and marketing personnel; sales agent fees; and other promotional activities. Sales and marketing expenses increased 43.9% to $82,000 in the three months ended March 31, 2001 from $57,000 in the three months ended March 31, 2000. As a percentage of total revenue, sales and marketing expenses increased to 14.2% in the three months ended March 31, 2001 from 3.6% in the three months ended March 31, 2000. The increase in expenses in both absolute dollars and as a percentage of revenue was primarily attributable to an increase in staffing expense associated with one sales representative in 2001 and additional sales agent fees.

Research and Development. Research and development expenses consist primarily of salaries, benefits and related overhead costs for engineering and technical personnel associated with developing new products and enhancing existing products. Research and development expenses decreased 18.5% to $265,000 in the three months ended March 31, 2001 from $325,000 in the three months ended March 31, 2000. As a percentage of total revenue, research and development expenses increased to 45.8% in the three months ended March 31, 2001 from 20.8% in the three months ended March 31, 2000. The decrease in research and development expenses in absolute dollars was primarily attributable to a reduction in staffing expenses. The Company plans to continue limited maintenance of and enhancements to its existing products.

General and Administrative. General and administrative expenses consist primarily of salaries and related costs for the finance and accounting, human resources, legal services, information systems, excess space charges, and other administrative departments of the Company, as well as contracted legal and accounting services. General and administrative expenses decreased 12.1% to $415,000 in the three months ended March 31, 2001 from $472,000 in the three months ended March 31, 2000. As a percentage of total revenue, general and administrative expenses increased to 71.8% in the three months ended March 31, 2001 from 30.2% in the three months ended March 31, 2000. The decrease in general and administrative expenses in absolute dollars was primarily due to the reduction in bonus expense in the three months ended March 31, 2001.

Cost of Strategic Investment

On March 27, 2000, Rocket invested $4,000,000 in the Company in exchange for 10,000,000 shares ($0.40 per share) of restricted common stock (37% of outstanding stock after the investment). The Company recorded a non-cash charge of $4,000,000 for the cost of this strategic investment equal to the difference between the purchase price per share of $0.40 and the market price per share of $0.80 on March 27, 2000.

Interest Income (Expense), Net

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Interest income and expense is primarily comprised of interest income from cash balances, partially offset by interest expense on debt. The Company had interest income, net, of $93,000 in the three months ended March 31, 2001 compared to interest income, net, of $35,000 in the three months ended March 31, 2000. This change in interest income (expense), net, was primarily attributable to increased interest income from interest bearing investments as a result of the Rocket investment.

Liquidity and Capital Resources

The Company has financed its operations and capital expenditures primarily with the proceeds from sales of the Company's convertible preferred stock and common stock, borrowings, advance payments for services from clients, and internally generated cash flows. The Company's cash balances were $3,652,000 and $3,716,000 at March 31, 2001 and December 31, 2000, respectively. The Company's working capital was $4,676,000 and $5,025,000 at March 31, 2001 and December 31, 2000, respectively.

The Company's operating activities used cash of $60,000 and provided cash of $310,000 during the three months ended March 31, 2001 and 2000, respectively. The cash used during the three months ended March 31, 2001 was primarily caused by a net loss of $424,000 less the non-cash depreciation and amortization expense of $79,000. Other uses were a decrease in billings in excess of costs and estimated earnings on uncompleted contracts of $125,000, a decrease in accounts payable of $28,000, a decrease in other accrued liabilities of $17,000 and a increase in prepaid and other assets of $10,000. These amounts were partially offset by a decrease in accounts receivable of $457,000 and a decrease in costs and estimated earnings in excess of billings on uncompleted contracts of $8,000.

The Company's investing used cash of $1,000 and provided cash of $57,000 during the three months ended March 31, 2001 and 2000, respectively. Investing activities in the three months ended March 31, 2001 reflect investments in property and equipment.

The Company's financing activities used cash of $3,000 and provided cash of $4,024,000 during the three months ended March 31, 2001 and 2000, respectively. Financing activities in the three months ended March 31, 2001 reflect principal payments on the Company's capital lease obligation. Financing activities for the three months ended March 31, 2000 included $4,000,000 in proceeds from the issuance of 10,000,000 shares of common stock to Rocket in March, 2000 at a per share purchase price of $0.40 per share.

The Company had an accounts receivable purchase agreement with a lender to permit borrowing against certain acceptable receivables at a rate of 80% of the face amount of such receivables up to a maximum of $4 million. In exchange for such agreement, the Company granted the lender security interest in substantially all of its assets. There were no borrowings outstanding under the agreement at March 31, 2001 and the Company terminated the agreement on April 18, 2001.

On March 27, 2000, Rocket invested $4,000,000 in the Company in exchange for 10,000,000 shares ($.40 per share) of restricted common stock (36.6% of outstanding stock after the investment). The Company granted Rocket certain registration rights with respect to the shares.

To date, the Company has not invested in derivative securities or any other financial instruments that involve a high level of complexity or risk. Excess cash has been, and the Company contemplates that it will continue to be, invested in interest-bearing, investment grade securities.

Foreign Currency

Assets and liabilities of the Company's majority-owned foreign subsidiary are translated into U.S. dollars at exchange rates in effect at the balance sheet date. Income and expense items are translated at average exchange rates for the period. Accumulated net translation adjustments are included in stockholders' equity.

Inflation

To date, inflation has not had a material impact on the Company's results of operations.

Factors That May Affect Future Results

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Rocket Merger

On March 28, 2001, the Company announced that it had received a non-binding offer from Rocket to acquire the Company and on April 18, 2001, the Company announced it had executed an Agreement and Plan of Merger with Rocket and Rocket Acquisition Company, Inc. Completion of the transaction is subject to several conditions, including the approval of the holders of a majority of the outstanding shares of the Company's common stock, that the Company must have at least $4,810,000 in cash at closing, after subtraction of the lesser of $810,000 or the actual transaction costs, and other customary closing conditons. There can be no assurance that the Company will satisfy these conditions or that the Company will otherwise be able to complete the merger. Moreover, in general, each of the parties to the Agreement and Plan of Merger has the right to terminate the Agreement and Plan of Merger if the merger is not completed on or prior to June 30, 2001. There can be no assurance that, even if all conditions to closing can be satisfied, those conditions will be satisfied prior to June 30, 2001.

Strategic Alternatives other than Rocket Merger

If the Rocket merger does not close, there can be no assurance that the Company will be able to find another viable alternative or to implement any strategic alternative.

Failure to Achieve Cash Flow Breakeven

The Company's ability to achieve a cash flow breakeven position is critical for achieving financial stability. Since its receipt of a non-binding offer letter from Rocket, the Company's primary focus has been the negotiation, evaluation and

preparation of the Agreement and Plan Merger, and once executed, the performance of that agreement and the satisfaction of the various conditions to closing that agreement. Moreover, the Company's only remaining outsourcing customer is Bull. The Bull contract expires on December 31, 2006 but is earlier cancellable by Bull or the Company. The Company expects Bull to cancel the contract effective January 1, 2002. There can be no assurance that the Company will achieve a cash flow breakeven in the future.

Financing

There can be no assurance that the Company will be able to obtain additional funds in the future through equity and/or debt financings.

Risk of Current Strategy

In the past, the Company generated significant revenues from marketing and selling products and services that addressed the year 2000 problem. The demand for such products and services has ended and the Company no longer actively markets and sells year 2000 products and services. The Company's primary current strategy is to seek some form of organizational transaction. In addition, the Company is continuing to service its existing outsourcing customer and attempting to convince the customer to purchase services beyond December 31, 2001. At the same time, the Company is pursuing new business through (i) the licensing of, and associated consulting and training for, its software maintenance methodology (technology transfer services), its SAM Relay tool, and selectively it CodeNine tool, and (ii) the provision of various service offerings including, without limitation, general software consulting.

The Company plans to continue limited maintenance of and enhancements to its existing products. The Company has explored certain extensions of its CodeNine tool beyond the field of application understanding and has concluded that such extensions are not feasible at this time.

The failure to sell existing products or services and/or develop and sell new products and/or services would have a material adverse effect on the Company's business, financial condition and results of operations. There can be no assurance that the Company will be able to sign new outsourcing business or sell its products or services. There can be no assurance that the Company's current strategy will generate revenues sufficient for the Company to achieve a cash flow breakeven position.

Over the Counter Listing

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Trading of the common stock is conducted in the over-the-counter market which could make it more difficult for an investor to dispose of, or obtain accurate quotations as to the market value of, the common stock. In addition, there are additional sales practice requirements on broker-dealers who sell such securities to persons other than established customers and accredited investors. For transactions covered by this rule, the broker-dealer must make a special suitability determination for the purchaser and must have received the purchaser's written consent to the transaction prior to sale. In addition, as the trading price of the common stock is below $5.00 per share, trading in the common stock is also subject to the requirements of certain rules promulgated under the Securities Exchange Act of 1934, which require additional disclosure by broker-dealers in connection with any trades involving a stock defined as a penny stock (generally any non-NASDAQ equity security that has a market price of less than $5.00 per share, subject to certain exceptions). Such rules require the delivery, prior to any penny stock transaction, of a disclosure schedule explaining the penny stock market and the risks associated therewith, and impose various sales practice requirements on broker-dealers who sell penny stocks to persons other than established customers and accredited investors (generally institutions). For these types of transactions, the broker-dealer must make a special suitability determination for the purchaser and have received the purchaser's written consent to the transaction prior to sale. The additional burdens imposed upon broker-dealers by such requirements may discourage broker-dealers from effecting transactions in the common stock, which could severely limit the market liquidity of the common stock and the ability of purchasers in this offering to sell the common stock in the secondary market.

Potential Fluctuations in Quarterly Performance

The Company's revenue and operating results have varied significantly in the past and are likely to vary significantly from quarter to quarter in the future. The Company's quarterly operating results may continue to fluctuate due to a number of factors, including the timing, size and nature of the Company's individual outsourcing, technology transfer, insourcing and licensing transactions; unforeseen difficulties in performing such transactions; the timing of the introduction and the market acceptance of new services, products or product enhancements by the Company or its competitors; the relative

proportions of revenue derived from license fees and professional services; changes in the Company's operating expenses; personnel changes; foreign currency exchange rates and fluctuations in economic and financial market conditions.

The timing, size and nature of individual outsourcing, technology transfer, insourcing and licensing transactions are important factors in the Company's quarterly operating results. Many such transactions involve large dollar amounts and the sales cycle for these transactions is often lengthy and unpredictable. In addition, the sales cycle associated with these transactions is subject to a number of uncertainties, including clients' budgetary constraints, the timing of clients' budget cycles and clients' internal approval processes. There can be no assurance that the Company will be successful in closing such large transactions on a timely basis or at all. Most of the Company's outsourcing engagements are performed on a fixed-price basis and, therefore, the Company bears the risk of cost overruns and inflation. A significant percentage of the Company's revenue derived from these engagements is recognized on the percentage-of-completion method, which requires revenue to be recorded over the term of a client contract. A loss is recorded at the time when current estimates of project costs exceed unrecognized revenue. The Company's operating results may be adversely affected by inaccurate estimates of contract completion costs.

The Company's expense levels are based, in part, on its expectations as to future revenue and are fixed, to a large extent, in the short term. As a result, the Company has been and may continue to be unable to adjust spending in a timely manner to compensate for any further unexpected revenue shortfall. Accordingly, any significant shortfall in revenue, in addition to those already experienced in relation to the Company's expectations, would have an immediate and material adverse effect on the Company's business, financial condition and results of operations.

Due to all of the foregoing factors, the Company believes that period-to-period comparisons of its operating results are not necessarily meaningful and that such comparisons cannot be relied upon as indicators of future performance. There can be no assurance that future revenue and operating results will not continue to vary substantially. It is also possible that in a quarter the Company's operating results will be below the expectations of public market analysts and investors. In either case, the price of the Company's common stock has been and could continue to be materially adversely affected.

Concentration of Clients and Revenue Risk

The Company's revenue is highly concentrated among a small number of clients. During the year ended December 31, 2000, revenue from four clients accounted for 78.0% of the year's total revenue with one client, Bull, representing 40.3%. Total revenue in the year 2000

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included license revenue of $1,045,000 (23.1% of total revenue) for paid-up licenses from two of these clients. In addition, the contract for one of these clients (representing 12.2% of the revenue for the year ended December 31, 2000) terminated in March 2001. During the first quarter of 2001, outsourcing revenue attributable to that client was $129,000. The Company has not signed any new outsourcing contracts during the last two years or any new license contracts since the third quarter of 2000. Moreover, the Company's only remaining outsourcing customer is Bull. The Bull contract expires on December 31, 2006 but is earlier cancellable by Bull or the Company. The Company expects Bull to cancel the contract effective January 1, 2002. The loss of, or a significant reduction in revenue from, any of the Company's major clients would have a material adverse impact on the Company's business, financial condition and results of operations. In addition, with such a large percentage of the Company's revenue attributable to a small number of clients, the loss of one or more major clients would have a material adverse impact on the Company's liquidity.

Competition

The market for the Company's products and services is intensely competitive and is characterized by rapid changes in technology and user needs and the frequent introduction of new products. In addition, the Company faces competition in the software maintenance outsourcing services market and the software maintenance tools market. A number of the Company's competitors are more established, benefit from greater name recognition and have substantially greater financial, technical and marketing resources than those of the Company. As a result, there can be no assurance that the Company's products and services will compete effectively with those of their respective competitors.

Competitive Market for Technical Personnel

The Company depends, to a significant extent, on its ability to attract, train, motivate and retain highly skilled software professionals, particularly project managers, software engineers and other senior technical personnel. The Company believes that there is a shortage of, and significant competition for, software development professionals with the

skills and experience necessary to perform the services offered by the Company. The Company's ability to maintain and renew existing engagements and obtain new business depends, in large part, on its ability to hire and retain technical personnel with the IT skills that keep pace with continuing changes in software evolution, industry standards and technologies and client preferences. The inability to hire additional qualified personnel could impair the Company's ability to satisfy its client base, requiring an increase in the level of responsibility for both existing and new personnel. There can be no assurance that the Company will be successful in retaining current or future employees.

Fixed-Price, Fixed-Time Contracts

Part of the Company's business is to offer its outsourcing and technology transfer services on fixed-price, fixed-time frame contracts, rather than contracts in which payment to the Company is determined solely on a time-and-materials basis. These contracts are terminable by either party generally upon prior written notice. Although the Company uses its proprietary tools and methodologies and its past project experience to reduce the risks associated with estimating, planning and performing the fixed-price projects, the Company's standard outsourcing and technology transfer agreements provide for a fixed-fee based on projected reductions in a client's maintenance costs and increases in a client's maintenance productivity. The Company's failure to estimate accurately the resources, costs and time required for a project or its failure to complete its contractual obligations within the time frame committed could have a material adverse effect on the Company's business, financial condition and results of operations.

Potential for Contract Liability

The Company's products and services relating to software maintenance involve key aspects of its clients' computer systems. A failure in a client's system could result in a claim for substantial damages against the Company, regardless of the Company's responsibility for such failure. The Company attempts to limit contractually its liability for damages arising from negligent acts, errors, mistakes or omissions in rendering its products and services. Despite this precaution, there can be no assurance that the limitations of liability set forth in its contracts would be enforceable or would otherwise protect the Company from liability for damages. Additionally, the Company maintains general liability insurance coverage, including coverage for errors and omissions. However, there can be no assurance that such coverage will continue to be available on acceptable terms, or will be available in sufficient amounts to cover one or more large claims, or that the insurer will not disclaim coverage as to any future claim. The successful assertion of one or more large claims against the Company that exceed available insurance coverage or changes in the Company's insurance policies, including premium increases or the imposition of large

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deductible or co-insurance requirements, could have a material adverse effect on the Company's business, financial condition and results of operations. Furthermore, litigation, regardless of its outcome, could result in substantial cost to the Company and divert management's attention from the Company's operations. Any contract liability claim or litigation against the Company could, therefore, have a material adverse effect on the Company's business, financial conditions and results of operations.

