

P97000004178

Document Number Only

CT Corporation System  
660 East Jefferson Street  
Tallahassee, FL 32301  
Tel 850 222 1092  
Fax 850 222 7615  
Attn: Jeff Netherton

800003393728--7  
-09/15/00--01052--023  
\*\*\*\*\*8.75 \*\*\*\*\*8.75

800003393728--7  
-09/14/00--01037--016  
\*\*\*\*105.00 \*\*\*\*105.00

CORPORATION(S) NAME

Adjoined Technologies, Inc. (DE)

*Merger*

Merging:

Adjoined Technologies, Inc. (FL)

Entente Investment, Inc. (FL)

<input type="checkbox"/> Profit	<input type="checkbox"/> Amendment	<input checked="" type="checkbox"/> Merger
<input type="checkbox"/> Nonprofit		
<input type="checkbox"/> Foreign	<input type="checkbox"/> Dissolution/Withdrawal	<input type="checkbox"/> Mark
	<input type="checkbox"/> Reinstatement	
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Annual Report	<input type="checkbox"/> Other
<input type="checkbox"/> LLC	<input type="checkbox"/> Name Registration	<input type="checkbox"/> Change of RA
	<input type="checkbox"/> Fictitious Name	<input type="checkbox"/> UCC
<input type="checkbox"/> Certified Copy	<input type="checkbox"/> Photocopies	<input type="checkbox"/> CUS

<input type="checkbox"/> Call When Ready	<input type="checkbox"/> Call If Problem	<input type="checkbox"/> After 4:30
<input checked="" type="checkbox"/> Walk In	<input type="checkbox"/> Will Wait	<input checked="" type="checkbox"/> Pick Up
<input type="checkbox"/> Mail Out		

Name 9/15/00 09/14/00  
Availability  
Document  
Examiner ABR  
Updater  
Verifier  
Acknowledgement  
W.P. Verifier

00 SEP 14 PM 3:07  
STATE  
TALLAHASSEE, FLORIDA

FILED

RECEIVED  
00 SEP 14 PM 2:38  
DEPARTMENT OF STATE  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

200789, 00624, 02277, 00672

P97000004178

ARTICLES OF MERGER  
Merger Sheet

-----  
MERGING:

ADJOINED TECHNOLOGIES, INC., a Florida corporation P97000004178 .  
ENTENTE INVESTMENT, INC., a Florida corporation P99000093797

INTO

**ADJOINED TECHNOLOGIES, INC.,** a Delaware corporation not qualified in  
Florida.

File date: September 14, 2000

Corporate Specialist: Annette Ramsey



FLORIDA DEPARTMENT OF STATE

Katherine Harris  
Secretary of State

September 14, 2000

CT Corporation System  
660 East Jefferson St.  
Tallahassee, FL 32301

SUBJECT: ADJOINED TECHNOLOGIES, INC.  
Ref. Number: P97000004178

We have received your document for ADJOINED TECHNOLOGIES, INC. and your check(s) totaling \$105.00. However, the enclosed document has not been filed and is being returned for the following correction(s):

The document must have original signatures.

The articles of merger must contain the provisions of the plan of merger or the plan of merger must be attached.

If you have any questions concerning the filing of your document, please call (850) 487-6907.

Annette Ramsey  
Corporate Specialist

Letter Number: 900A00048768

RECEIVED  
00 SEP 15 AM 10:03  
DIVISION OF CORPORATIONS  
TALLAHASSEE, FLORIDA

*Please back-date*

*Also, see Attached check for a certified copy  
not requested yesterday.*

*Theresa  
Jeff*

FILED  
00 SEP 14 PM 3:07  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER  
MERGING  
ADJOINED TECHNOLOGIES, INC.,  
A FLORIDA CORPORATION,  
AND  
ENTENTE INVESTMENT, INC.,  
A FLORIDA CORPORATION,  
WITH AND INTO  
ADJOINED TECHNOLOGIES, INC.,  
A DELAWARE CORPORATION

Pursuant to the provisions of Sections 607.1101, 607.1103, 607.1105, and 607.1107 of the Florida Business Corporation Act and Section 8-252 of the General Corporation Law of the state of Delaware, Adjoined Technologies, Inc., a Florida corporation ("Adjoined-FL"), Entente Investment, Inc., a Florida corporation ("Entente"), and Adjoined Technologies, Inc., a Delaware corporation (the "Surviving Corporation"), hereby adopt the following Articles of Merger for the purpose of merging Adjoined-FL and Entente with and into the Surviving Corporation (the "Merger").

**FIRST:** The Agreement and Plan of Merger for the Merger (the "Plan of Merger") is attached hereto as Exhibit A.

**SECOND:** The names of the corporations that are the parties to the Merger are Adjoined Technologies, Inc., a Florida corporation; Entente Investment, Inc., a Florida corporation; and Adjoined Technologies, Inc., a Delaware corporation.

**THIRD:** The Merger shall be effective upon the filing with and acceptance of the Certificate of Merger by the Secretary of State of the state of Delaware (the "Effective Time").

**FOURTH:** An executed Agreement and Plan of Merger is on file at the Surviving Corporation's office. The Surviving Corporation will furnish, on written request and without cost, to any shareholder of Adjoined-FL, Entente, and the Surviving Corporation, a copy of the Plan of Merger.

**FIFTH:** The Certificate of Incorporation of the Surviving Corporation shall, as of the Effective Time, continue in full force and effect until changed, altered, or amended as therein provided and in the manner prescribed by the laws of the State of Delaware.

**SIXTH:** The shareholders of each of Adjoined-FL and Entente approved the Plan of Merger pursuant to Section 607.1103 of the Florida Business Corporation Act. The stockholders of the Surviving Corporation approved the Plan of Merger in accordance with the laws of the state of Delaware. The Board of Directors of Adjoined-FL, Entente, and the Surviving Corporation have each duly authorized the Plan of Merger by all action required by the laws under which each entity is incorporated or organized and by each of its constituent documents.

**SEVENTH:** The Plan of Merger was approved by (A) the unanimous written consent of the Board of Directors and shareholders of Adjoined-FL as of September 14, 2000, (B) the unanimous written consent of the Board of Directors and shareholders of Entente as of September 14, 2000, and (C) the unanimous written consent of the Board of Directors and stockholders of the Surviving Corporation as of September 14, 2000.

IN WITNESS WHEREOF, each of Adjoined-FL, Entente, and the Surviving Corporation have caused these Articles of Merger to be signed in their respective corporate names and on their behalf by an authorized officer, as of this 14 day of September, 2000.

ADJOINED TECHNOLOGIES, INC., a Florida corporation

By: 

Name: Rodney Rogers

Title: President

ENTENTE INVESTMENT, INC., a Florida corporation

By: 

Name: William D. Pruitt

Title: Chairman of the Board

ADJOINED TECHNOLOGIES, INC., a Delaware corporation

By: 

