SERVIDYNE, INC.
Form DEFM14A
July 29, 2011

Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of the Securities
Exchange Act of 1934

Filed by the Registrant þ

Filed by a Party other than the Registrant o

Check the appropriate box:

o Preliminary Proxy Statement
o Confidential, For Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
þ Definitive Proxy Statement
o Definitive Additional Materials
o Soliciting Material Pursuant to § 240.14a-12

SERVIDYNE, INC.
(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

o No fee required.

o Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

þ Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing Party:

(4) Date Filed:

Servidyne, Inc.
1945 The Exchange
Suite 300
Atlanta, Georgia 30339-2029

July 29, 2011

Dear Shareholder:

You are cordially invited to attend the special meeting of shareholders of Servidyne, Inc., a Georgia corporation (the Company), which will be held at the Company s headquarters at 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029, on August 26, 2011, at 11:00 a.m., local time.

On June 26, 2011, we entered into a merger agreement with Scientific Conservation, Inc. (SCI) and Scrabble Acquisition, Inc. (Merger Sub), which is a wholly-owned subsidiary of SCI. The merger agreement provides that Merger Sub will merge with and into the Company with the Company continuing as the surviving corporation and as a wholly-owned subsidiary of SCI. If the merger is completed, Company shareholders will receive $3.50 in cash, without interest, and less any applicable withholding tax, for each share of Company common stock owned by them at the time of the merger, and Company shareholders will cease to have an ownership interest in the continuing business of the Company. The aggregate purchase price for the Company is approximately $13.1 million on a fully diluted basis.

As described in the enclosed proxy statement, you are being asked to consider and vote on (i) a proposal to approve the merger agreement, (ii) a proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and (iii) a proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.

After careful consideration, a special committee of our board of directors, consisting of all four (4) of our non-management directors, and our entire board of directors unanimously determined the merger, the merger agreement and the transactions contemplated thereby to be advisable and fair to and in the best interests of the Company and its shareholders, and approved and adopted the merger and the merger agreement. **Therefore, our board of directors unanimously recommends that you vote FOR approval of the proposal to approve the merger agreement, FOR the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and FOR the proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.**

The enclosed proxy statement provides detailed information about the merger agreement, the merger and the special meeting. We encourage you to read this information carefully. You may also obtain more information about the Company from documents we have filed with the Securities and Exchange Commission (the SEC), which can be found on the SEC s website at www.sec.gov.

Only shareholders of record of common stock at the close of business on July 20, 2011, or the record date, are entitled to notice of, and to vote at, the special meeting or any adjournment or postponement thereof.

The merger agreement must be approved by the holders of a majority of the shares of our outstanding common stock on the record date, so your vote is very important, regardless of the number of shares you own. If you fail to vote on the approval of the merger agreement, the effect will be the same as a vote against the proposal to approve the merger agreement.

Certain shareholders of the Company, which as of July 20, 2011 held approximately 56% of the outstanding shares of common stock of the Company, have entered into voting and support agreements pursuant to which the shareholders have agreed, among other things, to vote in favor of the merger and against

Table of Contents

alternative transactions, subject to, with respect to approximately 27% of the outstanding shares of common stock of the Company, termination of such voting obligations under certain circumstances as more fully described in the enclosed proxy statement.

The affirmative vote of the holders of at least a majority of the shares present, in person or by proxy at the special meeting and entitled to vote thereon, is required, (i) provided a quorum is present, to approve the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and (ii) whether or not a quorum is present, to approve the proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.

To vote your shares, you may use the enclosed proxy card, vote via the Internet or telephone, or attend the special meeting in person. If you hold shares in street name through a broker or nominee, you should follow the procedures provided by your broker or nominee. **On behalf of the board of directors, I urge you to sign, date and return the enclosed proxy card, or vote via the Internet or telephone as soon as possible, even if you currently plan to attend the special meeting.** If you are a shareholder of record of the Company, voting by proxy will not prevent you from voting your shares in person if you subsequently choose to attend the special meeting.

On behalf of our board of directors and employees, thank you for your support of our Company. I look forward to seeing you at the special meeting.

Sincerely,

Alan R. Abrams
Chairman of the Board and Chief Executive Officer

This proxy statement is dated July 29, 2011, and is first being mailed to Company shareholders on or about August 1, 2011.

Neither the SEC nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger or passed upon the adequacy or accuracy of the disclosures in this proxy statement. Any representation to the contrary is a criminal offense.

Table of Contents

Servidyne, Inc.
1945 The Exchange
Suite 300
Atlanta, Georgia 30339-2029

Notice of Special Meeting of Shareholders
To Be Held On August 26, 2011

To the Shareholders of Servidyne, Inc.:

Notice is hereby given that a special meeting of shareholders of Servidyne, Inc., a Georgia corporation (the Company), will be held on August 26, 2011, at 11:00 a.m., local time, at the Company s corporate headquarters located at 1945 The Exchange, Suite 300 Atlanta, Georgia 30339-2029, for the following purposes:

1. To consider and vote upon the approval of the Agreement and Plan of Merger, dated as of June 26, 2011, among Scientific Conservation, Inc., a Delaware corporation, Scrabble Acquisition, Inc., a Georgia corporation and wholly-owned subsidiary of Scientific Conservation, Inc., and the Company, as more fully described in the enclosed proxy statement;

2. To consider and vote on a proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers; and

3. To consider and vote on a proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.

The board of directors of the Company has fixed the close of business on July 20, 2011 as the record date for the special meeting or any adjournment or postponement thereof. Only shareholders of record of common stock at the close of business on the record date are entitled to notice of, and to vote at, the special meeting or any adjournment or postponement thereof. At the close of business on the record date, there were outstanding and entitled to vote 3,675,782 shares of Company common stock.