Software Errors or Bugs

The Company's software products and tools are highly complex and sophisticated and could from time to time contain design defects or software errors that could be difficult to detect and correct. Errors, bugs or viruses may result in loss of or delay in market acceptance, a failure in a client's system or loss or corruption of client data. Although the Company has not experienced material adverse effects resulting from any software defects or errors, there can be no assurance that, despite testing by the Company and its clients, errors will not be found in new products, which errors could have a material adverse effect upon the Company's business, financial condition and results of operations.

Limited Protection of Proprietary Rights

The Company relies on a combination of patent, copyright, trademark and trade secret laws and license agreements to establish and protect its rights in its software products and proprietary technology. In addition, the Company currently requires its employees and consultants to enter into nondisclosure and assignment of invention agreements to limit use of, access to and distribution of its proprietary information. There can be no assurance that the Company's means of protecting its proprietary rights in the United States or abroad will be adequate. The laws of some foreign countries may not protect the Company's proprietary rights as fully or in the same manner as do the laws of the United States. Also, despite the steps taken by the Company to protect its proprietary rights, it may be possible for unauthorized third parties to copy aspects of the Company's products, reverse engineer, develop similar technology independently or obtain and use information that the Company regards as proprietary. Furthermore, there can be no assurance that others will not develop

technologies similar or superior to the Company's technology or design around the proprietary rights owned by the Company.

The Company has entered into license agreements with certain clients that allow these clients access to and use of the source code of certain of the Company's software for certain purposes. Access to the Company's source code may increase the likelihood of misappropriation or misuse by third parties.

The Company has been granted certain patents. There can be no assurance that such patents would survive a legal challenge to their validity or provide meaningful or significant protection to the Company. In addition, the Company has abandoned its pending patent applications because, among other things, it has determined that continued prosecution of such applications would be too costly, the technologies, processes or methodologies are not critical to the Company's business in the foreseeable future or it is unlikely that a patent will issue with regard to a particular application. Certain of the Company's technology incorporated in some of its products may infringe on patents held by others. Any infringement claim or litigation against the Company could have a material adverse effect on the Company's business, financial condition and results of operations.

The Company maintains trademarks and service marks to identify its various service offerings, products and software. Although the Company has registered certain trademarks and service marks with the United States Patent and Trademark Office ("PTO") and has several trademark and service mark applications pending in the United States and foreign jurisdictions, not all of the applications have been granted and, even if granted, there can be no assurance that a particular trademark or service mark will survive a legal challenge to its validity or provide meaningful or significant protection to the Company. In addition, the Company has abandoned the applications of certain trademarks or service marks that it believes are not critical to its business in the future. In some cases, entities other than the Company are using certain trademarks and service marks either in a jurisdiction where the Company has not filed an application or in which the Company is using a mark in a different manner than a third party. There may be some risk of infringement claims against the Company in the event that a service or product of the Company is too similar to that of another entity that is using a similar mark.

Dependence on Third-Party Technology

The Company's proprietary software is currently designed, and may in the future be designed, to work on or in conjunction with certain third-party hardware and/or software products. If any of these current or future third-party vendors were to discontinue making their products

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available to the Company or to licensees of the Company's software or to increase materially the cost to the Company or its licensees to acquire, license or purchase the third-party vendors' products, or if a material problem were to arise in connection with the ability of the Company to design its software to properly use or operate with third-party hardware and/or software products, the Company would be required to redesign its software to function with or on alternative third-party products or attempt to develop internally a replacement for the third-party products. In such an event, interruptions in the availability or functioning of the Company's software and delays in the introduction of new products and services may occur until equivalent technology is obtained. There can be no assurance that an alternative source of suitable technology would be available or that the Company would be able to develop an alternative product in sufficient time or at a reasonable cost. The failure of the Company to obtain or develop alternative technologies or products on a timely basis and at a reasonable cost could have a material adverse effect on the Company's business, financial condition and results of operations.

Rapid Technological Change

The market for the Company's products and services is characterized by rapidly changing technology, evolving industry standards and new product introductions and enhancements that may render existing products obsolete. As a result, the Company's market position could erode further due to unforeseen changes in the features and functionality of competing products. The process of developing products and services such as those offered by the Company is extremely complex and is expected to become increasingly complex and expensive in the future with the introduction of new platforms and technologies. There can be no assurance that the Company will enhance its products or develop any new products or services at all or in a timely fashion or that the Company's current or future products will satisfy the needs of its target market.

Potential Adverse Effects of Anti-Takeover Provisions; Possible Issuance of Preferred Stock

The Company's Amended and Restated Articles of Organization and Amended and Restated By-laws contain provisions that may make it more difficult for a third party to acquire, or discourage acquisition bids for, the Company. For instance, the Company's Amended and Restated By-laws provide that special meetings of stockholders may be called only by the President, the Board of Directors or the holders of at least 80% of the voting securities of the Company. In addition, the Massachusetts General Laws provide that stockholders may take action without a meeting only by the unanimous written consent of all stockholders. The Company's Board of Directors is also divided into three classes, as nearly equal in size as possible, with staggered three-year terms. The Company is also subject to an anti-takeover provision of the Massachusetts General Laws which prohibits, subject to certain exceptions, a holder of 5% or more of the outstanding voting stock of the Company from engaging in certain activities with the Company, including a merger, stock or asset sale. The foregoing provisions could limit the price that certain investors might be willing to pay in the future for shares of the Company's Common Stock. In addition, shares of the Company's Preferred Stock may be issued in the future without further stockholder approval and upon such terms and conditions, and having such rights, privileges and preferences, as the Board of Directors may determine. The rights of the holders of Common Stock will be subject to, and may be adversely affected by, the rights of any holders of Preferred Stock that may be issued in the future. The issuance of Preferred Stock, while providing desirable flexibility in connection with possible acquisitions and other corporate purposes, could have the effect of making it more difficult for a third party to acquire, or discouraging a third party from acquiring, a majority of the outstanding voting stock of the Company.

Item 3. *Quantitative and Qualitative Disclosures About Market Risk*

To date, the Company has not invested in derivative securities or any other financial instruments that involve a high level of complexity or risk. As of March 31, 2001, the Company was exposed to market risks which primarily include changes in U.S. interest rates. The Company maintains a significant portion of its cash and cash equivalents in financial instruments with purchased maturities of two years or less. These financial instruments are subject to interest rate risk and will decline in value if interest rates increase. Due to the short duration of these financial instruments, an immediate increase in interest rates would not have a material effect of the Company's financial condition or results of operations.

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

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The Company is from time to time subject to legal proceedings and claims which arise in the normal course of its business. In the opinion of management, the amount of ultimate liability with respect to these actions, currently known, will not have a material adverse effect on the Company's financial position or results of operations.

Item 6. ***Exhibits And Reports On Form 8-K***

(a) Exhibits:

Documents listed below, except for documents identified by footnotes, are being filed as exhibits herewith. Documents identified by footnotes, if any, are not being filed herewith and, pursuant to Rule 12b-32 of the General Rules and Regulations promulgated by the Commission under the Securities Exchange Act of 1934 (the "Exchange Act") reference is made to such documents as previously filed as exhibits with the Commission. The Company's file number under the Exchange Act is 000-22647.

Exhibit 10.1 Agreement and Plan of Merger by and among Peritus Software Services, Inc., Rocket Software, Inc, and Rocket Acquisition Company, Inc. dated April 18, 2001

Exhibit 11 Statement Re Computation of Net Income (Loss) per common Share

(b) Reports on Form 8-K:

A Current Report Form 8-K dated January 5, 2001 was filed by the Company on January 12, 2001. The Company reported under item 5 (Other Events) that the Company has reached a settlement in its litigation with Micah Technology Services, Inc and Affiliated Computer Services, Inc.

A Current Report Form 8-K dated February 8, 2001 was filed by the Company on February 12, 2001. The Company reported under item 5 (Other Events) that the Company announced a workforce reduction effective February 23, 2001.

A Current Report Form 8-K dated March 28, 2001 was filed by the Company on April 12, 2001. The Company reported under item 5 (Other Events) that the Company had received, on March 28, 2001, a non-binding offer from Rocket Software, Inc. for acquisition of the Company.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: May 11, 2001

PERITUS SOFTWARE SERVICES, INC.

By: /s/ John D. Giordano

John D. Giordano
President, Chief Executive Officer and Chief Financial Officer
(Principal Financial Officer)

PERITUS SOFTWARE SERVICES, INC.

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By: /s/ Patrick Manning
Patrick Manning
Corporate Controller
(Chief Accounting Officer)

Peritus Software Services, Inc.
FORM 10-Q
For the Quarterly Period Ended March 31, 2001
Exhibit Index

Exhibit No.	Description
10.1	Agreement and Plan of Merger by and among Peritus Software Services, Inc., Rocket Software, Inc, and Rocket Acquisition Company, Inc. dated April 18, 2001
11	Statement Re Computation of Net Income (Loss) per Common Share

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EXHIBIT 10.1

AGREEMENT AND PLAN OF MERGER

By and Among

Peritus Software Services, Inc.
("Company"),

Rocket Software, Inc.
("Rocket")

and

Rocket Acquisition Company, Inc.
("Acquiror")

April 18, 2001

A-1

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER is made as of April 18, 2001, by and among Peritus Software Services, Inc., a Massachusetts corporation ("Company"), Rocket Software, Inc., a Massachusetts corporation ("Rocket"), and Rocket Acquisition Company, Inc., a Massachusetts corporation ("Acquiror").

RECITALS

A. The respective Boards of Directors of Company, Rocket and Acquiror deem the merger of Acquiror into Company on the terms and conditions set forth in this Agreement and Plan of Merger (as from time to time amended in accordance herewith, this "Agreement") to be desirable and generally to the welfare and advantage of each, and in the best interests of the stockholders of each.

B. The respective Boards of Directors of Company, Rocket and Acquiror have approved this Agreement and the merger of Acquiror into Company, with Company as the surviving corporation, and the other transactions contemplated by this Agreement, upon the terms and subject to the conditions set forth herein.

C. The Board of Directors of Company has determined that the consideration to be paid for each share of Company Common Stock in the Merger is fair to and in the best interests of the stockholders of Company.

D. The Board of Directors of Company has approved the transactions contemplated by this Agreement in accordance with the provisions of Section 1 of Massachusetts General Laws ch. 110F.

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E. The Board of Directors of Company has directed that this Agreement be submitted to the stockholders of Company for their approval, and Rocket, the majority stockholder of Acquiror, has heretofore approved and adopted this Agreement.

F. Certain capitalized terms used herein are defined in Section 7 of this Agreement or elsewhere in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and other valuable consideration, the receipt and adequacy whereof are hereby acknowledged, the parties hereto, intending to be legally bound, hereby represent, warrant, covenant and agree as follows:

Section 1. The Merger and Related Matters.

1.1 The Merger.

(a) Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Massachusetts Business Corporation Law (the "MBCL"), at the Effective Time, Acquiror shall be merged with and into Company (the "Merger"). At the Effective Time, the separate corporate existence of Acquiror shall cease, and Company shall continue as the surviving corporation under the name Peritus Software Services, Inc. (the "Surviving Corporation").

(b) Upon the terms and subject to the conditions set forth in this Agreement, the Merger shall become effective at the time of filing of articles of merger with the Secretary of State of the Commonwealth of Massachusetts in accordance with the provisions of the MBCL (the "Articles of Merger"), or at such later time in accordance with the provisions of the MBCL as is specified in the Articles of Merger. The Articles of Merger shall be substantially in the form of Articles of Merger attached hereto as Exhibit A. Company and Acquiror agree to file the Articles of Merger at the time of the Closing. The date and time when the Merger shall become effective is hereinafter referred to as the "Effective Time."

(c) From and after the Effective Time, the Surviving Corporation shall possess all the rights, privileges, powers and franchises and be subject to all of the restrictions, disabilities and duties of Acquiror and Company, and the Merger shall otherwise have the effects provided for under the MBCL.

1.2 Closing. Unless this Agreement shall have been terminated and the transactions contemplated hereby abandoned pursuant to Section 8, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Hale and Door LLP, 60 State Street, Boston, Massachusetts at 10:00 a.m., local time, on the first (1st) Business Day after the date on which the last of the conditions set forth in Sections 5 and 6 is fulfilled or waived, or at such other time, date or place as Company, Rocket and Acquiror may mutually agree in writing. The date on which the Closing

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actually takes place is hereinafter referred to as the "Closing Date".

1.3 Articles of Organization; By-Laws; Directors and Officers.

(a) The Articles of Organization of Company, as in effect immediately prior to the Effective Time, shall be the Articles of Organization of the Surviving Corporation until amended in accordance with the terms thereof and the MBCL. The name of the Surviving Corporation shall be "Peritus Software Services, Inc."

(b) The By-laws of Company, as in effect immediately prior to the Effective Time, shall be the By-laws of the Surviving Corporation until amended in accordance with the terms thereof, the Articles of Organization of the Surviving Corporation and the MBCL.

(c) The directors and officers of Acquiror immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation, each to hold office in accordance with the Articles of Organization and By-Laws of the Surviving Corporation.

1.4 Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of Acquiror or Company or their respective stockholders:

(a) Each share of common stock, par value $0.01 per share, of Company (the "Company Common Stock"), issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares held by Rocket or any of its wholly owned Subsidiaries or by Acquiror or any of its wholly owned Subsidiaries and shares held in the treasury of Company or by any of its wholly owned Subsidiaries) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive $0.19 (the "Merger Price"), in cash, upon the surrender of the certificate representing such share.

(b) Prior to the Effective Time, the Board of Directors of Company shall adopt appropriate resolutions and take all other actions necessary to provide that, except as may be otherwise agreed in writing between Acquiror and any holder of any Company Option Securities, each Company Option Security issued and outstanding immediately prior to the Effective Time (other than Company Option Securities held by Rocket or any of its wholly owned Subsidiaries or held in the treasury of Company or by any of its wholly owned Subsidiaries) shall, by virtue of the Merger and without any action on the part of the holder thereof, (i) in the case of Company Option Securities with a per share exercise price that is less than the Merger Price, be converted into the right to receive, upon the surrender of the instrument evidencing such Company Option Security, a cash payment equal to the product (the "Company Option Security Price") of (A) the number of shares of Company Common Stock subject to such Company Option Security and (B) the excess, if any, of the Merger Price over the per share exercise price of the Company Option Security, and each Company Option Security so converted will, upon such payment, be canceled, and, (ii) in the case of all other Company Option Securities, shall be canceled without payment of any consideration therefor or any cost or penalty to or other recourse to or against any of Company, Rocket and the Surviving Corporation and

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without any conversion thereof. In no event shall the holder of any Company Option Security be entitled, from and after the Effective Time, to acquire securities of the Surviving Corporation or Rocket. Anything herein to the contrary notwithstanding, no interest or dividends shall accrue or be payable or paid on the Company Option Security Price to any Person hereunder.

(c) Each share of common stock, par value $0.01 per share, of Acquiror issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one share of common stock, par value $0.01 per share, of the Surviving Corporation.

(d) Each share of Company Common Stock then held by Rocket or any direct or indirect wholly owned Subsidiary of Rocket, or held by Acquiror or any direct or indirect wholly owned Subsidiary of Acquiror, or held in the treasury of Company or by any direct or indirect wholly owned Subsidiary of Company, shall be canceled without payment of any consideration therefor and without any conversion thereof.

(e) Notwithstanding anything in this Agreement to the contrary but only in the circumstances and to the extent provided by the MBCL, shares of Company Common Stock which are outstanding immediately prior to the Effective Time and which are held by stockholders who were entitled to and did not vote such shares in favor of the Merger or consented thereto in writing and who shall have properly and timely delivered to Company a written demand for payment of the fair cash value of shares of Company Common Stock in the manner provided in and complied with all of the relevant provisions of Sections 86 and 89 of the MBCL ("Dissenting Shares") shall not be converted into or represent the right to receive the Merger Price. Instead, the holders thereof shall be entitled to payment of the fair cash value of such shares in accordance with the provisions of Sections 86 through 98 of the MBCL; provided, however, that (i) if any holder of Dissenting Shares shall subsequently deliver a written withdrawal of his demand for payment of the fair cash value of such shares and the Board of Directors of Company or the Surviving Corporation, as the case may be, shall consent thereto, or (ii) if any holder fails to establish and perfect his entitlement to the relief provided in such Sections 86 through 98 of the MBCL or if the right of such holder to receive the fair cash value of such shares of Company Common Stock as to which he seeks relief otherwise terminates pursuant to any of Sections 86 through 98 of the MBCL, such shares shall thereupon cease to be deemed to be Dissenting Shares and shall be deemed to have been converted into and represent the right to receive, upon the surrender of the certificate or certificates representing such shares, as of the Effective Time, the Merger Price. Company will not settle any demand with respect to any Dissenting Shares without the consent of Rocket and Acquiror.