Name: Rodney Rogers

Title: President

**EXHIBIT A**

**Agreement and Plan of Merger**

See attached

**EXECUTION VERSION**

---

**AGREEMENT AND PLAN OF MERGER**

---

**Among**

**ADJOINED TECHNOLOGIES, INC., a Florida corporation;**

**ENTENTE INVESTMENT, INC., a Florida corporation;**

**ADJOINED TECHNOLOGIES, INC., a Delaware corporation;**

**and**

**THEIR RESPECTIVE SHAREHOLDERS**

**September 14, 2000**

## TABLE OF CONTENTS

	Page
ARTICLE I THE MERGER.....	1
SECTION 1.01. The Merger.....	1
SECTION 1.02. Closing .....	1
SECTION 1.03. Effective Time .....	1
SECTION 1.04. Effects of the Merger.....	1
SECTION 1.05. Certificate of Incorporation and Bylaws .....	2
SECTION 1.06. Directors .....	2
SECTION 1.07. Officers.....	2
SECTION 1.08. Stock Options.....	2
ARTICLE II EFFECT OF THE MERGER ON THE CAPITAL STOCK OF ADJOINED, NEW ADJOINED AND ENTENTE; EXCHANGE OF CERTIFICATES .....	2
SECTION 2.01. Exchange Ratios .....	2
SECTION 2.02. Exchange of Certificates .....	3
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE COMPANIES .....	4
SECTION 3.01. Organization, Qualification and Corporate Power .....	4
SECTION 3.02. Authorization .....	4
SECTION 3.03. Validity.....	5
SECTION 3.04. Capitalization.....	5
SECTION 3.05. Financial Statements .....	5
SECTION 3.06. Litigation and Compliance with Law.....	6
SECTION 3.07. Proprietary Information of Third Parties .....	6
SECTION 3.08. Title to Assets.....	7
SECTION 3.09. Insurance .....	7
SECTION 3.10. Taxes .....	7
SECTION 3.11. Other Agreements.....	7
SECTION 3.12. Intellectual Property Assets .....	8
SECTION 3.13. Investments in Other Persons.....	9
SECTION 3.14. Assumptions, Guaranties, etc. of Indebtedness of Other Persons.....	9
SECTION 3.15. Significant Customers and Suppliers.....	9
SECTION 3.16. Governmental and other Approvals .....	9
SECTION 3.18. No Brokers or Finders .....	9
SECTION 3.19. [Intentionally Omitted] .....	10
SECTION 3.20. Transactions with Affiliates.....	10
SECTION 3.21. Employees .....	10
SECTION 3.22. ERISA .....	10



**TABLE OF CONTENTS**  
(continued)

	Page
SECTION 3.23. Labor Relations .....	10
SECTION 3.24. Books and Records .....	10
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SHAREHOLDERS .....	10
ARTICLE V COVENANTS .....	12
SECTION 5.01. Covenants of the Companies .....	12
SECTION 5.02. Other Actions .....	14
ARTICLE VI ADDITIONAL AGREEMENTS .....	14
SECTION 6.01. Access to Information .....	14
SECTION 6.02. Reasonable Efforts .....	14
SECTION 6.03. Confidentiality .....	14
SECTION 6.04. Fees and Expenses .....	15
SECTION 6.05. Indemnification; Insurance .....	15
SECTION 6.06. Employment and Benefit Arrangements .....	15
SECTION 6.07. Additional Agreements by the Shareholders .....	15
ARTICLE VII CONDITIONS .....	16
SECTION 7.01 Conditions Precedent .....	16
ARTICLE VIII TERMINATION AND AMENDMENT .....	17
SECTION 8.01. Termination .....	17
SECTION 8.02. Effect of Termination .....	17
SECTION 8.03. Amendment .....	17
SECTION 8.04. Extension; Waiver .....	17
ARTICLE IX MISCELLANEOUS .....	17
SECTION 9.01. Nonsurvival of Representations and Warranties .....	17
SECTION 9.02. Notices .....	18
SECTION 9.03. Interpretation .....	18
SECTION 9.04. Counterparts .....	18
SECTION 9.05. Entire Agreement; Third Party Beneficiaries .....	18
SECTION 9.06. Governing Law .....	18
SECTION 9.07. Assignment .....	18
SECTION 9.08. Enforcement .....	19

## **EXECUTION VERSION**

### **AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER is made and entered into as of September 14, 2000, among Adjoined Technologies, Inc., a Florida corporation ("Adjoined"); Entente Investment, Inc., a Florida corporation ("Entente"); Adjoined Technologies, Inc., a Delaware corporation and a wholly owned subsidiary of Adjoined ("New Adjoined" of the "Surviving Corporation"), and their respective shareholders named on the signature pages hereto.

#### **Recitals**

WHEREAS the respective Boards of Directors and shareholders of Adjoined, New Adjoined and Entente (collectively, the "Companies" and each, individually, a "Company") have approved the merger (the "Merger") of Entente and Adjoined with and into New Adjoined, upon the terms and subject to the conditions set forth in this Agreement; and

WHEREAS the Companies desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the Companies hereby agree as follows:

#### **ARTICLE I**

##### **The Merger**

SECTION 1.01. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the Delaware General Corporation Law (the "Corporation Law") and Florida Law (as defined below), Entente and Adjoined shall be merged with and into New Adjoined at the Effective Time (as defined in Section 1.03). Following the Effective Time, the separate corporate existence of Entente and Adjoined shall cease and New Adjoined shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of Entente and Adjoined in accordance with the Corporation Law.

SECTION 1.02. Closing. The closing of the Merger will take place at 10:00 a.m. (local time) on a date to be specified by the Companies, which shall be no later than September 5, 2000 (the "Closing Date"), at the Phoenix offices of Greenberg Traurig, LLP, unless another date, time or place is agreed to in writing by the parties hereto.

SECTION 1.03. Effective Time. Subject to the provisions of this Agreement, as soon as practicable on or after the Closing Date, the parties shall file a Certificate of Merger or other appropriate documents, (in any such case, the "Certificate of Merger") executed in accordance with the relevant provisions of the Corporation Law and the Florida Business Corporation Act ("Florida Law"), as applicable, and shall make all other filings or recordings required under the Corporation Law and Florida Law, as applicable. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Delaware Secretary of State, or at such other time as the Companies shall agree should be specified in the Certificate of Merger (the time the Merger becomes effective being hereinafter referred to as the "Effective Time").

SECTION 1.04. Effects of the Merger. The Merger shall have the effects set forth in the applicable provisions of the Corporation Law and Florida Law, as applicable.

#### SECTION 1.05. Certificate of Incorporation and Bylaws.

(a) The Certificate of Incorporation of New Adjoined as in effect immediately prior to the Effective Time shall be the Certificate of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

(b) The bylaws of New Adjoined as in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

SECTION 1.06. Directors. The directors of New Adjoined immediately prior to the Effective Time shall be the directors of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

SECTION 1.07. Officers. The officers of New Adjoined immediately prior to the Effective Time, shall be the officers of the Surviving Corporation until the earlier of their resignation or removal or until their respective successors are duly elected and qualified, as the case may be.

SECTION 1.08. Stock Options. As of the Effective Time, any stock options to purchase shares of common stock of Adjoined and Entente that are outstanding at the Effective Time shall be assumed by New Adjoined and converted into a stock option to purchase, on the same terms and conditions (including without limitation, the date, vesting, and exercise provisions) as were applicable prior the Effective Time, the number of Surviving Corporation Common Shares equal to the number of shares of common stock of Adjoined and Entente subject to such stock option multiplied by the applicable exchange ratio, at an exercise price per Surviving Corporation Common Shares equal to the former exercise price per Adjoined Share or Entente Share (as the case may be) under such stock option immediately prior to the Effective Time (without taking into account any anti-dilution formula) divided by the applicable exchange ratio. The consummation of the Merger shall not be treated as a termination of employment for purposes of the stock options or the New Adjoined stock option plan.

### ARTICLE II

#### Effect of the Merger on the Capital Stock of Adjoined, New Adjoined and Entente; Exchange of Certificates

SECTION 2.01. Exchange Ratios. At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:

(a) Capital Stock of Adjoined, New Adjoined and Entente.