1.5 Payment. (a) Pursuant to an agreement reasonably satisfactory to Company, Rocket and Acquiror (the "Disbursing Agent Agreement") to be entered into before the Closing Date among Rocket, Acquiror and a disbursing agent to be selected by Company and reasonably satisfactory to Rocket and Acquiror (the "Disbursing Agent"), at or immediately following the Effective Time, Company

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shall deposit or cause to be deposited in trust for the benefit of Company's stockholders cash to which holders of Company Common Stock and holders of the Company Option Securities shall be entitled at the Effective Time pursuant to the provisions of Section 1.4. The Disbursing Agent shall invest the cash deposited with it in such manner as the Surviving Corporation directs; provided, however, that substantially all of such investments shall be in obligations of or guaranteed by the United States of America, in commercial paper obligations receiving the highest rating from either Moody's Investors Service, Inc. or Standard & Poor's Corporation, or in certificates of deposit, bank repurchase agreements or bankers' acceptances of commercial banks with capital exceeding $1,000,000,000 (collectively, "Permitted Investments") or in money market funds which are invested solely in Permitted Investments; provided further, however, that the maturities of Permitted Investments shall be such as to permit the Disbursing Agent to make prompt payment of the Merger Price. Any net profit from, or interest or income produced by, Permitted Investments shall be payable to the Surviving Corporation as and when requested by the Surviving Corporation. The Surviving Corporation shall be required to replace any funds lost as a result of any investment. Any funds remaining unclaimed following the expiration of the twelfth (12th) month after the Effective Time shall be released and repaid or redelivered by the Disbursing Agent to the Surviving Corporation upon demand, after which time Persons entitled thereto may look, subject to applicable escheat and other similar laws, only to the Surviving Corporation and to Rocket, which shall remain responsible for payment thereof. Notwithstanding the foregoing, neither the Surviving Corporation, Rocket nor the Disbursing Agent shall be liable to any holder of a share of Company Common Stock for any Merger Price delivered in respect of such share to a public official pursuant to any applicable escheat or other similar law.

(b) As soon as practicable after the Effective Time, the Disbursing Agent shall send a notice and transmittal form to each holder of a certificate or certificates theretofore evidencing shares of Company Common Stock, other than certificates representing Dissenting Shares (such certificates, other than those representing shares to be canceled pursuant to Section 1.4(d) and Dissenting Shares, are collectively referred to herein as the "Certificates"), advising such holder of the effectiveness of the Merger and the procedure for surrendering to the Disbursing Agent such Certificate for payment of the Merger Price. Upon the surrender of a Certificate to the Disbursing Agent together with and in accordance with such transmittal form, the holder thereof shall be entitled to receive in exchange therefor the Merger Price payable in respect of each share of Company Common Stock represented thereby. Upon such surrender, the Disbursing Agent will promptly pay the Merger Price. Except as otherwise provided in Section 1.4, until so surrendered, each such Certificate shall be deemed for all purposes to evidence only the right to receive the Merger Price.

(c) If the Merger Price (or any portion thereof) is to be paid to a Person other than the Person in whose name the Certificate surrendered in exchange therefor is registered, it shall be a condition to the payment of the Merger Price that the Certificate so surrendered shall be properly endorsed or accompanied by appropriate stock powers and otherwise be in proper form for transfer, that such transfer otherwise be proper and that the Person requesting

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such transfer pay to the Disbursing Agent any transfer or other taxes payable by reason of the foregoing or establish to the satisfaction of the Disbursing Agent and the Surviving Corporation that such taxes have been paid or are not required to be paid.

(d) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and subject to such other reasonable conditions as the Board of Directors of the Surviving Corporation may impose, the Surviving Corporation shall issue in exchange for such lost, stolen or destroyed Certificate the Merger Price deliverable in respect thereof as determined in accordance with Section 1.4. When authorizing such issue of the Merger Price in exchange therefor, the Board of Directors of the Surviving Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificate to give the Surviving Corporation a bond or other surety in such sum as it may reasonably direct as indemnity against any claim that may be made against the Surviving Corporation with respect to the Certificate alleged to have been lost, stolen or destroyed.

(e) Anything herein to the contrary notwithstanding, no interest or dividends shall accrue or be payable or paid on any portion of the Merger Price payable to any Person hereunder.

(f) At and after the Effective Time, each holder of a Certificate or of a certificate representing shares of Company Common Stock to be canceled pursuant to Section 1.4(d) or of Dissenting Shares shall cease to have any rights as a stockholder of Company, except, in the case of the holder of a Certificate for the right to surrender Certificates in the manner prescribed by Section 1.5(b) in exchange for payment of the Merger Price or, in the case of the holder of Dissenting Shares, the right to perfect the right to receive payment for Dissenting Shares pursuant to Sections 86 through 98 of the MBCL. No transfer of Company Common Stock shall be made on the stock transfer books of the Surviving Corporation at or after the Effective Time.

(g) The Disbursing Agent Agreement shall also contain provisions of a nature similar to those set forth in this Section with respect to payment of the Company Option Security Price required to be made with respect to Company Option Securities as provided for in Section 1.4(b).

Section 2. Representations, Warranties, Covenants and Agreements of Company.

Except as otherwise disclosed in the Company SEC Documents or in the Disclosure Schedule (the "Disclosure Schedule") delivered by Company to Rocket herewith, Company hereby represents and warrants to Rocket and Acquiror as follows:

2.1 Organization and Business; Power and Authority; Effect of Transaction.

(a) Company (i) is a corporation duly organized, validly existing and in

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good standing under the laws of the Commonwealth of Massachusetts, (ii) has all requisite power and authority (corporate and other) to own or hold under lease its properties and to conduct its business as now conducted and as presently proposed to be conducted, and has made and has in full force and effect all Governmental Authorizations and, to Company's knowledge, Private Authorizations to the extent required for such ownership and lease of its property and conduct of its business, and (iii) has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction in which it is required to be so qualified or authorized to do business, except where the failure to be so qualified or authorized to do business (individually or in the aggregate) would not have a Material Adverse Effect on Company. Complete and correct copies of the Articles of Organization and By-laws of Company, each as amended to date, have heretofore been made available by Company to Rocket. Such Articles of Organization and By-laws are in full force and effect.

(b) Company has all requisite corporate power and authority necessary to enable it to execute and deliver, and to perform its obligations under, and to consummate the transactions contemplated by, this Agreement and each Transaction Document executed or to be executed by Company; and the execution, delivery and performance of this Agreement and each Transaction Document executed or to be executed by Company have been duly authorized by all requisite corporate action, other than the Company Stockholder Approval. This Agreement has been duly executed and delivered by Company and constitutes, and each Transaction Document when executed and delivered by Company will constitute, legal, valid and binding obligations of Company, enforceable in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

(c) The authorized and outstanding capital stock of Company is as set forth in the Disclosure Schedule. All of such outstanding capital stock has been duly authorized and validly issued, is fully paid and nonassessable and is not subject to any preemptive or similar rights. Except as set forth in the Disclosure Schedule, (i) there is neither outstanding nor has Company or any Subsidiary agreed to grant or issue any shares of capital stock or any Option Security or Convertible Security and (ii) neither Company nor any Subsidiary is a party to or is bound by any agreement, put or commitment pursuant to which it is obligated to purchase, redeem or otherwise acquire any shares of capital stock or any Option Security or Convertible Security. Complete and correct copies of each of (A) the Long-Term Incentive Plan (1992), (B) the 1997 Stock Incentive Plan and (C) the 1997 Director Stock Option Plan of Company, together with representative forms of option agreements issued thereunder, have heretofore been delivered by Company to Rocket.

(d) Subject to obtaining the Company Stockholder Approval, neither the execution and delivery of this Agreement or any Transaction Document, nor the consummation of the transactions herein or therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof by Company or any of its Subsidiaries:

(i) (A) will conflict with, or result in a breach or violation of, or

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constitute a default under, any Applicable Law on the part of Company or any of its Subsidiaries or (B) will conflict with or result in a breach or violation of, or constitute a default under, any of the Organic Documents of Company or any of its Subsidiaries or (C) will conflict with, or result in a breach or violation of, or constitute a default under, or permit the acceleration of any obligation or liability under, or but for any requirement of giving of notice or passage of time or both would constitute such a conflict with, breach or violation of, or default under, or permit any such acceleration of, any Contractual Obligation of Company or any of its Subsidiaries, or

(ii) will result in or permit the creation or imposition of any Encumbrance upon any property now owned or leased by Company or any such other party, except, with respect to the immediately preceding

clauses (i)(C) and (ii), in cases where such conflicts, breaches, violations, defaults, accelerations or Encumbrances would not (individually or in the aggregate) result in a Material Adverse Effect on Company.

(e) Company does not have any Subsidiaries other than those set forth in on the Disclosure Schedule, each of which (i) is wholly owned, is a corporation which is duly organized, validly existing and in good standing under the laws of the respective state of incorporation set forth opposite its name on the Disclosure Schedule, (ii) has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction in which it is required to be so qualified or authorized to do business, except where to failure to be so qualified or authorized to do business (individually or in the aggregate) would not have a Material Adverse Effect on Company, and (iii) has full corporate power and authority to carry on the business in which it is engaged. Each such Subsidiary has made and has in full force and effect all Governmental Authorizations and, to Company's knowledge, Private Authorizations required for such ownership and lease of its property and conduct of its business. Company owns all of the outstanding capital stock as shown on the Disclosure Schedule of each such Subsidiary, free and clear of all Encumbrances, and all such stock has been duly authorized and validly issued and is fully paid and nonassessable. There are no outstanding Option Securities or Convertible Securities, or agreements, puts, commitments or understandings with respect to any of the foregoing, of any nature whatsoever relating to the authorized and unissued or the outstanding capital stock of any such Subsidiaries. Except as shown on the Disclosure Schedule, neither Company nor any of its Subsidiaries owns directly or indirectly any capital stock or equity or proprietary interest in any other Entity or enterprise, however organized and however such interest may be denominated or evidenced, or is party to or bound by any agreements, puts, commitments or understandings pursuant to which it is obligated to purchase or otherwise acquire any of the foregoing. None of the Entities, if any, so set forth in the Disclosure Schedule is a Subsidiary of Company except as so set forth.

2.2 Company SEC Documents; Undisclosed Liabilities.

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(a) Each form, report, schedule, registration statement, definitive proxy statement and other document filed or required to be filed by Company with the Commission (as such documents have since the time of their filing been amended, the "Company SEC Documents"), including any financial statements filed or required to be filed as a part thereof, has been duly and timely filed by the Company and complied in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and none of the Company SEC Documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not false or misleading. Company has heretofore made available to Rocket true and complete copies of the Company SEC Documents. None of Company's Subsidiaries is required to file any forms, reports, schedules, registration statements, definitive proxy statements or other documents with the Commission.

(b) The audited consolidated financial statements and unaudited interim consolidated financial statements of Company and its Subsidiaries included in the Company SEC Documents (i) comply in all material respects with applicable accounting requirements and the published rules and regulations of the Commission with respect thereto, (ii) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except as may be indicated therein or in the notes thereto, and in the case of quarterly financial statements, as permitted by Form 10-Q under the Exchange Act), (iii) fairly present the consolidated financial condition, results of operations and cash flows of the Company and its Subsidiaries as of the respective dates thereof and for the periods referred to therein, and (iv) are substantially consistent with the books and records of the Company. Except as set forth in the Company SEC Documents, neither Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) required by GAAP to be set forth on a consolidated balance sheet of Company and its Subsidiaries or in the notes thereto, as of the respective dates thereof and for the periods referred to therein.

(c) Company has delivered to Rocket a true and complete copy of Company's budget for the year ending December 31, 2001, as in effect at the date hereof.

2.3 Absence of Certain Changes or Events. Since the date of the most recent audited financial statements of Company and its Subsidiaries included in the Company SEC Documents: (i) there has been no Material Adverse Effect on Company; (ii) there has been no damage, destruction or loss, whether or not covered by insurance, that has or is likely to have a Material Adverse Effect on Company; (iii) none of the Company and its Subsidiaries has incurred any material liability or obligation (whether accrued, absolute, contingent or otherwise) other than in the ordinary course of business consistent with past practice, nor entered into any material transaction or agreement not in the ordinary course of business; (iv) there has been no dividend or distribution of any kind declared, paid or made by the Company or, except for dividends paid to the Company or any of its Subsidiaries on any class of capital stock or repurchase or redemption by the Company or any of its Subsidiaries of any class

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of capital stock; (v) there has been no change in accounting methods, principles or practices by Company or any of its Subsidiaries materially affecting its assets, liabilities or business, except insofar as may have been required by a change in GAAP; (vi) there has been no revaluation by Company of any of its or any of its Subsidiaries assets, other than any indirect revaluation effected via a change in the market price or trading volume of the Company Common Stock; (vii) each of Company and its Subsidiaries has operated its business in the normal, usual and customary manner in the ordinary and regular course of business consistent with past practice, including the maintenance of working capital at normal operating levels consistent with prior practice; and (viii) none of Company and its Subsidiaries has Encumbered any of its property or assets, other than Permitted Encumbrances.

2.4 Title to Properties; Leases. Each of Company and its Subsidiaries has good and valid title to all the properties and assets reflected as owned on the most recent balance sheet of Company and its Subsidiaries included in the Company SEC Documents or used by Company or any of its Subsidiaries in its business if not so reflected, or purported to have been acquired by Company or any of its Subsidiaries since such date (other than inventory sold, or property, plant and other equipment used up or retired, since such date, in each case in the ordinary course of business consistent with past practice of Company and its Subsidiaries), in each case free and clear of all Encumbrances other than Permitted Encumbrances. The real property, improvements, equipment and personal property held under lease by any of Company and its Subsidiaries are held under valid and enforceable Leases, with such exceptions as are not material and do not materially interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such Subsidiary, and Company or such Subsidiary enjoys peaceful and undisturbed possession under all Leases pursuant to which it holds any real property, improvements, equipment or personal property. The Disclosure Schedule contains a true, correct and complete list of all real estate owned or leased by Company or any of its Subsidiaries and all Leases and a list of all material items of fixed assets and machinery and equipment.

2.5 Compliance with Contractual Obligations and Private Authorizations. The Disclosure Schedule sets forth a true, accurate and complete list of each Private Authorization and each Contractual Obligation which individually is material to any of Company and its Subsidiaries, all of which are in full force and effect. True and complete copies of each such Private Authorization and Contractual Obligation have been made available by Company to Rocket. Each of Company and its Subsidiaries has obtained and maintained all Private Authorizations which are necessary for the ownership by it of its properties and the conduct of its business as now conducted which, if not obtained and maintained, would (individually or in the aggregate) have a Material Adverse Effect on Company. Neither Company nor any Subsidiary is in breach or violation of, or is in default in the performance, observance or fulfillment of, any Contractual Obligation or Private Authorization, and no Event exists or has occurred, which constitutes, or but for any requirement of giving of notice or passage of time or both would constitute, such a breach, violation or default, under any Contractual Obligation or Private Authorization, except for such defaults, breaches or violations as would (individually or in the aggregate) have a Material Adverse Effect on Company. No Private Authorization is the subject of any pending or, to Company's knowledge, threatened repudiation,

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revocation or termination.

2.6 Litigation; Governmental Authorizations; Compliance with Applicable Law.

(a) The Disclosure Schedule contains a list of all Legal Actions which are pending or in which Company or any of its Subsidiaries or any of its business, operations or properties, or any of its officers or directors in connection therewith, is engaged, or, to Company's knowledge, which involves the business, operations or properties of Company or any of its Subsidiaries, or, to Company's knowledge, which is threatened or contemplated against Company or any of its Subsidiaries or any of their business, operations or properties, or any of their officers or directors in connection therewith.

(b) The Company and each of its Subsidiaries has obtained and maintained all Governmental Authorizations which are necessary for the ownership of its properties and the conduct of its business as now conducted which, if not obtained and maintained, would (individually or in the aggregate) have a Material Adverse Effect on Company. No such Governmental Authorization is the subject of any pending or, to Company's knowledge, threatened revocation on termination.

(c) The Company is not in violation of or in default with respect to any Applicable Law which (individually or in the aggregate) would have a Material Adverse Effect on Company.

2.7 Intellectual Property Rights. Company and its Subsidiaries own or possess sufficient trademarks, trade names, service marks, patent rights, copyrights, licenses, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") necessary to conduct their businesses as now conducted; and the expected expiration of any of such Intellectual Property Rights could not reasonably be expected to result in a Material Adverse Effect on Company. None of Company and its Subsidiaries has received any notice of infringement or conflict with asserted intellectual property rights of others, which infringement or conflict, if the subject of an unfavorable decision, would have a Material Adverse Effect on Company. The Disclosure Schedule sets forth a true, accurate and complete list of (i) each trademark, trade name, service mark, patent right or application, registered copyright owned by any of Company and its Subsidiaries and (ii) each other item of Intellectual Property Rights owned by any of Company and its Subsidiaries which, in the good faith judgment of management of Company, individually is material to any of Company and its Subsidiaries, all of which are in full force and effect. To the knowledge of Company, none of such items of Intellectual Property Rights is being infringed or violated by any other Person. No licenses, sublicenses or agreements pertaining to any of such items of Intellectual Property Rights are in effect except as set forth in the Disclosure Schedule.

2.8 Employees.

(a) To Company's knowledge, no employee of any of Company and its

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Subsidiaries is in violation of any material term of any employment contract, patent disclosure or invention agreement or non-competition agreement. There is no pending or, to Company's knowledge, threatened action, suit, proceeding or claim, or to its knowledge any basis therefor or threat thereof, with respect to any contract, agreement, covenant or obligation referred to in the preceding sentence. Company does not have any collective bargaining agreement covering any of its employees.

(b) The Disclosure Schedule lists all employment, management, consulting, management retention or other personal service, or compensation agreements or arrangements covering one or more non-employees (including severance, termination or change-of-control arrangements) and all material employment, management, consulting, management retention or other personal service, or compensation agreements or arrangements covering one or more employees (including severance, termination or change-of-control arrangements), in each case entered into by Company or any of its Subsidiaries, and a true and complete copy of each such agreement has been delivered to Rocket.

(c) The Disclosure Schedule sets forth a true and complete list as of April 9, 2001 of the names and positions of all employees of Company or any of its Subsidiaries and their respective base rate of compensation.

2.9 Related Party Transactions. The Disclosure Schedule sets forth a fair and accurate list of any Contractual Obligation, or transaction occurring after the date of the most recent financial statements contained in the Company SEC Documents, between Company or any of its Subsidiaries and any of the officers, directors, employees, stockholders of any of Company or its Subsidiaries or, to Company's knowledge, any Affiliate of any of the foregoing (other than reasonable and customary compensation for services as officers, directors and employees), including any providing for the furnishing of services to or by, providing for rental of property, real, personal or mixed, to or from, or providing for the lending or borrowing of money to or from or otherwise requiring payments to or from, any such officer, director, employee, stockholder or Affiliate.

2.10 Insurance. The Company and its Subsidiaries are insured by recognized institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses including, but not limited to, policies covering real and personal property owned or leased by the Company and its subsidiaries against theft, damage, destruction and acts of vandalism. The nature, amount and carriers of all such insurance are set forth in the Disclosure Schedule. The Company has no reason to believe that it or any Subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change. Neither the Company nor any Subsidiary has been denied any insurance coverage which it has sought or for which it has applied.

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2.11 Tax Matters. Company and its Subsidiaries have heretofore filed the Tax Returns with respect to Tax periods ending after December 31, 1997, in the jurisdictions specified in, the Disclosure Schedule and have paid, or made adequate provision in accordance with GAAP consistently applied, for the payment of, all Taxes shown to be due and payable on such Tax Returns. All payroll and income Taxes which any of Company or its Subsidiaries is required by law to withhold and collect have been duly withheld and collected, and have been paid over, in a timely manner, to the proper Authorities to the extent due and payable. Neither Company nor any of its Subsidiaries has executed any waiver to extend, or otherwise taken any action that would have the effect of extending, the applicable statute of limitations in respect of any Tax liabilities of Company or any of its Subsidiaries for the fiscal years prior to and including the most recently completed fiscal year. Neither Company nor any of its Subsidiaries is a "consenting corporation" within the meaning of Section 341(f) of the Code. Company and each of its Subsidiaries have at all times been taxable as a Subchapter C corporation under the Code. Neither Company nor any Subsidiary has ever been a member of any consolidated group (other than with Company and its Subsidiaries) for Tax purposes. Federal and state income tax returns of Company and its Subsidiaries have been examined by the IRS or applicable state Authority as shown in the Disclosure Schedule. At the date hereof, there are no Encumbrances on any of the assets of Company or any of its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax. Neither Company nor any of its Subsidiaries (i) is a party to any Tax allocation or sharing agreement, or (ii) has any liability or obligation for the Taxes of any Person (other than Company or any of its Subsidiary) under Treas. Reg. (S)1.1502-6 (or any similar provision of any other Applicable Law), as a transferee or successor, by contract, or otherwise. Company is not and has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code.

2.12 Employee Benefit Plans.

(a) The Disclosure Schedule lists each material Company Employee Benefit Plan and Company Benefit Arrangement. The Company has delivered to Rocket with respect to each such Company Employee Benefit Plan and Company Benefit Arrangement true and complete copies of (i) all written documents comprising such plans and arrangements (including amendments and individual, trust or insurance agreements relating thereto); (ii) the most recent Form 5500 series annual reports (including all schedules thereto) filed with respect to each such Company Employee Benefit Plan; (iii) the two most recent financial statements and actuarial reports, if any, pertaining to each such plan or arrangement; (iv) the summary plan description currently in effect and all material modifications thereto, if any, for each such Company Employee Benefit Plan; and (v) written

communications to employees to the extent the substance of any Company Employee Benefit Plan described therein differs materially from the other documentation furnished under this Section.

(b) None of Company or any of its Subsidiaries nor any ERISA Affiliate of

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any of them has at any time during the 6-year period preceding the date hereof participated in or been required to make or accrue a contribution to any Multiemployer Plan.

(c) Other than pursuant to the provisions of COBRA or other Applicable Law, no Company Employee Benefit Plan provides benefits described in Section 3(1) of ERISA to any former employees or retirees of Company or any of its Subsidiaries. No condition exists that would prevent Company or any of its Subsidiaries from amending or terminating Company Employee Benefit Plan or Company Benefit Arrangement providing health or medical benefits in respect of any active or retired employee other than limitations imposed by law. The Company is in compliance in all material respects with COBRA, including all notification requirements thereunder. Set forth in the Disclosure Schedule is a list identifying each former employee of Company or any of its Subsidiaries or other Person who is entitled to receive health continuation coverage under COBRA at the date hereof, including a brief description of the coverage and the date at which such right to coverage shall terminate.

(d) All Company Employee Benefit Plans that are Pension Plans intended to be qualified under Section 401 of the Code are so qualified and have been so qualified during the period since their adoption; each trust created under any such plan is exempt from tax under Section 501(a) of the Code and has been so exempt since its creation. A true and correct copy of the most recent determination letter from the Internal Revenue Service regarding such qualified status for each such plan has been delivered to Rocket. No Company Employee Benefit Plan has incurred an accumulated funding deficiency (as defined in section 412 of the Code), whether or not waived. As of the last applicable annual valuation date on a termination basis, using the assumptions established by the Pension Benefit Guaranty Corporation as in effect on such date, no Company Employee Benefit Plan subject to Title IV of ERISA had accrued benefit obligations which exceed the current fair market value of the assets of such plan. None of Company and its Subsidiaries nor any ERISA Affiliate of any of them has incurred, or reasonably expects to incur prior to the Closing Date, any material liability under Title IV of ERISA, other than with respect to the payment of premiums to the Pension Benefit Guaranty Corporation.

(e) Except as set forth in the Disclosure Schedule, no Company Employee will receive or be entitled to, and none of Company or any of its Subsidiaries shall be liable for, any additional benefits, bonuses, service or accelerated rights to payment of benefits under any Company Plan, including the right to receive any parachute payment, as defined in Section 280G of the Code, or become entitled to any severance, termination allowance or similar payments as a result of the transactions contemplated by this Agreement.

(f) Each Company Plan has at all times prior hereto been maintained, in all material respects, in accordance with all Applicable Laws. Each Company or any of its Subsidiaries and the ERISA Affiliates of Company or any of its Subsidiaries have made full and timely payment of all amounts required to be contributed under the terms of each Company Plan and Applicable Law or required to be paid as expenses under such Company Plan. No Prohibited Transaction has occurred with respect to any Company Employee Benefit Plan or any other employee benefit plan or arrangement maintained by Company or any of its Subsidiaries or any ERISA Affiliate of Company or any of its Subsidiaries which

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is covered by Title I of ERISA which has resulted in or could result in material liability of any kind to any of Company and its Subsidiaries, other than any liability to the extent reflected in the financial statements of Company contained in the Company SEC Documents. No Reportable Event for which reporting has not been waived, and no event described in Section 4062 or 4063 of ERISA, has occurred in connection with any Company Employee Benefit Plan within the last six (6) years. Neither Company or any of its Subsidiaries nor any of its current or former ERISA Affiliates (while an ERISA Affiliate) has within the last six (6) years engaged in, or is a successor or parent corporation to any entity that has engaged in, a transaction described in Section 4069 of ERISA.

2.13 Absence of Sensitive Payments. None of Company and its Subsidiaries has (a) made any contributions, payments or gifts to or for the private use of any governmental official, employee or agent where

either the payment or the purpose of such contribution, payment or gift is illegal under any Applicable Law, (b) established or maintained any unrecorded fund or asset for any purpose or made any false or artificial entries on its books, or (c) made any payments to any Person with the intention or understanding that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment.

2.14 Bank Accounts, Etc. The Disclosure Schedule contains a true and correct and complete list as of the date hereof of all banks, trust companies, savings and loan associations and brokerage firms in which Company or any of its Subsidiaries has an account or a safe deposit box and the names of all Persons authorized to draw thereon, to have access thereto, or to authorize transactions therein, the names of all Persons, if any, holding powers of attorney from Company or any such Subsidiary and a summary statement as to the terms thereof.

2.15 Broker or Finder. No Person assisted in or brought about the negotiation of this Agreement or the subject matter of the transactions contemplated hereby in the capacity of broker, agent or finder or in any similar capacity on behalf of Company or any of its Subsidiaries other than as set forth in the Disclosure Schedule, which sets forth a true, accurate and complete description of the arrangements with any such Person.

2.16 Environmental Matters. Except as set forth in the Disclosure Schedule:

(a) The operations of each of Company and its Subsidiaries are in compliance in all material respects with all applicable Environmental Laws.

(b) To Company knowledge, all real property currently or formerly owned, leased or operated by Company or any of its Subsidiaries is free from contamination by any Hazardous Material, and none of Company nor any of its Subsidiaries has disposed or arranged for the disposal of Hazardous Material so as to give rise to liability for any off-site disposal or contamination.

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(c) To the knowledge of Company, each of Company and its Subsidiaries currently maintains all Environmental Permits necessary for their operations and are in compliance in all material respects with such Environmental Permits.

(d) There are no Legal Actions or Environmental Claims pending or, to Company's knowledge, threatened, nor, to Company's knowledge, investigations with respect to any Environmental Claim pending or threatened, against any of Company or its Subsidiaries alleging the violation of any Environmental Law or asserting claims regarding Environmental Costs and Liabilities under any Environmental Law. None of Company or its Subsidiaries has received any claims or notices alleging liability under any Environmental Law.

(e) None of Company or its Subsidiaries nor, to the knowledge of Company, any owner of premises leased or operated by any of Company or its Subsidiaries has with respect to such premises, filed any formal notice under any Environmental Law or other Law indicating past or present generation, treatment, storage, or disposal of Hazardous Material or reporting an Environmental Release of Hazardous Material into the environment.

(f) There is not now nor, to the knowledge of Company, has there been in the past on, in or under any real property owned, leased or operated by any of Company or its Subsidiaries (i) any underground storage tanks, aboveground storage tanks, dikes or impoundments, (ii) any friable asbestos-containing materials or (iii) any polychlorinated biphenyls.

2.17 Certain State Statutes Inapplicable. The Board of Directors of the Company has approved, within the meaning of Section 1 of the Massachusetts General Laws ch. 110F, this Agreement, the Merger and the other the transactions contemplated by this Agreement, and such approval is sufficient to render inapplicable to this Agreement, the Merger and the other the transactions contemplated by this Agreement the provisions of Massachusetts General Laws ch. 110F.

2.18 Information Supplied. Neither the proxy statement relating to the approval by the stockholders of Company of this Agreement and the Merger (such proxy statement, including the exhibits thereto and the

information incorporated therein by reference, as amended or supplemented from time to time, the "Proxy Statement") nor the Transaction Statement on Schedule 13E-3 ("Schedule 13E-3") to be filed by the Company under the Exchange Act with the Proxy Statement shall, at the respective dates first mailed to Company's stockholders, at the time of the Company Stockholders Meeting or at the Effective Time, as the case may be, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not false or misleading or necessary to correct any

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statement in any earlier communication with respect to the solicitation of Proxies for the Company Stockholders Meeting which shall have become false or misleading, except that no representation or warranty is made by Company with respect to information supplied in writing by Rocket or Acquiror for inclusion in the Proxy Statement or Schedule 13E-3. The Proxy Statement and Schedule 13E-3 shall comply in all material respects as to form and content with the requirements of the Exchange Act.

2.19 Voting Agreements and Noncompetition Agreements. To Company's knowledge, there are no voting trusts or other agreements or understandings with respect to the voting of Company Common Stock. Except as set forth on the Disclosure Schedule, none of Company, its Subsidiaries or any Person in which Company or its Subsidiaries own any interest is a party to any noncompetition agreement or other agreement or arrangement which restrains, limits or impedes the current or contemplated business or operations of Company or any of its Subsidiaries or would apply to Acquiror or any of its Affiliates following the Effective Time.

2.20 Vote Required. The vote of a majority of the outstanding shares of Company Common Stock (the "Company Stockholder Approval") is the only vote of the holders of any class or series of Company capital stock necessary or required (under Applicable Law or otherwise) to approve this Agreement, the Merger and the transactions contemplated hereby. The shares of Company Common Stock held by Rocket at the date hereof are entitled to be voted by Rocket in respect of this Agreement, the Merger and the other transactions contemplated hereby.

2.21 Special Committee and Board Recommendation; Opinion of Financial Advisor.

(a) Each of the special committee of the Board of Directors of Company established by the Board of Directors of Company on April 9, 2001 (the "Special Committee") and the Board of Directors of Company, at a joint meeting duly called and held on April 17, 2001, has by unanimous vote of those Special Committee members and directors present (who constituted 100% of the directors then in office other than Messrs. Magnusson and Youniss, who absented themselves from such meeting) (i) determined that this Agreement, the Merger and the other transactions contemplated hereby are fair to and in the best interests of the stockholders of Company and has approved the same, and (ii) resolved to recommend that the holders of the shares of Company Common Stock approve this Agreement and the transactions contemplated hereby, including the Merger.

(b) On or prior to the date of this Agreement, Company, its Board of Directors and the Special Committee have received the Fairness Opinion of The Catalyst Group (the "Company Financial Advisor"). The Company has been authorized by the Company Financial Advisor, subject to prior review by the Company Financial Advisor, to include the Fairness Opinion in the Proxy Statement and in Schedule 13E-3. A true and complete copy of the Fairness Opinion has been furnished by Company to Rocket.