(i) Each issued and outstanding share of common stock, \$0.0001 par value, of Adjoined (an "Adjoined Share") shall be converted into 0.7784 shares of common stock, \$0.0001 par value, of the Surviving Corporation ("Surviving Corporation Common Shares");

(ii) Each share of Series A Preferred Stock, \$0.0001 par value, of Adjoined (an "Adjoined Series A Preferred Share") issued and outstanding immediately prior to the Effective Time shall be canceled automatically and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(iii) Each share of Series B Preferred Stock, \$0.0001 par value, of Adjoined (an "Adjoined Series B Preferred Share") issued and outstanding immediately prior to the Effective Time shall be canceled automatically and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(iv) Each share of Series C Preferred Stock, \$0.0001 par value, of Adjoined (an "Adjoined Series C Preferred Share") issued and outstanding immediately prior to the Effective Time shall be canceled automatically and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(v) Each share of common stock of New Adjoined that is held in the treasury of New Adjoined or is owned by Adjoined shall be canceled automatically and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(vi) Each issued and outstanding share of common stock, \$0.01 par value, of Entente (an "Entente Share") shall be converted into 0.9701 Surviving Corporation Common Shares; and

(vii) Each issued and outstanding share of Series A Convertible Preferred Stock, \$0.01 par value, of Entente (an "Entente Series A Preferred Share") shall be converted into 0.9701 shares of Series A Convertible Preferred Stock, \$0.0001 par value, of the Surviving Corporation ("Surviving Corporation Series A Shares").

(b) No Fractional Securities. No certificates or scrips representing fractional shares of capital stock of the Surviving Corporation shall be issued upon the surrender for exchange of a certificate or certificates which immediately prior to the Effective Time represented shares of capital stock of Adjoined or Entente (the "Certificates") and no dividend, stock split or other change in the capital structure of the Surviving Corporation shall relate to any fractional security, and such fractional interests shall not entitle the owner thereof to vote or to any rights of a security holder. Instead of any such fractional shares, each former holder of Entente or Adjoined securities who would otherwise have been entitled to a fraction of a share upon surrender of Certificates for exchange pursuant to this Article II shall be paid cash upon such surrender in an amount equal to the product of such fraction multiplied by \$2.59.

#### SECTION 2.02. Exchange of Certificates.

(a) General. Each holder of shares of capital stock of Adjoined and Entente will be entitled to receive, upon surrender to the Surviving Corporation of one or more Certificates representing such shares of Adjoined and Entente cancellation, certificates representing the number of shares of capital stock of the Surviving Corporation into which such shares are converted in the Merger. The shares of capital stock of the Surviving Corporation into which such shares of capital stock of Adjoined and Entente shall be converted in the Merger ("Surviving Corporation Shares") shall be deemed to have been issued at the Effective Time.

(b) Exchange Procedure. As soon as reasonably practicable after the Effective Time, the Surviving Corporation shall mail to each holder of record of a Certificate or Certificates which immediately prior to the Effective Time represented outstanding shares of capital stock of Adjoined or Entente whose shares were converted into Surviving Corporation Shares pursuant to this Article II, (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Surviving Corporation and shall be in a form and have such other provisions as Surviving Corporation may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing Surviving Corporation Shares. Upon surrender of a Certificate for cancellation to the Surviving Corporation together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing that number of Surviving Corporation Shares which such holder has the right to receive in respect of the Certificates surrendered pursuant to the provisions of this Article II. 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, Surviving Corporation will issue or cause to be issued in exchange for such lost, stolen or destroyed Certificate the number of Surviving Corporation Shares into which such shares are converted in the Merger in accordance with this Article II. When authorizing such issuance in exchange therefor, the Board of Directors of 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 deliver a bond in such

sum as it may reasonably direct as indemnity, or such other form of indemnity as it shall direct, against any claim that may be made against the Surviving Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

(c) Closing of Transfer Books. At the Effective Time, the stock transfer books of Entente shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of capital stock of Adjoined that were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged for Surviving Corporation Shares as provided in this Article II. At and after the Effective Time, the holders of securities of Entente to be exchanged for Surviving Corporation Shares pursuant to this Article II shall cease to have any rights as shareholders of Entente except for the right to surrender such Certificates in exchange for Surviving Corporation Shares pursuant to this Article II.

### ARTICLE III

#### Representations and Warranties of the Companies

Each Company represents and warrants to the other Company, except as disclosed to the other Company in the attached disclosure schedules corresponding to such Company, as follows:

##### SECTION 3.01. Organization, Qualification and Corporate Power

(a) Such Company is a duly organized and validly existing corporation and is in good standing under the laws of the jurisdiction of its incorporation and has all requisite corporate power and corporate authority for the ownership and operations of its properties and for the carrying on of its business as now conducted and as now proposed to be conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority could not reasonably be expected to have a Material Adverse Effect (as defined below) on such Company or to prevent or materially delay the completion of the Merger. Such Company is duly qualified and is in good standing as a foreign corporation and authorized to do business in all jurisdictions wherein the character of the property owned or leased, or the nature of the activities conducted by it, makes such qualification or authorization necessary, except where the failure to so qualify or be so authorized would not have a material adverse effect on such Company's assets, business, prospects, liabilities, properties, financial condition or results of operations taken as a whole or prevent or materially delay the completion of the Merger (a "Material Adverse Effect").

(b) Except as set forth in Schedule 3.01(b), such Company has no subsidiaries and does not own of record or beneficially, directly or indirectly, (i) any shares of capital stock or securities convertible into capital stock of any other corporation, or (ii) any participating interest in any partnership, joint venture, limited liability company or other non-corporate business enterprise and does not control, directly or indirectly, any other entity.

SECTION 3.02. Authorization. The execution and delivery by such Company of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action, including approval by such Company's board of directors and shareholders and will not (a) violate (i) any provision of any applicable law, or any order of any court or other agency of government applicable to such Company, (ii) the articles of incorporation of such Company, (iii) the bylaws of such Company, or (iv) any provision of any mortgage, lease, indenture, agreement or other instrument to which such Company or any of its properties or assets is bound, or (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of such Company, except in the case of clauses (a)(iv) and (b), where such violation, conflict, breach, default or lien would not have a Material Adverse Effect.

SECTION 3.03. Validity. This Agreement has been duly executed and delivered by such Company and constitutes the legal, valid and binding obligation of such Company, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (b) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

SECTION 3.04. Capitalization. As of the date hereof, the authorized capital stock of such Company is as set forth in Schedule 3.04 attached hereto. No shares of capital stock of such Company are held in such Company's treasury. All of the outstanding shares of capital stock of such Company are duly authorized, validly issued, fully paid and non-assessable and were not issued in violation of (i) any preemptive or other rights of any person to acquire securities of such Company, or (ii) any applicable federal or state securities laws, and the rules and regulations promulgated thereunder (collectively, the "Securities Laws"). Except for shares of such Company's preferred stock and options (collectively the "Options") to purchase shares of such Company's common stock, there are no outstanding subscriptions, options, convertible securities, rights (preemptive or otherwise), warrants, calls or agreements relating to any shares of capital stock of such Company. Schedule 3.04 attached hereto sets forth (x) a true and complete summary of the outstanding shares of such Company's capital stock, including the name of each stockholder and the number (and class and/or series) of shares held of record and beneficially by each stockholder, and (y) a true, complete and correct list of all Options, including with respect to each such security, (i) the name of the holder thereof, (ii) the number (and class and/or series) of shares subject thereto, (iii) the per share exercise price, (iv) the date of grant, (v) the expiration date, and (vi) any applicable exercise vesting schedule.

SECTION 3.05. Financial Statements.

(a) The financial statements of such Company attached as Schedule 3.05 (together the "Financial Statements") present fairly, in all material respects, the financial position of such Company as at the dates thereof and its results of operations for the periods covered thereby and, except as set forth therein, were prepared in all material respects in accordance with generally accepted accounting principles ("GAAP") consistently applied.

(b) Except as set forth in the Financial Statements or Schedule 3.05, such Company has no material liabilities, contingent or otherwise, other than (a) liabilities incurred in the ordinary course of business subsequent to the date of the most recent balance sheet included with the Financial Statements (the "Balance Sheet Date") and (b) executory obligations under contracts and commitments incurred in the ordinary course of business and not required under GAAP to be reflected in the Financial Statements.