2.22 Consents. Except (i) as set forth in the Disclosure Schedule, (ii) for the filing with the SEC of the Proxy Statement and such reports under the

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Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby, (iii) for the filing of the Articles of Merger with the Secretary of State of the Commonwealth of Massachusetts and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (iv) for the filing of Schedule 13E-3 with the Commission, and (v) for such filings in connection with any state or local tax which is attributable to the change in beneficial ownership of Company's or its Subsidiaries' real property, if any (collectively, "Gains Taxes"), (the items in clauses (i) through (iv) being collectively referred to herein as

("Company Consents"), no Governmental Authorizations or Private Authorizations are required to be obtained or made by or with respect to Company or any of its Subsidiaries on or prior to the Closing Date in connection with (A) the execution, delivery and performance of this Agreement or any of the Transaction Documents to which Company is a party, the consummation of the transactions contemplated hereby and thereby or the taking by Company of any other action contemplated hereby or thereby, (B) the continuing validity and effectiveness of (and prevention of any material default under or violation of the terms of) any Lease, or Private Authorization or Contractual Obligation disclosed in the Disclosure Schedule pursuant to the first sentence of Section 2.5 above, to which any of Company or its Subsidiaries is a party or any Governmental Authorization of any of Company of its Subsidiaries or (C) the conduct by Company or any of its Subsidiaries of their respective businesses following the Closing as conducted on the date hereof.

2.23 Disclosure. No representation or warranty by Company in this Agreement, or in any list, statement, document or information set forth in or attached to any schedule (including the Disclosure Schedule) delivered or to be delivered pursuant hereto, contains or will contain any untrue statement of a material fact or omits or will omit any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

Section 3. Representations and Warranties of Rocket and Acquiror.

Rocket and Acquiror represent and warrant to Company that:

3.1 Organization and Business; Power and Authority; Effect of Transaction.

(a) Each of Rocket and Acquiror (i) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and (ii) has all requisite corporate power and authority to own or hold under lease its properties and to conduct its business as now conducted and as presently proposed to be conducted.

(b) Each of Rocket and Acquiror has all requisite corporate authority, and has made and has in full force and effect all Governmental Authorizations and Private Authorizations necessary to enable it, to execute and deliver, and to perform its obligations under, and to consummate the transactions contemplated

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by, this Agreement and each Transaction Document executed or to be executed by it; and the execution, delivery and performance of this Agreement and each such Transaction Document have been duly authorized by all requisite corporate action, including that, if required, of Acquiror's stockholders. This Agreement has been duly executed and delivered by each of Rocket and Acquiror and constitutes, and each Transaction Document executed or to be executed by it when executed and delivered by Rocket or Acquiror will constitute, its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting generally the enforcement of creditors' rights and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies.

(c) Neither the execution and delivery of this Agreement or any Transaction Document executed or to be executed by Rocket or Acquiror, nor the consummation of the transactions herein or therein contemplated, nor compliance with the terms, conditions and provisions hereof or thereof by Rocket or Acquiror:

(i) (A) will conflict with, or result in a breach or violation of, or constitute a default under, any Applicable Law on the part of Rocket or Acquiror or (B) will conflict with or result in a breach or violation of, or constitute a default under, any of the Organic Documents of Rocket or Acquiror or (C) will conflict with, or result in a breach or violation of, or constitute a default under, or permit the acceleration of any obligation or liability under, or but for any requirement of giving of notice or passage of time or both would constitute such a conflict with, breach or violation of, or default under, or permit any such acceleration of, any material Contractual Obligation of Rocket or Acquiror, or

(ii) will require any Governmental Authorization or Private Authorization, except for the filing with the Secretary of State of the Commonwealth of Massachusetts of the Articles of Merger,

except, with respect to clauses (i)(A), (i)(C) and (ii) above, such conflicts, breaches, defaults, violations, accelerations, authorizations or filings, that (individually or in the aggregate) are not reasonably likely to result in a Material Adverse Effect on Rocket or Acquiror or on the ability of Rocket or Acquiror to perform any of its obligations set forth in this Agreement or any Transaction Document.

3.3 Broker or Finder. No Person assisted in or brought about the negotiation of this Agreement or the subject matter of the transactions contemplated hereby in the capacity of broker, agent or finder or in any similar capacity on behalf of Acquiror or Rocket.

3.4 Information Supplied. The information supplied in writing by Rocket or Acquiror for inclusion in the Proxy Statement or Schedule 13E-3 will not, at the respective dates first mailed to Company's stockholders, at the time of the Company Stockholders Meeting or at the Effective Time, as the case may be,

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contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of Proxies for the Company Stockholders Meeting which shall have become false or misleading, except that no representation or warranty is made by Rocket with respect to information supplied by Company or any other Person (other than Rocket or Acquiror) for inclusion in the Proxy Statement or Schedule 13E-3.

3.5 Transitory Subsidiary. Acquiror was formed for the purpose of engaging in the transactions contemplated by this Agreement and has engaged in no business activities unrelated to this Agreement and the transactions contemplated hereby.

3.6 Company Representations. Neither Rocket nor Acquiror nor any officer or director of either of them, by virtue of its status as a stockholder, director or other Affiliate of Company, has any knowledge of any breaches or violations of any representation or warranty of Company contained in this Agreement.

3.7 Rocket Ownership of Company Common Stock. As of the date hereof, Rocket owns of record an aggregate of 10,000,000 shares of Company Common Stock.

Section 4. Certain Covenants.

4.1 Access to Information. Company shall afford to each of Rocket and Acquiror and their accountants, counsel, financial advisors, financing sources and other representatives (the "Representatives") all reasonable access during normal business hours throughout the period prior to the Effective Time to all of its and its Subsidiaries properties, books, contracts, commitments and records (including Tax Returns) and, during such period, shall furnish promptly (i) a copy of each report, schedule and other document filed or received by it pursuant to the requirements of any federal or state securities laws or submitted to or filed with or received from the Commission or any other Authority in connection with the transactions contemplated by this Agreement or which management of Company has determined in good faith may have a material effect on its business, operations, properties, prospects, personnel, condition, financial or other, or results of operations and (ii) such other information concerning any of the foregoing as Rocket and Acquiror shall reasonably request; provided, however, that no investigation pursuant to this Section shall affect any representations or warranties made herein or the conditions to the obligations of the respective parties to consummate the transactions contemplated hereby. Rocket and Acquiror acknowledge and agree that, to the extent that any such information constitutes "Confidential Information" within the meaning of that certain Confidentiality Agreement, dated as of January 17, 2001 (the "Confidentiality Agreement"), such information shall be and remain subject to the terms and provisions of such Confidentiality Agreement, which remains in force and effect in accordance with its terms.

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4.2 Agreement to Cooperate.

(a) Subject to the terms and conditions of this Agreement, each of the parties hereto agrees to use all commercially reasonable efforts or take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under Applicable Laws to consummate and make effective the transactions contemplated by this Agreement, including using its commercially reasonable efforts to obtain all necessary or appropriate waivers, consents and approvals, if any, to effect all necessary registrations, filings and submissions (and, in such case, to proceed with the Merger as expeditiously as possible), subject, however, to the Company Stockholder Approval.

(b) In addition to the covenants set forth in the preceding subsection of this Section, Company agrees to use all commercially reasonable efforts on or prior to the Closing Date to obtain the satisfaction of the conditions specified in Sections 5 and 6. Rocket and Acquiror agree to cooperate with and to assist Company with respect to securing all necessary Governmental Authorizations and Private Authorizations to the consummation of the Merger.

4.3 Expenses. Except as otherwise expressly provided herein, each party shall pay its own expenses incident to the negotiation, execution, delivery and performance of this Agreement (including, without limitation, all filing fees, printing and mailing expenses and all fees and expenses of its counsel, accountants, advisors and other consultants and representatives for all activities undertaken in connection with this Agreement), whether or not the transactions contemplated hereby are consummated. To the fullest extent practicable, Company agrees not to pay such expenses prior to the Closing, provided that all such expenses shall be paid within five (5) Business Days after the Closing.

4.4 Public Announcements. No party shall, without the approval of the other parties, make or cause to be made any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby, except as and to the extent that it is required by Applicable Law to make such press release or other public announcement. To the extent reasonably practicable under the circumstances, the parties shall consult with each other prior to issuing any press release or other public announcement with respect to this Agreement or the transactions contemplated hereby. Each of the parties hereto acknowledges and consents to that certain press release issued by Company on March 28, 2001 entitled "Peritus Software Services Announces It Has Received a Non-Binding Offer for Acquisition of the Company".

4.5 Stockholders' Approval.

(a) Company shall as soon as practicable submit this Agreement and the transactions contemplated hereby for the approval of its stockholders at a duly called and held meeting of its stockholders (the "Company Stockholders Meeting", which term shall include any postponements or adjournments of such meeting). Unless otherwise required by the applicable fiduciary duties of the Board of Directors of Company, as determined in good faith by such directors after consultation with and based upon the advice of outside legal counsel, Company shall (i) recommend approval of this Agreement and the transactions

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contemplated hereby to the stockholders of Company, (ii) include in the Proxy Statement and Schedule 13E-3 such recommendation and the of the Board of Directors of Company and the Special Committee described in Section 2.21 above, and (iii) use all commercially reasonable efforts to solicit from its stockholders proxies in favor of approval of this Agreement and the transactions contemplated hereby and otherwise to obtain the Company Stockholder Approval in accordance with all Applicable Law. Without limiting the generality of the foregoing, Company agrees that its obligations under the first sentence of this Section shall not be affected by (A) the commencement, public proposal, public disclosure or communication to Company of any Acquisition Proposal or (B) the withdrawal or modification by the Board of Directors of Company or Special Committee of its approval or recommendation of this Agreement and the transactions contemplated hereby. Company shall take all action necessary to hold the Company Stockholders Meeting as soon as practicable following the date hereof.

(b) To the extent permitted by Applicable Law, each of Rocket and Acquiror agrees to vote all shares of Company Common Stock held of record by it in favor of this Agreement and the Merger and other transactions contemplated hereby at the Company Stockholders Meeting; provided that (i) Company is not in material breach of any of its representations, warranties or covenants contained herein or in any Transaction Document, (ii) there is no bona fide written Acquisition Proposal with respect to Company which has been received by Company and not rejected in writing by Company, and (iii) neither the Board of Directors of Company nor the Special Committee shall have withdrawn or modified its approval or recommendation of this Agreement and the Merger and other transactions contemplated hereby.

4.6 Proxy Statement; Schedule 13E-3.

(a) Company shall prepare and file with the Commission as soon as is reasonably practicable after the date hereof, the Proxy Statement and Schedule 13E-3, and shall use its best efforts to have the Proxy Statement and Schedule 13E-3 cleared by the Commission as promptly as practicable. Company shall be responsible for the costs and expenses, including filing fees and printing and mailing costs, arising from the preparation, filing and mailing of the Proxy Statement and Schedule 13E-3. Company shall also take any other action required to be taken under Applicable Law in connection with the consummation of the transactions contemplated by this Agreement. Rocket and Acquiror and Company shall promptly furnish to each other all information, and take such other actions and otherwise cooperate, as may reasonably be requested in connection with any action by any of them in connection with the provisions of this Section.

(b) Prior to the date of approval of the Merger by Company's stockholders, each of Company, Rocket and Acquiror shall correct promptly any information provided by it to be used specifically in the Proxy Statement or Schedule 13E-3 that shall have become false or misleading in any material respect and shall take all steps necessary to file with the Commission and have cleared by the Commission any amendment or supplement to the Proxy Statement and Schedule 13E-

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3, as so corrected, to be disseminated to the stockholders of Company to the extent required by Applicable Law. Without limiting the generality of the foregoing, Company shall notify Rocket promptly of the receipt of the comments of the Commission and of any request by the Commission for amendments or supplements to the Proxy Statement or Schedule 13E-3, or for additional information, and shall supply Rocket with copies of all correspondence between Company or its representatives, on the one hand, and the Commission or members of its staff, on the other hand, with respect to the Proxy Statement or Schedule 13E-3. If at any time prior to the Company Stockholders Meeting any event should occur relating to Company, Rocket or Acquiror or their respective officers or directors which should be described in an amendment or supplement to the Proxy Statement or Schedule 13E-3, the parties shall promptly inform each other. Whenever any event occurs which should be described in an amendment or a supplement to the Proxy Statement or Schedule 13E-3, Company, Rocket and Acquiror shall, upon learning of such event, cooperate in promptly preparing, filing and clearing with the Commission and mailing to the stockholders of Company such amendment or supplement; provided, however, that, prior to such mailing, (i) Company, Rocket and Acquiror shall consult with each other with respect to such amendment or supplement, (ii) shall afford each other reasonable opportunity to comment thereon, and (iii) each such amendment or supplement shall be reasonably satisfactory to the other.

4.7 No Solicitation; Other Offers.

(a) Nothing contained in this Section 4.7(a) shall prevent the Board of Directors of Company or Special Committee from considering, discussing, or providing any nonpublic information to any Person relating to, an bona fide inquiry or proposal regarding any merger, sale of substantial assets, sale of share of capital stock (including without limitation by way of a tender offer) or similar transactions involving Company or any Subsidiaries of Company other than the Merger (any such inquiry or proposal being referred to herein as an "Acquisition Proposal") not solicited in violation of this Agreement, provided the Board of Directors of Company or the Special Committee, as the case may be, determines in good faith (upon consultation of outside counsel) that it is required to do so in order to discharge properly its fiduciary duties. Nothing contained in this

Section shall prohibit the Board of Directors of Company or the Special Committee from complying with Rule 14e-2 promulgated under the Exchange Act with regard to a tender or exchange offer.

(b) Company shall immediately notify Rocket and Acquiror after receipt of any Acquisition Proposal, or any modification of or amendments to any Acquisition Proposal, or any request for nonpublic information relating to Company or any of its Subsidiaries in connection with an Acquisition Proposal or for access to the properties, books or records of Company or any Subsidiary of Company by any Person or entity that informs the Board of Directors of Company or the Special Committee or such Subsidiary that it is considering making, or has made, an Acquisition Proposal. Such notice to Rocket and Acquiror shall be made orally and in writing, and shall indicate whether

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Company is providing or intends to provide the Person making the Acquisition Proposal with access to information concerning Company as provided in Section 4.7(c).

(c) If the Board of Directors of Company or the Special Committee receives a request for material nonpublic information by a Person who makes, or indicates that it is considering making, an Acquisition Proposal, and the Board of Directors or the Special Committee, as the case may be, determines in good faith after consultation with outside counsel that it would be in the best interests of Company and its stockholders to provide such information, then, provided such Person has executed an appropriate confidentiality agreement, Company may provide such Person with access to information regarding Company. Company agrees not to release any third party from the confidentiality and standstill provisions of any confidentiality agreement to which Company is a party.

(d) Company shall use its commercially reasonable efforts to inform the officers, directors and employees of Company and its Subsidiaries and any outside counsel, financial advisor, investment banker or other advisor or representative retained by Company of the restrictions described in this Section.

4.8 Tax Returns. Without the prior written consent of Rocket, neither Company nor any of its Subsidiaries shall make or change any election, change an annual accounting or Tax period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim relating to Company or its Subsidiaries, surrender any right to claim a refund of Taxes, take or omit to take any similar action with respect to Taxes (other than the filing of any original Tax Return), if any such election, adoption, change, amendment, agreement, settlement, surrender or other action or omission would have the effect of increasing the Tax liability of Company and its Subsidiaries, by more than an aggregate amount of $25,000; provided, however, that Company may consent to an extension of a limitation period applicable to a Tax claim without Rocket's prior written consent (and Company will notify Rocket of any such extension no later than five (5) Business Days after taking such action if it would relate to the Company or its Subsidiaries).