(c) Except as set forth in Schedule 3.05, since the Balance Sheet Date there has not been:

(i) any change in the assets, liabilities, financial condition or operating results of such Company from that reflected in the Financial Statements, except changes that have not had a Material Adverse Effect on such Company;

(ii) any event or circumstance that has had, or could reasonably be expected to have, a Material Adverse Effect on such Company's prospects;

(iii) any resignation or termination of any executive officer or key employee of such Company (and such Company does not know of the impending resignation or termination of employment of any such officer or key employee);

(iv) any waiver by such Company of a valuable right or of a material debt owed to it;

(v) any direct or indirect loans made by such Company to any shareholder, employee, officer or director of such Company, other than advances made in the ordinary course of business;

(vi) any material change in any compensation arrangement or agreement with any employee, officer, director or shareholder of such Company;

(vii) any sale, assignment or transfer of any of such Company's patents, trademarks, copyrights, trade secrets or other intangible assets;

(viii) any declaration, setting aside or payment or other distribution in respect of any of such Company's capital stock, or any direct or indirect redemption, purchase or other acquisition of any such stock by such Company;

(ix) any material change or amendment to a material contract or arrangement by which such Company or any of its assets or properties is bound or subject; or

(x) any other material transaction by such Company outside of its ordinary course of business.

#### SECTION 3.06. Litigation and Compliance with Law.

(a) Except as set forth in Schedule 3.06, there is no (i) material action, suit, claim, proceeding or investigation pending or, to the best of such Company's knowledge, threatened against or affecting such Company, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign; (ii) material arbitration proceeding relating to such Company pending under collective bargaining agreements or otherwise; or (iii) material governmental inquiry pending or, to the best of such Company's knowledge, threatened against or affecting such Company (including, without limitation, any inquiry as to the qualification of such Company to hold or receive any license or permit), and, to the best of such Company's knowledge, there is no reasonable basis for any of the foregoing. Such Company is not in default with respect to any governmental order, writ, judgment, injunction or decree known to or served upon such Company of any court or of any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. Except as set forth in Schedule 3.06, there is no material action or suit by such Company pending or threatened against others.

(b) Such Company has complied in all respects with all laws, rules, regulations and orders applicable to its business, operations, properties, assets, products and services, and such Company has all necessary permits, licenses and other authorizations required to conduct its business as conducted and as proposed to be conducted, except to the extent failure to comply or obtain any such permits, licenses or authorizations will not have a Material Adverse Effect.

SECTION 3.07. Proprietary Information of Third Parties. Except as set forth in Schedule 3.07, to the best of such Company's knowledge, no third party has claimed or has reason to claim that any person employed by or affiliated with such Company has (a) violated or may be violating to any material extent any of the terms or conditions of his employment, non-competition or non-disclosure agreement with such third party, (b) disclosed or may be disclosing or utilized or may be utilizing any trade secret or proprietary information or documentation of such third party, or (c) interfered or may be interfering in the employment relationship between such third party and any of its present or former employees, or has requested information from such Company which suggests that such a claim might be contemplated. To the best of such Company's knowledge, no person employed by or affiliated with such Company has improperly utilized or proposes to improperly utilize any trade secret or any information or documentation proprietary to any former employer, and to the best of such Company's knowledge, no person employed by or affiliated with such Company has violated any confidential relationship which such person may have had with any third party, in connection with the development, manufacture or sale of any product or proposed

product or the development or sale of any service or proposed service of such Company, and such Company has no reason to believe there will be any such employment or violation. To the best of such Company's knowledge, none of the execution or delivery of this Agreement, the consummation of the Merger, and the other related agreements and documents executed in connection with the Closing hereunder, or the carrying on of the business of the Surviving Corporation as officers, employees or agents by any officer, director or key employee of the Surviving Corporation, or the conduct or proposed conduct of the business of the Surviving Corporation, will materially conflict with or result in a material breach of the terms, conditions or provisions of or constitute a material default under any contract, covenant or instrument under which any such person is obligated.

**SECTION 3.08. Title to Assets.** Except as set forth in Schedule 3.08, such Company has valid and marketable title to all of its assets now carried on its books including those reflected in the most recent balance sheet of such Company which forms a part of Schedule 3.05 attached hereto, or acquired since the Balance Sheet Date (except personal property disposed of since said date in the ordinary course of business) free of any liens, charges or encumbrances of any kind whatsoever, except such encumbrances and liens that arise in the ordinary course of business and do not materially impair such Company's ownership or use of such property or assets set forth on Schedule 3.05. Such Company does not own any real property. Such Company is in compliance in all material respects under all leases for property and assets under which it is operating, and all said leases are valid and subsisting and are in full force and effect.

**SECTION 3.09. Insurance.** Such Company carries insurance covering its properties and business adequate and customary for the type and scope of its properties and business.

**SECTION 3.10. Taxes.** Except as set forth in Schedule 3.10, such Company has accurately prepared and timely filed all federal, state and other tax returns required by law to be filed by it, and all taxes (including all withholding taxes) shown to be due and all additional assessments have been paid or provisions made therefor. Such Company knows of no additional assessments or adjustments pending or threatened against such Company for any period, nor of any basis for any such assessment or adjustment. Such Company has not elected pursuant to the Internal Revenue Code of 1986, as amended (the "Code"), to be treated as a Subchapter S corporation or a collapsible corporation pursuant to Section 1362(a) or Section 341(f) of the Code, nor has it made any other elections pursuant to the Code (other than elections that relate solely to methods of accounting, depreciation or amortization) that would have a Material Adverse Effect.

**SECTION 3.11. Other Agreements.** Except as set forth in Schedule 3.11, such Company is not a party to or otherwise bound by any written or oral contract or instrument or other restriction which individually or in the aggregate is material to the business, financial condition, operations, prospects, property or affairs of such Company. Except as set forth in Schedule 3.11, such Company is not a party to or otherwise bound by any written or oral:

(a) contract or agreement which is not terminable on less than ninety (90) days notice without cost or other liability to such Company (except for contracts which, in the aggregate, are not material to the business of such Company);

(b) material contract which entitles any customer to a rebate or right of set-off, or which varies in any material respect from such Company's standard form contracts;

(c) contract with any labor union;

(d) contract or other commitment with any supplier of goods or services containing any provision permitting any party other than such Company to renegotiate the price or other terms, or containing any pay-back or other similar provision, upon the occurrence of a failure by such Company to meet its obligations under the contract when due or the occurrence of any other event;



(e) contract for the future purchase of fixed assets or for the future purchase of materials, supplies or equipment in excess of its normal operating requirements;

(f) contract for the employment of any officer, employee or other person (whether of a legally binding nature or in the nature of informal understandings) on a full-time or consulting basis which is not terminable on notice without cost or other liability to such Company, except normal severance arrangements and accrued vacation pay;

(g) bonus, pension, profit-sharing, retirement, hospitalization, insurance, stock purchase, stock option or other plan, contract or understanding pursuant to which benefits are provided to any employee of such Company (other than group insurance plans applicable to employees generally);

(h) agreement or indenture relating to the borrowing of money or to the mortgaging or pledging of, or otherwise placing a lien or security interest on, any asset of such Company;

(i) guaranty of any obligation for borrowed money or otherwise;

(j) voting trust or agreement, shareholders' agreement, pledge agreement, buy-sell agreement or first refusal or preemptive rights agreement relating to any securities of such Company;

(k) agreement, or group of related agreements with the same party or any group of affiliated parties, under which such Company has advanced or agreed to advance money or has agreed to lease any property as lessee or lessor;

(l) agreement or obligation (contingent or otherwise) to issue, sell or otherwise distribute or to repurchase or otherwise acquire or retire any share of its capital stock or any of its other equity securities;

(m) assignment, license or other agreement with respect to any form of intangible property involving in the aggregate more than \$100,000 in payments;

(n) agreement under which it has granted any person any registration rights;

(o) agreement under which it has limited or restricted its right to compete with any person in any material respect;

(p) other contract or group of related contracts with the same party involving more than \$50,000, which contract or group of contracts is not terminable by such Company without penalty upon notice of thirty (30) days or less; or

(q) lease for office facilities or office equipment.

Such Company, and to the best of such Company's knowledge, each other party thereto have in all material respects performed all the obligations required to be performed by them to date, have received no notice of default and are not in default (with due notice or lapse of time or both) under any material lease, agreement or contract now in effect to which such Company is a party or by which it or its property may be bound. Such Company has no present expectation or intention of not fully performing all its obligations under each such material lease, contract or other agreement, and such Company has no knowledge of any breach or anticipated breach by the other party to any material contract or commitment to which such Company is a party. Such Company is in full compliance with all of the terms and provisions of its articles of incorporation and bylaws, each as amended.

SECTION 3.12. Intellectual Property Assets. Set forth in Schedule 3.12 is a list of all patents, patent rights, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names and copyrights, and all applications for such which are in the process of being

prepared, owned by or registered in the name of such Company, or of which such Company is a licensor or licensee or in which such Company has any right. Such Company owns or possesses adequate licenses or other rights to use all patents, patent applications, trademarks, trademark applications, service marks, service mark applications, trade names, copyrights, manufacturing processes, formulae, trade secrets and know-how (collectively, "Intellectual Property") necessary or material to the conduct of its business as conducted, without any conflict with or infringement of the rights of others, and as proposed to be conducted, and no claim is pending or, to the best of such Company's knowledge, threatened to the effect that the operations of such Company infringe upon or conflict with the asserted rights of any other person under any Intellectual Property, and, to the best of such Company's knowledge, there is no basis for any such claim (whether or not pending or threatened). Except as disclosed in Schedule 3.12, no claim is pending or, to the best of such Company's knowledge, threatened to the effect that any such Intellectual Property owned or licensed by such Company, or which such Company otherwise has the right to use, is invalid or unenforceable by such Company, and, to the best of such Company's knowledge, there is no basis for any such claim (whether or not pending or threatened). To the best of such Company's knowledge, all material technical information developed by and belonging to such Company which has not been patented has been kept confidential. Such Company has not granted or assigned to any other person or entity any right to manufacture, have manufactured or assemble the products or proposed products or to provide the services or proposed services of such Company. Except as set forth in Schedule 3.12, such Company has no material obligation to compensate any person for the use of any Intellectual Property nor has such Company granted to any person any license or other rights to use in any manner any Intellectual Property of such Company.

SECTION 3.13. Investments in Other Persons. Except as set forth in Schedule 3.13, such Company has not made any loan or advance to any Person which is outstanding on the date of this Agreement, nor is such Company obligated or committed to make any such loan or advance, nor does such Company own any capital stock or assets comprising the business of, obligations of, or any interest in, any person.

SECTION 3.14. Assumptions, Guaranties, etc. of Indebtedness of Other Persons. Except as set forth in Schedule 3.14, such Company has not assumed, guaranteed, endorsed or otherwise become directly or contingently liable for any material amount of indebtedness of any other person for (including, without limitation, liability by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor, or otherwise to assure the creditor against loss), except for guaranties by endorsement of negotiable instruments for deposit or collection in the ordinary course of business.

SECTION 3.15. Significant Customers and Suppliers. Since the Balance Sheet Date, no customer or supplier which was significant to such Company has terminated, materially reduced or threatened to terminate or materially reduce its purchases from or provision of products or services to such Company, as the case may be.

SECTION 3.16. Governmental and other Approvals. Except as set forth in Schedule 3.16 hereto and as otherwise contemplated by this Agreement, no authorization, consent, approval, license, filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary for the valid execution, delivery and performance by such Company of this Agreement, or the consummation of the Merger and the transactions contemplated hereby. This Agreement, the Merger, and the transactions contemplated hereby have been approved and adopted by the affirmative vote or consent by such Company's board of directors and the holders of such Company's capital stock.

SECTION 3.17. [Intentionally Omitted].

SECTION 3.18. No Brokers or Finders. No person has or will have, as a result of the transactions contemplated by this Agreement, any right, interest or valid claim against or upon such Company for any commission, fee or other compensation as a finder or broker arising out of the transactions contemplated by this Agreement.

SECTION 3.19. [Intentionally Omitted].

SECTION 3.20. Transactions with Affiliates. Except as is set forth in Schedule 3.20, there are no loans, leases, royalty agreements or other continuing transactions between such Company and any person owning five percent (5%) or more of any class of capital stock or other entity controlled by any such person or a member of any such person's family.

SECTION 3.21. Employees. No officer or key employee of such Company has excluded works or inventions made prior to his or her employment with such Company from his or her assignment of inventions pursuant to such employee's non-disclosure and inventions assignment agreement with such Company. No officer or key employee of such Company has advised such Company in writing that he intends to terminate employment with such Company. To the best of such Company's knowledge, such Company has complied in all material respects with all applicable labor and employment laws, including provisions relating to wages, hours, equal opportunity, collective bargaining and the payment of Social Security and other taxes, and with the Employee Retirement Income Security Act of 1974, as amended ("ERISA").

SECTION 3.22. ERISA. No employee benefit plan established or maintained, or to which contributions have been made, by such Company, which is subject to Part 3 of Subtitle B of Title I of ERISA had an accumulated funding deficiency (as such term is defined in Section 302 of ERISA) as of the last day of the most recent fiscal year of such plan ended prior to the date hereof, and no material liability to the Pension Benefit Guaranty Corporation has been incurred with respect to any such plan by such Company.

SECTION 3.23. Labor Relations. To the best of the knowledge of such Company, no labor union or any representative thereof has made any attempt to organize or represent employees of such Company. There are no pending unfair labor practice charges, material grievance proceedings or adverse decisions of a Trial Examiner of the National Labor Relations Board against such Company.

SECTION 3.24. Books and Records. The books of account, ledgers, order books, records and documents of such Company accurately reflect all material information relating to the business of such Company that is appropriate to be reflected therein in all material respects.

## ARTICLE IV

### Representations and Warranties of the Shareholders

In connection with the Merger and the transactions contemplated hereby, each shareholder of Entente and Adjoined (the "Shareholders") hereby severally represents and warrants to the Surviving Corporation as follows:

(a) In evaluating the Merger and the suitability of an investment in the Surviving Corporation, such Shareholder has not relied upon any representations or other information (whether written or oral) from the Surviving Corporation, except as expressly set forth herein. Such Shareholder also acknowledges that it has relied solely upon the information contained herein and upon investigations made by it in making the decision to approve the Merger and thereby invest in the Surviving Corporation.

(b) SUCH SHAREHOLDER IS AWARE THAT AN INVESTMENT IN THE SURVIVING CORPORATION INVOLVES A HIGH DEGREE OF RISK.

(c) Such Shareholder recognizes that any information furnished by the Surviving Corporation does not constitute investment, accounting, tax or legal advice. Moreover, such Shareholder is not relying upon the Surviving Corporation with respect to such Shareholder's tax and other economic circumstances in connection with its investment in Surviving Corporation. In regard to the tax and other

economic considerations related to such investment, such Shareholder has relied on the advice of, or has consulted with, only its own professional advisors.

(d) Such Shareholder is aware that the capital stock of Surviving Corporation to be issued pursuant to the Merger is being offered and sold by means of an exemption under the Securities Act of 1933, as amended (the "Securities Act"), as well as exemptions under certain state securities laws for nonpublic offerings, and that such Shareholder makes the representations, declarations and warranties as contained in this Article IV with the intent that the same shall be relied upon in determining such Shareholder's suitability as a purchaser of such Surviving Corporation capital stock.

(e) Such Shareholder is an "Accredited Investor" as defined in Rule 501 of Regulation D and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of an investment in the Surviving Corporation and of making an informed investment decision.