4.9 Conduct of Business by Company Prior to the Effective Time. Except as may be required by the terms of this Agreement or as may be consented to by Rocket in writing, between the date hereof and the Closing Company covenants that each of Company and its Subsidiaries:

(a) will not issue or sell or purchase or agree to issue or sell or purchase any capital stock or any Option Security or Convertible Security, otherwise than pursuant to any Company Option Securities or Company Convertible Securities outstanding at the date hereof and listed on the Disclosure Schedule pursuant to Section 2.1(c) above;

(b) will (i) operate its business in the normal, usual and customary manner in the ordinary and regular course of business consistent with past practice, including the maintenance of working capital at normal operating levels consistent with past practice and the payment of accounts payable and other expenses consistent with past practice, (ii) use its commercially

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reasonable efforts consistent with past practice to preserve intact its business organization, and (iii) use its commercially reasonable efforts to keep available the services of its officers and employees;

(c) will not sell or otherwise dispose of or contract to sell or otherwise dispose of, any of its properties or assets, other than inventory sold or otherwise disposed of in the ordinary course of business consistent with past practice;

(d) except in each case in the ordinary course of business consistent with past practice or with the prior written consent of Rocket (which shall not be unreasonably withheld or delayed), (i) will not incur any obligations or liabilities (fixed, contingent or other), (ii) will not enter into any commitments, and (iii) will not sell or transfer any material asset or canceled or cancel any material debts or claims;

(e) except in each case in the ordinary course of business consistent with past practice or with the prior written consent of Rocket (which shall not be unreasonably withheld or delayed), will not discharge or satisfy any Encumbrance or pay any obligation or liability (absolute or contingent) other than current liabilities or obligations under contracts existing on the date hereof or thereafter entered into in the ordinary course of business, and commitments under Leases existing on the date hereof or thereafter incurred in the ordinary course of business;

(f) except in each case with the prior written consent of Rocket, will not Encumber any of its property or assets, other than Permitted Encumbrances;

(g) will not increase the compensation or severance payable or to become payable to any of its officers, employees, advisers, consultants, salesmen or agents or otherwise alter, modify or change in any material respect the terms of their employment or engagement;

(h) except in each case with the prior written consent of Rocket (which shall not be unreasonably withheld or delayed) or as otherwise contemplated hereby, will not amend or terminate or enter into any Lease, Governmental Authorization, Private Authorization, Lease, any Lease, Contractual Obligation disclosed in the Disclosure Schedule pursuant to the first sentence of Section 2.5 above, Company Benefit Arrangement or Company Employee Benefit Plan, or any Contractual Obligation or transaction with any Affiliate;

(i) will not declare, make or pay, or agree to declare, make or pay, any Distribution other than any Distribution from a Subsidiary of Company to Company or to another Subsidiary of Company;

(j) will not split, reclassify, combine or redeem any shares of any class of capital stock or amend or modify any of its Organic Documents;

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(l) will not take any action that would result in any representation or warranty of Company being untrue in any material respect;

(m) will not make any change to its accounting (including Tax accounting) methods, principles, practices, or policies, other than those required by GAAP or Applicable Law;

(n) will not, and shall cause the Company not to, agree to do any of the foregoing;

(o) will not make or permit to be made any change affecting any bank, trust company, savings and loan association, brokerage firm account or safe deposit box or in the names of the Persons authorized to draw thereon, to have access thereto or to authorize transactions therein or in such powers of attorney, or open any additional accounts or boxes or grant any additional powers of attorney, without in each case promptly notifying Rocket in writing thereof; and

(p) will timely keep Rocket informed with respect to all material capital expenditures or other material developments with respect to Company or any of its Subsidiaries.

4.10 Certain Notices. Company will promptly notify Rocket of any and all Events which would require any change to be made in the Disclosure Schedule or which could cause or result in any breach or inaccuracy in any material respect of any of Company's representations and warranties, including without limitation those set forth in Section 2, or which are reasonably likely to impair the likelihood that all of the conditions specified in Sections 5 and 6 will be satisfied on or prior to the Closing Date.

4.11 Indemnification of Officers and Directors.

(a) All rights to indemnification existing in favor of those Persons who are directors and officers of the Company as of the date of this Agreement (the "Indemnified Persons") for their acts and omissions occurring prior to the Effective Time, as provided in the Company's Bylaws or Articles of Organization (as in effect at the date of this Agreement), shall survive the Merger and shall be observed by the Surviving Corporation to the fullest extent permitted by Massachusetts law for a period of six (6) years from the Effective Time.

(b) From the Effective Time until the first anniversary of the Effective Time, the Surviving Corporation shall maintain in effect, for the benefit of the Indemnified Persons with respect to their acts and omissions occurring prior to the Effective Time the existing $1.5 million policy of directors' and officers' liability insurance maintained by the Company as of the date of this Agreement in the form of disclosed by the Company to Rocket prior to the date of this Agreement (the "Existing Policy"), provided, however, that the Surviving Corporation may substitute for the Existing Policy a policy or policies of comparable coverage.

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4.12 Employee Benefits.

(a) Rocket agrees that all employees of Company who continue employment with Rocket, the Surviving Corporation or any Subsidiary of the Surviving Corporation after the Effective Time ("Continuing Employees") shall be eligible to continue to participate in the Surviving Corporation's health and welfare benefit plans; provided, however, that (i) the employment of each Continuing Employee shall be "at will" employment, (ii) nothing in this Section or elsewhere in this Agreement shall limit the right of Rocket or the Surviving Corporation to amend or terminate any such health or welfare benefit plan at any time, and (iii) if Rocket or the Surviving Corporation terminates any such health or welfare benefit plan, then (upon expiration of any appropriate transition period), the Continuing Employees shall be eligible to participate in Rocket's health and welfare benefit plans to substantially the same extent as similarly situated employees of Rocket. Nothing in this Section or elsewhere in this Agreement shall be construed to create a right in any Continuing Employee or other Person to employment with Rocket, the Surviving Corporation or any other Subsidiary of Rocket.

(b) Company shall terminate, effective as of the day immediately preceding the Effective Time, each Company Employee Benefit Plan sponsored or maintained by any of Company and its Subsidiaries (or in which any of any of Company and its Subsidiaries participate) that contains a cash or deferred arrangement intended to qualify under Section 401(k) of the Code (a "Company 401(k) Plan") unless Rocket provides written notice to Company prior to the Effective Time that any such Company 401(k) Plans shall not be terminated. Rocket shall receive from the Company prior to Closing evidence that the Company 401(k) Plan(s) have been terminated pursuant to resolutions of the Board of Directors of Company or the Special Committee (the form and substance of such resolutions shall be subject to review and approval of Rocket), effective as of the day immediately preceding the Effective Time. If Rocket has not given the notice referred to in the first sentence of this Section 4.12(b), Rocket agrees to use its commercially reasonable efforts to cause to be taken all actions necessary or appropriate to cover, under substantially similar terms and conditions applicable to similarly situated Rocket employees, the Continuing Employees under a plan sponsored by Rocket that includes a cash or deferred arrangement intending to qualify under Section 401(k) of the Code ("Rocket 401(k) Plan"), effective with respect to Rocket's first full regular pay period beginning after the Closing Date. Rocket agrees to use its commercially reasonable efforts to cause the Rocket 401(k) Plan to accept rollover contributions of amounts properly distributed to participants from the Company 401(k) Plan(s), including any outstanding participant loan that is not in default as of the time of the rollover; provided however, that neither Rocket nor any plan administrator or trustee for the Rocket 401(k) Plan shall be obligated to accept on behalf of the Rocket 401(k) Plan any such rollover contributions unless (i) the participant requesting such rollover is otherwise eligible to participate in the Rocket 401(k) Plan at the time of the rollover and (ii) a favorable determination letter has been received from the IRS with respect to the qualification of the applicable Company 401(k) Plan in connection with the termination of such Company 401(k) Plan. Rocket agrees that, notwithstanding the foregoing provisions of this Section 4.12(b), participants in Company's 401(k) Plan(s) shall continue to direct the investment of their account balances, in accordance with applicable Plan terms, during

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the period after termination date of any such Plan until Plan distribution elections are made available to participants in connection with the Plan's termination.

(c) The Continuing Employees will be given credit under Rocket employee benefit plans for services performed for Company for purposes of participation, vesting and benefit levels, to the same extent such services are so credited under Rocket's existing benefit plans; provided, however, that this Section 4.12(c) shall not apply for purposes of vesting under an option or other equity incentive award granted after the Effective Time.

Section 5. Conditions Precedent to Rocket's and Acquiror's Obligations.

The obligations of Rocket and Acquiror to consummate the Merger and other transactions contemplated hereby are subject to the satisfaction on the Closing Date of the following conditions except to the extent that any such condition may have been waived in writing by Rocket at or prior to the Closing Date:

5.1 No Opposition. No Legal Action or other claim shall be pending or threatened at any time prior to or on the Closing Date before or by any Authority seeking to restrain or prohibit, or damages or other relief in connection with, the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby or which might in the judgment of Rocket have any Material Adverse Effect on Company, Rocket or Acquiror.

5.2 Representations, Warranties and Covenants. The representations and warranties of Company contained in this Agreement or otherwise made in writing by it or on its behalf pursuant hereto shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made on and as of such date (except those which speak as of a date certain which shall continue to be true and correct in all material respects as of such date) on the Closing Date; each and all of the covenants, agreements and conditions to be performed or satisfied by Company or its Board of Directors or the Special Committee hereunder at or prior to the Closing Date (including but not limited to the obligations of the Board of Directors of Company set forth in Section 1.4(b) above) shall have been duly performed or satisfied in all material respects; and Company shall have furnished Rocket with such certificates and other documents evidencing the truth of such representations and warranties and the performance and satisfaction of such agreements or conditions as Rocket shall have reasonably requested.

5.3 Company's Stockholders' Approval. Company shall have duly and validly obtained the Company Stockholder Approval.

5.4 Dissenters' Rights. The beneficial owners of no more than seven and one-half percent (7.5%) of Company Common Stock shall have asserted dissenters' rights in connection with the Merger.

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5.5 Consents. Company shall have obtained unconditional consents to the assignment and continuation of all Private Authorizations and Contractual Obligations disclosed in the Disclosure Schedule pursuant to the first sentence of Section 2.5 above, including a consent from Bull HN Information Systems, Inc. substantially in the form included in the Disclosure Schedule or in such other form as may be reasonably acceptable to Rocket, but excluding a consent from Southborough/Westborough LLC under the Lease Agreement for Company's premises located at 112 Turnpike Road, Westborough, Massachusetts.

5.6 No Material Adverse Change. As of the Closing Date, there shall not have occurred and be continuing any Material Adverse Change affecting any of Company and its Subsidiaries from those reflected in the most recently audited financial statements of Company and its Subsidiaries included in the Company SEC Documents, other than any material adverse change in the financial condition, operations or results of operations of Company and its Subsidiaries since December 31, 2001 arising out of matters of a general economic nature or matters affecting the industry generally, and none of Company and its Subsidiaries shall have sustained any loss or damage to its assets that materially affects its ability to operate its assets and business in the ordinary course of business.

5.7 Cash at Closing. At Closing, the remainder of (i) the aggregate amount of cash and cash equivalents held by Company minus (ii) the lesser of (A) $840,000 and (B) the actual aggregate amount of out-of-pocket costs and expenses incurred by Company in connection with this Agreement and the transactions contemplated hereby, shall be equal to at least $4,810,000.

5.8 Certain Certificates and Documents. Each of Company and its Subsidiaries shall have furnished Rocket and Acquiror with the following:

(a) A certificate of its Clerk or Assistant Clerk as to (i) the by-laws, (ii) all resolutions of its Board of Directors and stockholders relating to this Agreement and (iii) incumbency of any officers signing any Transaction Document on its behalf.

(b) A copy of each of Company's and its Subsidiaries' respective articles of organization or certificate of incorporation or similar document, as the case may be, as certified by the Secretary of State or other appropriate official of the jurisdiction of organization or incorporation of such Entity, each dated within a recent date prior to the Closing Date.

(c) A certificate of legal existence and good standing for each of Company and its Subsidiaries from the Secretary of State or other appropriate official of the jurisdiction of organization or incorporation of such Entity, each dated within a recent date prior to the Closing Date.

(d) Such other certificates, documents and instruments as may be necessary to effect the intent of this Agreement or consummate the transactions contemplated hereby or as Rocket or Acquiror may reasonably

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request.

Section 6. Conditions Precedent to Company's Obligations.

The obligations of Company to consummate the Merger and the other the transactions contemplated by this Agreement are subject to the satisfaction at or prior to the Closing Date of the following conditions except to the extent that any such condition may have been waived in writing by Company at or prior to the Closing Date:

6.1 Representations and Covenants. The representations and warranties of Rocket and Acquiror contained in this Agreement or otherwise made in writing by them or on their behalf pursuant hereto shall be true and correct in all material respects at and as of the Closing Date with the same force and effect as though made on and as of such date except those which speak as of a date certain which shall continue to be true and correct in all material respects as of such date on the Closing Date; each and all of the agreements and conditions to be performed or satisfied by Rocket or Acquiror hereunder at or prior to the Closing Date shall have been duly performed or satisfied in all material respects; and Rocket shall have furnished Company with such certificates and other documents evidencing the truth of such representations and warranties and the performance and satisfaction of such agreements and conditions as Company shall have reasonably requested.

6.2 No Opposition. As of the Closing Date, no injunction, writ or preliminary restraining order or order of any nature issued by any Authority of competent jurisdiction shall be in effect preventing the consummation of the transactions contemplated by this Agreement.

6.3 Stockholder Approval. Company shall have duly and validly obtained the Company Stockholder Approval.

Section 7. Definitions.

7.1 Principles of Construction. As used herein, unless the context otherwise requires, the following terms have the following respective meanings. Terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa, and the reference to any gender shall be deemed to include all genders. Except where the context otherwise requires, references to "this Section" or words of similar import shall be

deemed to refer to the entire section and not a particular subsection and references to "hereunder," "herein," "hereof" or words of similar import shall be deemed to refer to the entire Agreement and not the particular Section or subsection or other provision. The words "includes" and "including" are not limiting and mean "including without limitation." In computation or periods of time from a specified date to a later specified date, the word "from" means "from and including," the words "to" and "until" each means "to but excluding," and the word "through" means "to and including." Unless otherwise defined or the context otherwise clearly requires, terms for which meanings are provided

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in this Agreement shall have such meanings when used in any schedule hereto (including the Disclosure Schedule) and each Instrument, notice, certificate, communication, opinion or other document executed or required to be executed pursuant hereto or thereto or otherwise delivered, from time to time, pursuant hereto or thereto. All accounting terms not specifically defined herein shall be construed in accordance with GAAP. References to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing such statute or regulation.

7.2 Certain Defined Terms. The following terms shall have the respective meanings specified therefor below.

"Acquiror" is defined in the preamble preceding the Recitals.

"Acquisition Proposal" is defined in Section 4.7.

"Affiliate," when used with respect to any specified Person, shall mean any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such specified Person.

"Agreement" is defined in the Recitals.

"Applicable Law" shall mean any Law of any Authority, whether domestic or foreign, including all federal and state Laws, to which the Person in question is subject or by which it or any of its property is bound, and including without limitation any: (a) administrative, executive, judicial, legislative or other statute, code, consent decree, constitution, decree, directive, enactment, finding, guideline, injunction, interpretation, judgment, law, order, ordinance, policy statement, proclamation, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, or writ, of any Authority, domestic or foreign; (b) common law or other legal or quasi-legal precedent; or (c) arbitrator's, mediator's or referee's award, decision, finding or recommendation, or, in any case, any particular section, part or provision thereof.

"Articles of Merger" is defined in Section 1.1.

"Authority" shall mean any governmental or quasi-governmental authority, whether administrative, executive, judicial, legislative or other, or any combination thereof, including any federal, state, territorial, county, municipal or other government or governmental or quasi-governmental agency, arbitrator, authority, board, body, branch, bureau, central bank or comparable agency or entity, commission, corporation, court, department, instrumentality, master, mediator, panel, referee, system or other political unit or subdivision or other entity of any of the foregoing, whether domestic or foreign.

"Benefit Arrangement" shall mean any benefit arrangement (whether or not written), including (a) any employment or consulting agreement, (b) any arrangement providing for insurance coverage or workers' compensation benefits, (c) any incentive bonus or deferred bonus arrangement, (d) any arrangement providing termination allowance, severance or similar benefits, (e) any equity compensation plan, (f) any deferred compensation plan and (g) any compensation

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policy and practice, but excluding in any event any Employee Benefit Plan.