(f) Such Shareholder is aware that it cannot sell or otherwise transfer the capital stock of Surviving Corporation without registration under applicable state securities laws or without an exemption therefrom, and is aware that it will be required to bear the financial risks of its purchase for an indefinite period of time because, among other reasons, the capital stock of Surviving Corporation has not been registered with any regulatory authority of any State and, therefore, cannot be transferred or resold unless subsequently registered under applicable state securities laws or an exemption from such registration is available. Such Shareholder also understands that, except as expressly contemplated by the Investors' Rights Agreement attached hereto as Exhibit A, the Surviving Corporation is under no obligation to register the capital stock of Surviving Corporation on its behalf or to assist it in complying with any exemption from registration under applicable state securities laws.

(g) Such Shareholder recognizes that no federal or state agency has recommended or endorsed the Merger or the purchase of the capital stock of Surviving Corporation or passed upon the adequacy or accuracy of the information set forth herein, and that the Surviving Corporation is relying on the truth and accuracy of the representations, declarations and warranties made by such Shareholder as contained herein in selling the Surviving Corporation Shares to be issued pursuant to the Merger and this Agreement.

(h) Such Shareholder has at all times been given the opportunity to obtain reasonably requested additional information, to verify the accuracy of the information received and to ask questions of and receive answers from certain representatives of the Surviving Corporation concerning the terms and conditions of the Merger and such Shareholder's investment in Surviving Corporation and the nature and prospects of the Surviving Corporation's business.

(i) Such Shareholder recognizes that there may be no public market for the capital stock of Surviving Corporation, and that it is extremely unlikely that there will be such a market in the future since, except as expressly contemplated by the Amended and Restated Investors' Rights Agreement, the Surviving Corporation is under no obligation to register the capital stock of Surviving Corporation under the Securities Act or any state securities laws, or to comply with any exemption available for the resale of capital stock of Surviving Corporation without registration. The transferability of the capital stock of Surviving Corporation will also be restricted by the Stockholders' Agreement attached hereto as Exhibit B. Furthermore, the laws of various states also may require transferees of the capital stock of Surviving Corporation to meet standards similar to those set forth in paragraph (e) above. Thus, such Shareholder realizes that it cannot expect to be able to liquidate its investment in the Surviving Corporation readily or at all in case of an emergency.

(j) Such Shareholder is acquiring the capital stock of Surviving Corporation for investment for its own account and not with a view to or for sale in connection with any distribution of the capital stock of Surviving Corporation to or for the accounts of others. Such Shareholder agrees that it will not dispose of the capital stock of Surviving Corporation to be issued pursuant to this Agreement, or any portion thereof or interest therein, unless and until counsel for the Surviving Corporation shall have

determined that the intended disposition is permissible and does not violate the Securities Act or the rules and regulations of the U.S. Securities Exchange Commission thereunder, or the provisions of any applicable state securities laws, or any rules or regulations thereunder.

(k) Such Shareholder recognizes that the acquisition of the capital stock of Surviving Corporation is a speculative investment and any financial forecasts or other estimates which may have been made by the Surviving Corporation merely represent predictions of future events which may or may not occur and are based on assumptions which may or may not occur. As a consequence, such financial forecasts or other estimates may not be relied upon to indicate the actual results which might be attained.

(l) Such Shareholder understands and agrees that depending upon its state of residence, a legend in substantially the following form may be placed on all certificates evidencing the shares of capital stock into which the Shares will be exchanged at the Effective Time:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT") NOR ANY APPLICABLE STATE SECURITIES LAWS BY REASON OF SPECIFIC EXEMPTIONS THEREUNDER RELATING TO THE LIMITED AVAILABILITY OF THE OFFERING. THESE SECURITIES CANNOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF TO ANY PERSON OR ENTITY UNLESS SUBSEQUENTLY REGISTERED UNDER THE ACT AND/OR SUCH STATE SECURITIES OR THE ISSUER RECEIVES AN OPINION OF COUNSEL (REASONABLY ACCEPTABLE TO THE ISSUER) THAT REGISTRATION IS NOT REQUIRED.

(m) Such Shareholder hereby consents to the Merger and the transactions contemplated hereby.

(n) Such Shareholder has full power and authority to enter into this Agreement and to perform the transactions contemplated by this Agreement in accordance with its terms.

(o) The execution and delivery of, and performance of the transactions contemplated by, this Agreement is not in conflict with or will not result in any material breach of any terms, conditions or provisions of, or constitute a material default under any indenture, lease, agreement, order, judgment or other instrument to which such Shareholder is a party.

(p) Such Shareholder is the holder of record and beneficial owner of the shares of capital stock of Adjoined and/or Entente as set forth beside its name in Schedule 3.04.

## ARTICLE V

### Covenants

SECTION 5.01. Covenants of the Companies. Each Company agrees that, during the period from the date of this Agreement and continuing until the Effective Time:

(a) Ordinary Course. Such Company shall carry on their respective businesses in the usual, regular and ordinary course and such Company shall use all reasonable efforts to preserve intact its present business organizations, keep available the services of its present officers and employees and preserve its relationships with customers, suppliers and others having business dealings with such Company.

(b) Dividends; Changes in Stock. Such Company shall not (i) declare or pay any dividends on or make other distributions in respect of any of its capital stock; (ii) split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock; or (iii) repurchase, redeem or otherwise acquire any shares of capital stock of such Company or any other securities thereof.

(c) Issuance of Securities. Such Company shall not issue, deliver, sell, pledge or encumber, or authorize or propose the issuance, delivery, sale, pledge or encumbrance of, any shares of its capital stock of any class or any securities convertible into, or any rights, warrants, calls, subscriptions or options to acquire, any such shares or convertible securities, or any other ownership interest (including stock appreciation rights or phantom stock) other than (i) the issuance of shares of common stock upon the exercise of stock options outstanding on the date of this Agreement and in accordance with the terms of such stock options, or (ii) issuances by a wholly owned subsidiary of such Company of its capital stock to its parent.

(d) Governing Documents. Such Company shall not amend or propose to amend its articles of incorporation or bylaws (or similar organizational documents), except as contemplated by this Agreement.

(e) No Acquisitions. Except as contemplated by this Agreement, such Company shall not acquire or agree to acquire by merging or consolidating with, or by purchasing any equity interest in or any substantial assets of (other than inventory and equipment in the ordinary course consistent with past practice, to the extent not otherwise prohibited by this Agreement), or by any other manner, any business or any corporation, partnership, joint venture, association or other business organization or division thereof.

(f) No Dispositions. Other than dispositions in the ordinary course of business consistent with past practice, such Company shall not sell, lease, license, encumber or otherwise dispose of, or agree to sell, lease, license, encumber or otherwise dispose of, any of its assets.

(g) Indebtedness. Such Company shall not (i) incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities or warrants or rights to acquire any debt securities of such Company, guarantee any debt securities of others, enter into any "keep-well" or other agreement to maintain any financial statement condition of another person or enter into any arrangement having the economic effect of any of the foregoing, except for working capital borrowings incurred in the ordinary course of business consistent with past practice under such Company's credit facility existing and in effect on the date of this Agreement, or (ii) make any loans, advances or capital contributions to, or investments in, any other person, other than, with respect to both clause (i) and (ii) above, (A) to such Company or any direct or indirect wholly owned subsidiary of such Company, or (B) any advances to employees in accordance with past practice.

(h) Discharge of Liabilities. Except for fees and expenses related to the transactions contemplated herein, such Company shall not pay, discharge, settle or satisfy any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge, settlement or satisfaction, in the ordinary course of business consistent with past practice or in accordance with their terms. Such Company shall not waive the benefits of, or agree to modify in any manner, any confidentiality, standstill or similar agreement to which such Company is a party.

(i) Compensation of Company Employees. Such Company will not, except as contemplated by this Agreement or as may be required by law, (i) enter into, adopt, amend or terminate any employee benefit plan or any agreement, arrangement, plan or policy for the benefit of any director, executive officer or current or former key employee, (ii) increase in any manner the compensation or fringe benefits of, or pay any bonus to, any director, executive officer or key employee, except as required by any benefit plan or agreement with such employees existing on the date of this Agreement, (iii) enter into, adopt, amend or terminate any benefit plan or agreement, arrangement, plan or policy for the benefit of any employees who are not directors, executive offices or current or former key employees of such Company, other than increases in the compensation of employees made in the ordinary course of business consistent with past practice, or (iv) pay any benefit not required by any plan or arrangement as in effect as of the date hereof (including the granting of, acceleration of exercisability of or vesting of stock options, stock appreciation rights or restricted stock).

(j) Material Contracts. Except as contemplated by this Agreement, such Company shall not (i) modify, amend or terminate any material contract or agreement to which such Company or such subsidiary is a party, or (ii) waive, release or assign any material rights or claims.

(k) No Dissolution, Etc. Such Company shall not authorize, recommend, propose or announce an intention to adopt a plan of complete or partial liquidation of such Company.

(l) Tax Election. Such Company shall not make any tax election or settle or compromise any material income tax liability.

(m) Other Actions. Such Company shall not take or agree or commit to take any action that is reasonably likely to result in any of such Company's representations or warranties hereunder being untrue in any material respect at, or as of any time prior to, the Effective Time.

(n) General. Such Company shall not authorize any of, or commit or agree to take any of, the foregoing actions described in this Section 5.01.

SECTION 5.02. Other Actions. The Companies shall not take any action that could reasonably be expected to result in (i) any of the representations and warranties of such Company set forth in this Agreement that are qualified as to materiality becoming untrue, (ii) any of such representations and warranties that are not so qualified becoming untrue in any material respect, or (iii) any of the conditions to the Merger set forth in Article VII hereof not being satisfied in all material respects.

## ARTICLE VI

### Additional Agreements

SECTION 6.01. Access to Information. Each Company shall afford to the other's officers, employees, accountants, counsel and other representatives access, during normal business hours throughout the period from the date hereof to the Effective Time, to all their respective properties, books, contracts, commitments and records and, during such period, each Company shall furnish promptly to the other Companies all information concerning its business, properties and personnel as such other Company may reasonably request.

SECTION 6.02. Reasonable Efforts. Each party agrees to use its reasonable efforts to take, or cause to be taken, all actions necessary to comply promptly with all legal requirements which may be imposed on itself with respect to the Merger and shall promptly cooperate with and furnish information to each other in connection with any such requirements imposed upon any of them in connection with the Merger. Each party will use its reasonable efforts to take all reasonable actions necessary to obtain (and will cooperate with each other in obtaining) any consent, authorization, order or approval of, or any exemption by, any governmental entity or other public or private third party required to be obtained or made by such Company in connection with the Merger or the taking of any action contemplated by this Agreement, except that no party need waive any substantial rights or agree to any substantial limitation on its operations or to dispose of or hold separate any material assets.

SECTION 6.03. Confidentiality. Prior to the Closing, each Company shall, and shall cause its affiliates (as defined in Section 9.03) and its and their employees, agents, accountants, legal counsel and other representatives and advisers to, hold in strict confidence all, and not divulge or disclose any information of any kind concerning any other Company and its business; provided, however, that the foregoing obligation of confidence shall not apply to (i) information that is or becomes generally available to the public other than as a result of a disclosure by such Company, any of their respective affiliates or any of their respective employees, agents, accountants, legal counsel or other representatives or advisers, (ii) information that is or becomes available to such Company, any of their respective affiliates or any of their respective employees, agents, accountants, legal counsel or other representatives or advisers on a nonconfidential basis, and (iii) information that is required to be disclosed by such

Company, any of their respective affiliates or any of their respective employees, agents, accountants, legal counsel or other representatives or advisers as a result of any applicable law, rule or regulation of any governmental entity.

SECTION 6.04. Fees and Expenses. All fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated.

SECTION 6.05. Indemnification; Insurance.

(a) The Companies agree that all rights to indemnification for acts or omissions occurring prior to the Effective Time now existing in favor of the current or former directors or officers (the "Indemnified Parties") of the Companies as provided in their respective articles of incorporation or bylaws or existing indemnification contracts shall survive the Merger and shall continue in full force and effect in accordance with their terms.

(b) This Section 6.05 shall survive the consummation of the Merger at the Effective Time, is intended to benefit the Companies and the Indemnified Parties and their respective heirs, personal representatives, successors and assigns, and shall be binding on all successors and assigns of the Companies.

SECTION 6.06. Employment and Benefit Arrangements.

(a) From and after the Effective Time, the Surviving Corporation shall honor all employment, severance, termination and retirement agreements to which any Company is a party, as such agreements are in effect on the date hereof with such modifications as are contemplated by this Agreement.

(b) The Surviving Corporation shall take all actions required so that eligible employees of each Company shall receive service credit under the Surviving Corporation's vacation and severance programs, for the duration of their service with the Companies prior to the Effective Time.

(c) The provisions of this Section 6.06 are not intended to create rights of third party beneficiaries.

SECTION 6.07. Additional Agreements by the Shareholders.

(a) Each Shareholder agrees at Closing to execute and deliver to the other parties thereto the Investors' Rights Agreement attached hereto as Exhibit A and, if such Shareholder will hold preferred stock of the Surviving Corporation, the Stockholders' Agreement attached hereto as Exhibit B.

(b) Each Shareholder agrees that neither the Merger nor any of the transactions contemplated herein or in any of the exhibits hereto shall result in or be deemed to be a "change in control" or termination under any agreement entered into by such Shareholder with any of the Companies nor shall it result in the acceleration of any rights, vesting schedules of any stock options or restricted stock, or trigger any rights to receive severance payments. Each Shareholder agrees to waive his, her or its preemptive rights under any agreement entered into by such Shareholder with Adjoined or Entente. Each Shareholder further agrees that any change in his or her job position, title, position, or responsibilities following the Merger shall not be deemed to be a termination of employment or trigger a right to receive severance payments.



## ARTICLE VII

### Conditions

SECTION 7.01. Conditions Precedent. The respective obligation of each Company to effect the Merger shall be subject to the satisfaction (or waiver by the Companies) prior to the Closing Date of the following conditions:

(a) This Agreement and the Merger shall have been approved and adopted by the requisite affirmative vote or consent of the holders of the outstanding shares of each class and/or series of capital stock of each Company entitled to vote on such matter;

(b) All consents, authorizations, orders and approvals of (or filings or registrations with) any governmental authority or other regulatory body required in connection with the execution, delivery and performance of this Agreement, the failure to obtain which would prevent the consummation of the Merger, shall have been obtained;

(c) There shall not have occurred any change, condition, event or development that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect on either Company;

(d) The representations and warranties of each Company in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Effective Time;

(e) Each Company shall have performed in all material respects all obligations required to be performed by it under this Agreement;

(f) All authorizations, consents, waivers and approvals from parties to contracts or other agreements to which any Company is a party, or by which any of them is bound, as may be required to be obtained by them in connection with the performance of this Agreement, shall have been obtained, except where the failure to so obtain would not, individually or in the aggregate, have a Material Adverse Effect.

(g) No suit, action or proceeding before any court or any governmental or regulatory authority shall have been commenced and be pending by any person against any Company, or any of their affiliates, associates, officers or directors (i) challenging the Merger, seeking to restrain or prohibit the consummation of the transactions contemplated by this Agreement or seeking to obtain any substantial damages relating to the consummation of the transactions contemplated by this Agreement, (ii) seeking to prohibit or impose any material limitation on the ownership or operation by the Surviving Corporation of all or a material portion of the business or assets or properties of the Companies or to compel the Surviving Corporation to dispose of or hold separate all or any portion of the business or assets of the Companies, (iii) seeking to impose any material limitation upon the ability of the Surviving Corporation effectively to acquire or hold or to exercise full rights of ownership of the Companies or (iv) which otherwise is reasonably likely to have a Material Adverse Effect on any of the Companies;

(h) The Certificate of Merger shall have been filed with and accepted by the Delaware Secretary of State and the Florida Secretary of State.