"Certificates" is defined in Section 1.5.

"Closing" is defined in Section 1.2.

"Closing Date" is defined in Section 1.2.

"COBRA" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, as set forth in Section 4980B of the Code and Part 6, Subtitle B of Title I of ERISA.

"Code" shall mean the United States Internal Revenue Code of 1986, and the rules and regulations thereunder, all as from time to time in effect, or any successor law, rules or regulations, and any reference to any statutory or regulatory provision shall be deemed to be a reference to any successor statutory or regulatory provision.

"Commission" shall mean the Securities and Exchange Commission or any successor Authority thereto.

"Company" is defined in the preamble preceding the Recitals.

"Company 401(k) Plan" is defined in Section 4.12.

"Company Benefit Arrangement" shall mean any Benefit Arrangement maintained by Company or any of its Subsidiaries, or any ERISA Affiliates of Company or any of its Subsidiaries, covering any employees, former employees, directors or former directors of Company or any of its Subsidiaries or any ERISA Affiliates of Company or any of its Subsidiaries, and the beneficiaries of any of them.

"Company Common Stock" is defined in Section 1.4.

"Company Consents" is defined in Section 2.22.

"Company Convertible Securities" shall mean any Convertible Securities directly or indirectly convertible into or exchangeable for shares of Company Common Stock.

"Company Employee" shall mean any present or former employee of Company or any of its Subsidiaries.

"Company Employee Benefit Plan" shall mean any Employee Benefit Plan that is sponsored or contributed to by Company or any of its Subsidiaries, or any of ERISA Affiliates of Company or any of its Subsidiaries covering the employees or former employees of Company or any of its Subsidiaries or any ERISA Affiliates of Company or any of its Subsidiaries.

"Company Financial Advisor" is defined in Section 2.21.

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"Company Option Securities" shall mean any Option Securities for the purchase or other acquisition of shares of Company Common Stock or Company Convertible Securities.

"Company Plan" shall mean any Company Employee Benefit Plan or Company Benefit Arrangement.

"Company SEC Documents" is defined in Section 2.2.

"Company Stockholder Approval" is defined in Section 2.20.

"Company Stockholder Meeting" is defined in Section 4.5.

"Confidentiality Agreement" is defined in Section 4.1.

"Continuing Employees" is defined in Section 4.12.

"Contractual Obligation" shall mean, with respect to any Person, any term, condition, provision, representation, warranty, agreement, covenant, undertaking, commitment, indemnity or other obligation set forth or which is outstanding or existing under any Instrument (including without limitation any Instrument relating to or evidencing any indebtedness or capital lease obligation) to which such Person is a party or by which it or any of its properties is bound.

"Convertible Securities" shall mean any evidences of indebtedness, shares of capital stock or other securities directly or indirectly convertible into or exchangeable for shares of common stock, whether or not the right to convert or exchange thereunder is immediately exercisable or is conditioned upon the passage of time, the occurrence or non-occurrence or existence or non-existence of some other Event, or both.

"Disbursing Agent" is defined in Section 1.5.

"Disbursing Agent Agreement" is defined in Section 1.5.

"Dissenting Shares" is defined in Section 1.4.

"Distribution" shall mean, with respect to any Person: (a) the declaration or payment of any dividend on or in respect of any shares of any class of capital stock of such Person; (b) the purchase, redemption or other retirement of any shares of any class of capital stock of such Person or any shares of capital stock of any Subsidiary owned by a Person other than such Person or a wholly owned Subsidiary of such Person; and (c) any other distribution on or in respect of any shares of any class of capital stock of such Person or any shares of capital stock of any Subsidiary owned by a Person other than such Person or a wholly owned Subsidiary of such Person.

"Effective Time" is defined in Section 1.1.

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"Employee Benefit Plan" shall mean any benefit plan, as defined in Section 3(3) of ERISA.

"Encumber" or "Encumbrance" shall mean any of the following: mortgage; lien (statutory or other); preference, priority or other security agreement, arrangement or interest; hypothecation, pledge or other deposit arrangement; assignment; charge; levy; executory seizure; attachment; garnishment; encumbrance (including any easement, exception, variance, reservation or limitation, right of way, zoning restriction, building or use restriction, and the like); conditional sale, title retention or other similar agreement, arrangement, device or restriction; preemptive or similar right; any financing lease involving substantially the same economic effect as any of the foregoing; the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction; restriction on sale, transfer, assignment, disposition or other alienation; or any option, equity, claim or right of or obligation to, any other Person, of whatever kind and character.

"Entity" shall mean any corporation, firm, unincorporated organization, association, partnership, limited liability company, a trust (inter vivos or testamentary), an estate of a deceased, insane or incompetent individual, business trust, joint stock company, joint venture or other organization, entity or business, whether acting in an individual, fiduciary or other capacity, or any Authority.

"Environmental Claim" means any notice received by Company or any of its Subsidiaries of violation, action, claim, Environmental Lien, demand, abatement or other order or direction (conditional or otherwise) by any Authority or any other Person for personal injury (including sickness, disease or death), tangible or intangible property damage, damage to the environment, pollution, contamination or other adverse effects on the environment, or for fines, penalties or restrictions resulting from or based upon (a) the existence of an Environmental Release (including, without limitation, a sudden or non-sudden accidental or non-accidental Environmental Release) of, or exposure to, any Hazardous Material, noxious odor or illegal audible noise in, into or onto the environment (including, without limitation, the air, soil, surface water or groundwater) at, in, by, from or related to any property presently or formerly owned, operated or leased by any of Company or its Subsidiaries or any activities or operations thereon; (b) the transportation, storage, treatment or disposal of

Hazardous Material in connection with any property presently or formerly owned, operated or leased by any of Company or its Subsidiaries or their operations or facilities; or (c) the violation, or alleged violation, of any Environmental Law relating to environmental matters connected with any property presently or formerly owned, leased or operated by any of Company or its Subsidiaries.

"Environmental Costs and Liabilities" means any and all losses, liabilities, obligations, damages, fines, penalties, judgments, actions, claims, costs and expenses (including, without limitation, fees, disbursements and expenses of

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legal counsel, experts, engineers and consultants and the costs of investigation and feasibility studies and Remedial Action) arising from or under any Environmental Law or contract, agreement or similar arrangement with any Authority or other Person required under any Environmental Law.

"Environmental Law" shall mean any Law relating to or otherwise imposing liability or standards of conduct concerning pollution or protection of the environment or health or safety, occupational or other, including without limitation Laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, noises, odors or industrial, toxic or hazardous substances, materials or wastes, including without limitation Hazardous Materials, whether solid, liquid or gaseous in nature and whether as matter or energy, into the environment (including, without limitation, ambient air, surface water, ground water, mining or reclamation or mined land, land surface or subsurface strata) or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes, whether solid, liquid or gaseous in nature, including without limitation any Law relating to reporting, licensing, permitting, investigation and remediation of any of the foregoing. Environmental Laws shall include without limitation the Comprehensive Environmental Response, compensation and Liability Act (42 U.S.C. Section 9601 et seq.), the Hazardous Material Transportation Act (49 U.S.C. Section 1801 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), the Clean Water Act (Federal Water Pollution Control Act) (33 U.S.C. Section 1251 et seq.), the Clean Air Act (42 U.S.C. Section 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.), the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), the Endangered Species Act (16 U.S.C. Section 1531 et seq.), the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.), the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), the Federal Insecticide, Fungicide Rodenticide Act (7 U.S.C. Section 136 et seq.), the Food, Drug and Cosmetic Act (21 U.S.C. Section 301 et seq.), the Medical Waste Tracking Act of 1988, Pub. L. No. 100-582, 102 Stat. 2950 (1988), and the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.), as such laws have been amended or supplemented from time to time, and any analogous present or future federal, state, local or foreign statutes, including transfer of ownership notification statutes.

"Environmental Lien" means any Encumbrance arising under any Environmental Law.

"Environmental Permit" means any permit, approval, authorization, license, variance, registration or permission required under any applicable Environmental Law.

"Environmental Release" means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching, or migration on or into the indoor or outdoor environment or into or out of any property not authorized under any Environmental Permit and requiring notification under any applicable Environmental Law.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as

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amended, and the rules and regulations thereunder, all as from time to time in effect, or any successor law, rules or regulations, and any reference to any statutory or regulatory provision shall be deemed to be a reference to any successor statutory or regulatory provision.

"ERISA Affiliate" shall mean a Person and/or such Person's Subsidiaries or any trade or business (whether or not incorporated) which is under common control with such Person's or such Person's Subsidiaries or which

is treated as a single employer with such Person or any Subsidiary of such Person under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(f) of ERISA.

"Event" shall mean the occurrence or existence of any act, action, activity, circumstance, condition, event, fact, failure to act, incident or practice, or any set or combination of any of the foregoing.

"Exchange Act" shall mean the Securities Exchange Act of 1934, and the rules and regulations of the Commission thereunder, all as from time to time in effect, or any successor law, rules or regulations, and any reference to any statutory or regulatory provision shall be deemed to be a reference to any successor statutory or regulatory provision.

"Existing Policy" is defined in Section 4.11.

"Fairness Opinion" shall mean the written opinion, dated April [17], 2001 of the Company Financial Advisor to the effect, without limitation, that the consideration to be received by the holders of shares of Company Common Stock and Company Option Securities in the Merger is fair from a financial point of view to such holders.

"GAAP" shall mean, with respect to any Person, except to the extent that a deviation therefrom is expressly required by this Agreement, generally accepted accounting principles applied on a consistent basis (a) as set forth in Opinions of the Accounting Principles Board of the American Institute of Certified Public Accountants ("AICPA") and/or in statements of the Financial Accounting Standards Board that are applicable in the circumstances as of the date in question, (b) when not inconsistent with such opinions and statements, as set forth in other AICPA publications and guidelines and/or (c) that otherwise arise by custom for the particular industry. The requirement that such principles be consistently applied means that the accounting principles in a current period are comparable in all material respects to those applied in preceding period. All accounting and financial terms used in this Agreement, all determinations and computations required to be made pursuant to the provisions of this Agreement, and the compliance with each covenant contained in this Agreement that relates to financial matters shall, except as otherwise specifically provided to the contrary, be determined in accordance with GAAP as defined in this paragraph.

"Gains Taxes" is defined in Section 2.22.

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"Governmental Authorizations" shall mean all approvals, concessions, consents, exemptions, franchises, licenses, permits, plans, registrations and other authorizations of and all reports and notices to and filings with all Authorities.

"Hazardous Material" means any substance, material or waste which is regulated by any Authority in jurisdictions in which any of Company or its Subsidiaries operates, including, (a) any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and (b) petroleum, petroleum products, asbestos and polychlorinated biphenyls.

"Indemnified Person" is defined in Section 4.11.

"Instrument" shall mean any agreement, bond, contract, debenture, indenture, lease, letter of credit, mortgage, note, commitment, memorandum, certificate, notice, document or other writing (whether by formal agreement, letter or otherwise), or any oral arrangement, understanding or commitment, under which any debt, liability or other obligation is evidenced, assumed or undertaken, or any lien (or right or interest therein) is granted, perfected or exists.

"Intellectual Property Rights" is defined in Section 2.7.

"IRS" or the "Service" shall mean the United States Internal Revenue Service or any successor Authority thereto.

"Law" shall mean any action, approval, authorization, code, consent decree, constitution, demand, decree, directive, enactment, finding, guideline, injunction, interpretation, judgment, law, license, order, ordinance, permit, policy statement, proclamation, promulgation, regulation, requirement, rule, rule of law, rule of public policy, settlement agreement, statute, or writ, or the common law, or any particular section, part or provision thereof, or any interpretation, directive, guideline or request (whether or not having the force of law), of any Authority, including without limitation the judicial systems thereof, or any particular section, part or provision thereof.

"Lease" shall mean any lease of property, whether real, personal or mixed.

"Legal Action" shall mean, with respect to any Person, any litigation or legal or other actions, arbitrations, investigations, proceedings or suits, at law or in arbitration, equity or admiralty (whether or not purported to be brought on behalf of such Person) affecting such Person or any of its business or property or assets.

"Material Adverse" or "Materially and Adversely" when used alone or in conjunction with other terms (including without limitation "Affect," "Change" and "Effect") in respect of any Person shall mean any Event or set of Events which could be expected to (a) have any material adverse effect upon or result

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in any material adverse change in the validity or enforceability of this Agreement, or any of the Transaction Documents, (b) materially and adversely affect the business, operations, management, properties or prospects, or the condition, financial or other, or results of operation of such Person and its Subsidiaries taken as a whole, (c) materially impair such Person's ability to fulfill its obligations under the terms of this Agreement or any Transaction Document, or (d) materially and adversely affect the aggregate rights and remedies of Rocket or Acquiror under this Agreement or any Transaction Document; provided that in no event shall any of the following constitute a Material Adverse Effect on Company: (i) net losses of Company and its Subsidiaries from operations in the normal, usual and customary manner in the ordinary and regular course of business, consistent with past practice, of Company and its Subsidiaries, (ii) a change in the market price or trading volume of the Company Common Stock, (iii) any adverse Event principally attributable to conditions affecting the industries in which Company and its Subsidiaries participate, or the U.S. economy, as a whole, or (iv) any failure by Company to meet internal projections or forecasts, analysts' expectations or published revenue or earnings predictions for any period ending (or for which revenues or earnings are released) on or after the date of this Agreement.

"MBCL" is defined in Section 1.1.

"Merger" is defined in Section 1.1.

"Merger Price" is defined in Section 1.4.

"Multiemployer Plan" shall mean a multiemployer plan, as defined in Sections 3(37) and 4001(a)(3) of ERISA.

"Option Securities" shall mean all rights, options and warrants, and calls or commitments evidencing the right, to subscribe for, purchase or otherwise acquire shares of capital stock or Convertible Securities, whether or not the right to subscribe for, purchase or otherwise acquire is immediately exercisable or is conditioned upon the passage of time, the occurrence or non-occurrence or the existence or non-existence of some other Event.

"Organic Documents" shall mean, with respect to any Entity, the instrument, as from time to time in effect, filed by such Entity under the laws of its jurisdiction of organization for the purpose of effecting such organization, its by-laws, partnership agreement, management agreement, operating agreement and all

stockholder, partner and member agreements, voting trusts and similar arrangements applicable to any of its capital stock, partnership interests or membership interests.

"Pension Plan" shall mean any employer pension benefit plan, as defined in Section 3(2) of ERISA.

"Permitted Encumbrances" shall mean the following: (a) liens for taxes,

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assessments and governmental charges not yet due and payable; (b) rights reserved to any Authority to regulate the affected property; (c) as to leased assets, interests of lessors and encumbrances affecting the interests of the lessors; and (d) leases, encumbrances or restrictions that do not in any material respect, individually or in the aggregate, affect or impair the value or use of the affected asset or property.

"Permitted Investments" is defined in Section 1.5.

"Person" shall mean any human being or any Entity.

"Private Authorizations" shall mean all franchises, permits, licenses, approvals, consents, concessions and other authorizations of or notices to or filings with all Persons (other than Authorities) including without limitation those with respect to patents, trademarks, service marks, trade names, copyrights, computer software programs, technology and know-how.

"Prohibited Transaction" shall mean a transaction that is prohibited under Section 4975 of the Code or Section 406 of ERISA and not exempt under Section 4975 of the Code or Section 408 of ERISA, respectively.

"Proxy Statement" is defined in Section 2.18.

"Remedial Action" means all actions required under any applicable Environmental Law or otherwise undertaken by any Authority, including any capital expenditures, required or undertaken to (a) clean up, remove, treat, or in any other way address any Hazardous Material; (b) prevent an Environmental Release or the threat of an Environmental Release, or minimize any further Environmental Release so it does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (c) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (d) bring facilities on any property owned, operated or leased by any of Company or its Subsidiaries and operations conducted thereon into compliance with any applicable Environmental Law or Environmental Permit.

"Representatives" is defined in Section 4.1.

"Reportable Event" shall mean a "reportable event", as defined in Section 4043 of ERISA, whether or not the reporting of such event to the Pension Benefit Guaranty Corporation has been waived.