(i) The Investors' Rights Agreement attached hereto as Exhibit A shall have been executed and delivered by the requisite parties thereto;

(j) The Stockholders' Agreement attached hereto as Exhibit B shall have been executed and delivered by the requisite parties thereto.

## ARTICLE VIII

### Termination And Amendment

SECTION 8.01. Termination. This Agreement may be terminated at any time prior to the Effective Time:

(a) by mutual written consent of the Companies;

(b) by either Company if any governmental entity shall have issued an order, injunction, decree or ruling or taken any other action (that has not been vacated, withdrawn or overturned) permanently enjoining, restraining or otherwise prohibiting the Merger and such order, decree or ruling or other action shall have become final and nonappealable; or

(c) by either Company, if

(i) (A) the representations and warranties of the other Company in Section 3.04 shall not have been true and correct in all material respects when made, or (B) any other representation or warranty of the other Company shall not have been true and correct in all material respects when made, except in any case where such failure to be true and correct would not, in the aggregate, have a Material Adverse Effect.

(ii) the other Company shall have failed to comply with any of its obligations or covenants contained herein except in any case where such failure to comply would not be reasonably likely to have a Material Adverse Effect.

SECTION 8.02. Effect of Termination. In the event of a termination of this Agreement by either Company as provided in Section 8.01, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of either Company or their respective officers, directors, stockholders or affiliates, except with respect to Section 6.03.

SECTION 8.03. Amendment. This Agreement may be amended by the parties hereto, by action taken or authorized by their respective Boards of Directors, at any time before or after obtaining shareholder approval, but, after any such shareholder approval, no amendment shall be made which by law requires further approval by such shareholders, without obtaining such further approval. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

SECTION 8.04. Extension; Waiver. At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or, (iii) subject to the first sentence of Section 8.03, waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights.

## ARTICLE IX

### Miscellaneous

SECTION 9.01. Nonsurvival of Representations and Warranties. None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive

the Effective Time. This Section 9.01 shall not limit any covenant or agreement of the parties which by its terms contemplates performance after the Effective Time of the Merger.

SECTION 9.02. Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally, telecopied (which is confirmed), sent by overnight courier (providing proof of delivery) or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

- (a) if to Entente, to: Entente Investment, Inc.  
6205 Blue Lagoon Drive  
Suite 110  
Miami, Florida 33126  
Attention: William D. Pruitt  
Fax No.: (786) 388-8889
- (b) if to Adjoined, to: Adjoined Technologies, Inc.  
Weston Corporate Center  
2700 South Commerce Parkway  
Suite 309  
Ft. Lauderdale, Florida 33331  
Attention: Rodney J. Rogers  
Fax No.: (954) 626-3559

SECTION 9.03. Interpretation. When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The phrase "made available" in this Agreement shall mean that the information referred to has been made available if requested by the party to whom such information is to be made available. As used in this Agreement, the term "subsidiary" of any person means another person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its Board of Directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first person, and the term "affiliate" shall have the meaning set forth in Rule 12b-2 promulgated under the Exchange Act.

SECTION 9.04. Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when said counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

SECTION 9.05. Entire Agreement; Third Party Beneficiaries. This Agreement (including the documents and the instruments referred to herein) (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, and (b) are not intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

SECTION 9.06. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Florida, without regard to any applicable conflicts of law.

SECTION 9.07. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement

will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

SECTION 9.08. Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement. In addition, each of the parties hereto (i) consents to submit such party to the personal jurisdiction of any federal court located in the State of Florida in the event any dispute arises out of this Agreement or any of the transactions contemplated hereby, (ii) agrees that such party will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that such party will not bring any action relating to this Agreement or any of the transactions contemplated hereby in any court other than a federal court sitting in the State of Florida. The prevailing party in any judicial action shall be entitled to receive from the other party reimbursement for the prevailing party's reasonable attorneys' fees and disbursements, and court costs.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Companies have caused this Agreement to be signed by their respective shareholders and their officers thereunto duly authorized as of the date first written above.

**ADJOINED TECHNOLOGIES, INC.,**  
a Florida corporation

By: \_\_\_\_\_  
Rodney J. Rogers,  
President and Chief Executive Officer

**ADJOINED TECHNOLOGIES, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Rodney J. Rogers,  
President

**ENTENTE INVESTMENT, INC., Florida Corporation**

By: \_\_\_\_\_  
William D. Pruitt,  
Chairman of the Board

**SHAREHOLDERS:**

\_\_\_\_\_  
Rodney J. Rogers

\_\_\_\_\_  
Kevin Reid

\_\_\_\_\_  
Michael Rosenbloom

\_\_\_\_\_  
William Donlan

\_\_\_\_\_  
Helen Gomez

\_\_\_\_\_  
Gregory Bloom

---

Jeff David Johnson

---

Mark Alan Loth

---

Alex Cox

---

Mark Reid

---

Stuart Broderick

---

Beverley Broderick

---

Betty Rogers

---

Ian Moore

---

Ralph Rogers

---

David Rogers

---

Richard Rogers

---

John Jenny

---

**ENTENTE INVESTMENT, INC.**, a Florida corporation

---

By: William D. Pruitt  
Chairman of the Board

**ADJOINED TECHNOLOGIES, INC.**, a Florida  
corporation

---

By: Rodney J. Rogers  
President and Chief Executive Officer

**C/MAX CAPITAL (ENTENTE INVESTMENT) LIMITED  
PARTNERSHIP-IV**

By: C/max Capital (Entente Investment GP)-  
IV, LLC, its general partner

By: \_\_\_\_\_  
Marc M. Watson

**NEW RIVER CAPITAL PARTNERS, L.P.**

By: B&B Management Partners, L.P.  
its general partner

By: Greyhawk Investments, Inc.  
its administrative general partner

By: \_\_\_\_\_  
Thomas C. Byrne, President

\_\_\_\_\_  
Thomas G. Richardson

\_\_\_\_\_  
Augusto L. Vidaurreta

**PRUITT ENTERPRISES, L.P.**

By: Pruitt Ventures, Inc., its general partner

By: \_\_\_\_\_  
William D. Pruitt



\_\_\_\_\_  
Ileana O. Pruitt

\_\_\_\_\_  
Richard K. Berkowitz

\_\_\_\_\_  
David Buchholz

\_\_\_\_\_  
Dennis Scholl

\_\_\_\_\_  
Sandra J. Strouss

\_\_\_\_\_  
Marc M. Watson

\_\_\_\_\_  
Kevin Watson

**G. NANCY MCKEE REVOCABLE TRUST DATED  
MARCH 30, 2000**

By: \_\_\_\_\_  
G. Nancy McKee, as Trustee

\_\_\_\_\_  
Sharron M. Pruitt

\_\_\_\_\_  
Thomas W. Pruitt

\_\_\_\_\_  
William E. Richardson

\_\_\_\_\_  
William M. Richardson

\_\_\_\_\_  
Esther M. Vidaurreta

\_\_\_\_\_  
Augusto L. Vidaurreta, Jr.

\_\_\_\_\_  
Esther B. Vidaurreta

\_\_\_\_\_  
Ryan W. Pruitt

By: \_\_\_\_\_  
William D. Pruitt, his legal guardian

Kaitlyn A. Vidaurreta

By: \_\_\_\_\_  
Augusto L. Vidaurreta, her legal guardian

Alexis M. Vidaurreta

By: \_\_\_\_\_  
Augusto L. Vidaurreta, her legal guardian

#### **Exhibits**

Exhibit A - Investors' Rights Agreement

Exhibit B - Stockholders' Agreement