"Rocket" is defined in the preamble preceding the Recitals.

"Rocket 401(k) Plan" is defined in Section 4.12.

"Schedule 13E-3" is defined in Section 2.18.

"Subsidiary" shall mean, with respect to any Person, any Entity a majority of the capital stock ordinarily entitled to vote for the election of directors, or if no such voting stock is outstanding a majority of the equity interests, of which is owned directly or indirectly by such Person or any other Person which is a Subsidiary of such Person.

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"Special Committee" is defined in Section 2.21.

"Surviving Corporation" is defined in Section 1.1.

"Tax" or "Taxes" shall mean all taxes, charges, fees, imposts, levies or other assessments, including, without limitation, all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, transfer gains, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, real or personal property, and estimated taxes, water, rent and sewer service charges, custom duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any taxing authority or other Authority (federal, state, local or foreign) and shall include any transferee liability in respect of Taxes.

"Tax Return" shall mean any return, declaration, report, estimate, information return or statement required to be filed in respect of any Taxes.

"Termination Date" is defined in Section 8.1.

"Transfer" shall mean any sale, assignment, conveyance, transfer or other disposition, mortgage, pledge or other Encumbrance, lease, exchange, abandonment, parting with control of, gift, granting of an option or proxy or other act of alienation.

"Transaction Document" shall mean any Instrument executed or to be executed in connection with the consummation of the Merger and the other transactions contemplated hereby, whether or not expressly referred to in this Agreement.

Section 8. Termination.

8.1 Termination. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated, whether before or after the Company Stockholder Approval:

(a) By mutual written agreement of the parties; or

(b) By any party, by written notice to the other parties, if, other than as a result of a breach of this Agreement by the terminating party, the Closing shall not have occurred on or before June 30, 2001 or such later date as may be mutually agreed in writing by the parties (the "Termination Date"); or

(c) By any party, by written notice to the other parties, if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued an order, decree or ruling (which order, decree, ruling or action the parties hereto shall use their best efforts to lift or reverse), in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and

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such order, decree, ruling or other action shall have become final and nonappealable; or

(d) (i) By Company, by written notice to the other parties, if both (A) it is not in material breach of any of its representations, warranties or covenants contained herein or in any Transaction Document and (B) there has been a material breach of a representation or warranty in this Agreement by Rocket or Acquiror, or a material breach by Rocket or Acquiror of any covenant set forth herein, or a failure of any condition to which the obligations of Company hereunder are subject, and such breach or failure cannot be cured by the Termination Date and has not been waived, or (ii) by Rocket and Acquiror, by written notice to Company, if both (A) neither Rocket nor Acquiror is in material breach of any of its representations, warranties or covenants contained herein or in any Transaction Document and (B) there has been a material breach of a representation or warranty in this Agreement by Company, or a material breach by Company of any covenant set forth herein, or a failure of any condition to which the obligations of Rocket and Acquiror hereunder are subject, and such breach or failure cannot be cured by the Termination Date and has not been waived.

(e) By any party, by written notice to the other parties, if the Company Stockholder Approval shall not have been obtained by reason of the failure to obtain the required vote upon a vote held at the

Company Stockholders Meeting contemplated by Section 4.5 (including any postponements or adjournments thereof).

(f) By Rocket and Acquiror, by written notice to Company, if the Board of Directors of Company shall have (i) withdrawn or modified, in a manner adverse to Acquiror, its approval or recommendation of this Agreement or any of the transactions contemplated hereby, (ii) failed to include such recommendation in the Proxy Statement, (iii) approved or recommended any Acquisition Proposal from any Person other than Rocket or Acquiror or (iv) resolved to do any of the foregoing.

In the event of any termination pursuant to this Section (other than pursuant to clause (a) above), written notice setting forth the reasons thereof shall forthwith be given by the terminating party to the other party and, in the case of paragraph (d) the breach or failure set forth in such notice shall not have been cured within seven (7) days of such written notice.

8.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become void, there shall be no liability on the part of any party, or any of its respective stockholders, partners, officers or directors, to the other and all rights and obligations of each party shall cease, except that such termination shall not relieve any party from liability for any misrepresentation or breach of any of its warranties, covenants or agreements set forth in this Agreement occurring prior to termination.

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Section 9. General Provisions.

9.1 Nature and Survival of Representations and Warranties.

(a) All representations, warranties, covenants and agreements made in this Agreement or in any agreement, instrument, other document or certificates delivered in connection with the transactions contemplated hereby shall be deemed material and relied on by each party notwithstanding any investigation made by it or on its behalf. All representations, warranties, covenants and agreements made in this Agreement shall terminate at the Effective Time or upon termination of this Agreement pursuant to Section 8.1, except for those covenants and agreements herein that by their terms are to be performed in whole or in part after the Effective Time. Nothing in this Section shall relieve any party from liability for any misrepresentation or breach of any of its warranties, covenants or agreements set forth in this Agreement occurring prior to its termination.

(b) All statements contained in the Disclosure Schedule or in any certificate delivered by or on behalf of Company or any of its Subsidiaries pursuant to or in connection with this Agreement or any amendments to any thereof, shall constitute representations and warranties made under this Agreement.

9.2 Entire Agreement. This Agreement (which term, unless the context otherwise specifically requires, includes any exhibits or schedules hereto and all agreements, instruments and certificates delivered pursuant hereto or thereto) and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior agreements, arrangements, covenants, promises, conditions, understandings, inducements, representations and negotiations, expressed or implied, written or oral, between them as to such subject matter, including, without limitation, any so-called "letters of intent" with respect thereto.

9.3 Specific Performance; Other Rights and Remedies. The parties recognize that certain of their rights under this Agreement are unique and, accordingly, the parties shall, in addition to such other remedies as may be available to any of them at law or in equity, have the right to enforce their rights hereunder by actions for injunctive relief and specific performance to the extent permitted by law. The parties hereby waive any requirement for security or the posting of any bond or other surety in connection with any temporary or permanent award of injunctive, mandatory or other equitable relief. The rights and remedies of the parties under this Agreement are cumulative and are not in lieu of, but are in addition to, any other rights and remedies

which the parties shall have under or by virtue of any statute, rule or regulation or any rule of law, or in equity, or any other agreement or obligation between the parties or any of them.

9.4 Waivers; Amendments. Anything in this Agreement to the contrary notwithstanding, required consents and approvals may be granted, compliance

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with any term, covenant, agreement, condition or other provision set forth herein may be omitted or waived, and misrepresentations and breaches of warranties may be waived, either generally or in a particular instance and either retroactively or prospectively with, but only with, the written consent of the party entitled to the benefit thereof. This Agreement may be altered or amended only by an instrument in writing, duly executed by each of the parties hereto, at any time before or after the Company Stockholder Approval, but after such approval no alteration or amendment shall be made which by Applicable Law requires further approval by the stockholders of Company.

9.5 Assignment; Successors and Assigns. This Agreement shall not be assignable by any party without the prior written consent of the other parties. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns, including, without limitation, successors by operation of law pursuant to any merger, consolidation or sale of assets involving any of the parties. Nothing in this Agreement expressed or implied is intended to and shall not be construed to confer upon or create in any person (other than the parties hereto and their permitted successors and assigns) any rights or remedies under or by reason of this Agreement, including without limitation any rights to enforce this Agreement.

9.6 Notices. All notices and other communications which by any provision of this Agreement are required or permitted to be given shall be given in writing and shall be (a) mailed by first-class or express mail, postage prepaid, (b) sent by telegram, telecopy or other form of rapid transmission, confirmed by mailing (by first class or express mail, postage prepaid) written confirmation at substantially the same time as such rapid transmission, or (c) personally delivered to the receiving party (which if other than an individual shall be an officer or other responsible party of the receiving party). All such notices and communications shall be mailed, sent or delivered as follows:

If to Rocket or Acquiror, at:

Rocket Software, Inc.
2 Apple Hill Drive
Natick, MA 01760
Attention: Mr. Johan Magnusson
Facsimile: 508-652-4730

with a copy to:

Lucash Gesmer & Updegrove LLP
40 Broad Street
Boston, MA 02109
Attention: Peter Moldave, Esq.

Facsimile: 617-350-6878

If to Company, at:

Peritus Software Services, Inc.
112 Turnpike Road, Suite 111

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Westborough, MA 01581
Attention: Mr. John D. Giordano
President

Facsimile: 508-870-0764

with a copy to:

Hale and Dorr LLP
60 State Street
Boston, MA 02109
Attention: Peter B. Tarr, Esq.

Facsimile: 617-526-5000

or to such other person(s), telex or facsimile number(s) or address(es) as the party to receive any such communication or notice may have designated by written notice to the other party.

9.7 Severability. If any provision of this Agreement shall be held or deemed to be, or shall in fact be, invalid, inoperative, illegal or unenforceable as applied to any particular case in any jurisdiction or jurisdictions, or in all jurisdictions or in all cases, because of the conflicting of any provision with any constitution or statute or rule of public policy or for any other reason, such circumstance shall not have the effect of rendering the provision or provisions in question invalid, inoperative, illegal or unenforceable in any other jurisdiction or in any other case or circumstance or of rendering any other provision or provisions herein contained invalid, inoperative, illegal or unenforceable to the extent that such other provisions are not themselves actually in conflict with such constitution, statute or rule of public policy, but this Agreement shall be reformed and construed in any such jurisdiction or case as if such invalid, inoperative, illegal or unenforceable provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted in such jurisdiction or in such case, except when such reformation and construction would operate as an undue hardship on either party, or constitute a substantial deviation from the general intent and purpose of such party as reflected in this Agreement.

9.8 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, binding upon all the parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart. In pleading or proving any provision of this Agreement, it shall not be necessary to produce more than one of such counterparts.

9.9 Section Headings. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

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9.10 Further Acts. Each of the parties hereto agrees to do all such things and execute and deliver all such further instruments, agreements and documents and to take all such further action as any other party may reasonably request in order to effectuate the terms and conditions of this Agreement.

9.11 Governing Law. Except for provisions required to be governed by the MBCL, the validity, interpretation, construction and performance of this Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts applicable to contracts made and performed in such jurisdiction and, in any event, without giving effect to any choice or conflict of laws provision or rule that would cause the application of domestic substantive laws of any other jurisdiction.

9.12 Consent to Jurisdiction and Service. To the extent permitted by Applicable Law, each of the parties hereto absolutely and irrevocably consents and submits to the jurisdiction of the courts of the Commonwealth of Massachusetts and of any Federal Court located in the said jurisdiction in connection with any actions or proceedings brought against it by any other party to this Agreement arising out of or relating to this Agreement and hereby irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in any such court.

9.13 No Presumption. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

IN WITNESS WHEREOF, each of the undersigned parties has caused this Agreement to be entered into and signed, effective and delivered as of the date first-above written.

COMPANY:

Peritus Software Services, Inc.

/s/ John D. Giordano
By:__________________________________
Name: John D. Giordano
Title: President and Chief Executive Officer

ROCKET:

Rocket Software, Inc.

/s/ Johan Magnusson
By: _________________________________
Name: Johan Magnusson
Title: Director, Chief Operating Officer

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ACQUIROR:

Rocket Acquisition Company, Inc.

/s/ Johan Magnusson

By: ________________________________

Name: Johan Magnusson

Title: President

Exhibit A

FEDERAL IDENTIFICATION NO. 04-3126919	FEDERAL IDENTIFICATION NO. 04-

The Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth
One Ashburton Place, Boston, Massachusetts 02108-1512

ARTICLES OF MERGER
(General Laws, Chapter 156B, Section 78)

merger of

Peritus Software Services, Inc.
and
Rocket Acquisition Company, Inc.

the constituent corporations, into

Peritus Software Services, Inc.
one of the constituent corporations.

The undersigned officers of each of the constituent corporations certify under the penalties of perjury as follows:

1. An agreement of merger has been duly adopted in compliance with the requirements of General Laws, Chapter 156B, Section 78, and will be kept as provided by Subsection (d) thereof. The surviving corporation will furnish a copy of said agreement to any of its stockholders, or to any person who was a stockholder of any constituent corporation, upon written request and without charge.

2. The effective date of the merger determined pursuant to the agreement of merger shall be the date approved and filed by the Secretary of the Commonwealth. If a later effective date is desired, specify such date which shall not be more than thirty days after the date of filing:

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3. (For a merger)

**The following amendments to the Articles of Organization of the surviving corporation have been effected pursuant to the agreement of merger:

Article III is hereby amended to change the authorized capital to:

200,000 shares common, $.01 par value per share

----

*   Delete the inapplicable word

** If there are no provisions state "None".

Note: If the space provided under any article or item on this form is insufficient, additions shall be set forth on separate 8 1/2 x 11 sheets of paper with a left margin of at least 1 inch. Additions to more than one article may be made on a single sheet as long as each article requiring each addition is clearly indicated.

(For a consolidation)

(a) The purpose of the resulting corporation is to engage in the following business activities:

(b) State the total number of shares and the par value, if any, of each class of stock which the resulting corporation is authorized to issue.

Without Par Value		With Par Value		
Type	Number of Shares	Type	Number of Shares	Par Value
Common:		Common:		
Preferred:		Preferred:		

**(c) If more than one class of stock is authorized, state a distinguishing designation for each class and provide a description of the preferences, voting powers, qualifications, and special or relative rights or privileges of each class and of each series then established.

**(d) The restrictions, if any, on the transfer of stock contained in the agreement of consolidation are:

**(e) Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or stockholders, or of any class of stockholders:

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4. The information contained in Item 4 is not a permanent part of the Articles of Organization of the surviving corporation.

(a) The street address of the surviving corporation in Massachusetts is: (post office boxes are not acceptable)

2 Apple Hill Drive, Natick, Massachusetts 01760

(b) The name, residential address, and post office address of each director and officer of the *resulting / *surviving corporation is:

	Name	Residential Address	Post Office Address
President:	Johan Magnusson	2320 Ocean Boulevard Rye Beach, New Hampshire 03871	
Treasurer:	Johan Magnusson	same as above	
Clerk:	Johan Magnusson	same as above	
Directors:	Johan Magnusson	same as above	
Asst. Clerk:	Andrew Youniss	26 Bogastow Circle Millis, Massachusetts 02054	
Asst. Clerk:	Timothy Lindamood	15 Ethan Allen Drive Acton, Massachusetts 01720	

(c) The fiscal year (i.e. tax year) of the surviving corporation shall end on the last day of the month of:

December

(d) The name and business address of the resident agent, if any, of the surviving corporation is:

Andrew Youniss, 2 Apple Hill Drive, Natick, Massachusetts 01760

The undersigned officers of the several constituent corporations listed above further state under the penalties of perjury as to their respective corporations that the agreement of merger has been duly executed on behalf of such corporation and duly approved by the stockholders of such corporation in the manner required by General Laws, Chapter 156B, Section 78.

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____, President
Johan Magnusson

____, Clerk
Johan Magnusson
of Rocket Acquisition Company, Inc.

____
(Name of constituent corporation)

____, President
John D. Giordano

____, Clerk
Peter B. Tarr
of Peritus Software Services, Inc.

____
(Name of constituent corporation)

THE COMMONWEALTH OF MASSACHUSETTS

ARTICLES OF *CONSOLIDATION / *MERGER
(General Laws, Chapter 156B, Section 78)

I hereby approve the within Articles of *Consolidation/*Merger and, the filing fee in the amount of $, having been paid, said articles are deemed to have been filed with me this day of , .

Effective date: ____

WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION
Photocopy of document to be sent to:

Leslie Martello, Legal Specialist
Lucash, Gesmer & Updegrove LLP
40 Broad Street, Boston, Massachusetts 02109
Telephone: (617) 350-6800

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Exhibit 11

Peritus Software Services, Inc.

Statement Re Computation of Net Income (Loss)

Per Common Share

(in thousands, except per share data)

	Three Months Ended March 31,	
	2000	**2000**
Net loss, as reported	$ (424)	$ (3,810)
Net loss attributable to common stockholders	$ (424)	$ (3,810)
Weighted average shares outstanding-Basic and diluted	27,320	17,743
Net loss per share- basic and diluted	$ (0.02)	$ (0.21)

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