Holders of Company common stock are entitled to dissenters rights under the Georgia Business Corporation Code in connection with the merger if they meet certain conditions. See The Merger Dissenters Rights on page 45. A copy of Article 13 of the Georgia Business Corporation Code is attached to the proxy statement as Annex E.

Your vote is important. The affirmative vote of the holders of a majority of the outstanding shares of the Company s common stock on the record date is required to approve the merger agreement. The affirmative vote of the holders of at least a majority of the shares present, in person or by proxy, at the special meeting and entitled to vote thereon is required, (i) provided a quorum is present, to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and (ii) whether or not a quorum is

present, to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.

Certain shareholders of the Company, which as of July 20, 2011 held approximately 56% of the outstanding shares of common stock of the Company, have entered into voting and support agreements pursuant to which the shareholders have agreed, among other things, to vote in favor of the merger and against alternative transactions, subject to, with respect to approximately 27% of the outstanding shares of common stock of the Company, termination of such voting obligations under certain circumstances as more fully described in the enclosed proxy statement.

Table of Contents

All shareholders are cordially invited to attend the special meeting in person. Even if you plan to attend the special meeting in person, we request that you complete, sign, date, and return the enclosed proxy or vote via the Internet or telephone and thus ensure that your shares will be represented at the special meeting if you are unable to attend. If you do attend the special meeting and wish to vote in person, you may withdraw your proxy and vote in person. Holders of common stock may revoke their proxies in the manner described in the accompanying proxy statement at any time before they have been voted at the special meeting.

By Order of the Board of Directors

SERVIDYNE, INC.

Alan R. Abrams
Chairman of the Board and Chief Executive Officer

Atlanta, Georgia

July 29, 2011

Table of Contents

Table of Contents

	Page
Summary Term Sheet	1
Questions and Answers About the Special Meeting And The Merger	9
Forward-Looking Information	14
Market Price and Dividend Data	15
The Special Meeting	16
General	16
Purpose of Special Meeting	16
Recommendation of the Board of Directors	16
Record Date; Stock Entitled to Vote	16
Quorum	17
Vote Required	17
Shares Owned by Our Directors and Executive Officers	17
Voting; Proxies	17
Revocation of Proxies	18
Solicitation of Proxies	19
Householding of Special Meeting Materials	19
Shareholder List	19
Other Business	19
Servidyne Shareholder Account Maintenance	19
Assistance	20
The Companies	21
Servidyne, Inc.	21
Scientific Conservation, Inc.	21
Scrabble Acquisition, Inc.	21
Proposal 1 Approval of the Merger Agreement	22
The Merger	22
Background of the Merger	22
Reasons for the Merger and Recommendation of the Special Committee and the Board of Directors	30
Opinion of the Company s Financial Advisor	33
Projected Financial Information	39
Interests of Company Directors and Executive Officers in the Merger	41
Effective Time of the Merger	45
Dissenters Rights	45
Accounting Treatment	48
Form of the Merger	48
Merger Consideration	48
Delisting and Deregistration of the Company s Common Stock	48
Material Federal Income Tax Consequences of the Merger	48
Regulatory Approvals	50
Certain Relationships between SCI and the Company	50
Litigation Relating to the Merger	50
The Merger Agreement	51
The Merger	51
Closing and Effective Time of the Merger	51

Merger Consideration; Conversion of Shares	51
Dissenters Rights	52

Table of Contents

	Page
Treatment of Stock Options; Stock Appreciation Rights and Warrants	52
Treatment of Restricted Stock	52
Payment Procedures	52
Articles of Incorporation and Bylaws of the Company Following the Merger	53
Directors and Officers of the Company Following the Merger	53
Representations and Warranties	54
Conduct of Our Business Prior to the Merger	56
Limitation on Soliciting, Discussing or Negotiating Other Acquisition Proposals	58
Proxy Statement; Shareholders Meeting	60
Board Recommendation	61
Employee Matters	62
Regulatory Approvals	62
Public Statements	62
Additional Agreements	63
Shareholder Litigation	63
Access to Information	63
Indemnification, Expense Advancement and Exculpation; Directors and Officers Insurance	63
Resignation of Officers and Directors	63
Section 16 Matters	64
Related Party Notes	64
Conditions to the Merger	64
Termination	65
Effect of Termination	67
Expenses; Termination Fees	67
Remedies	68
Amendment	68
The Support Agreements	69
Proposal 2 Advisory Vote on Compensation	71
The Advisory Vote on Compensation	71
Vote Required and Board Recommendation	71
Proposal 3 Authority to Adjourn the Special Meeting	72
The Adjournment Proposal	72
Vote Required and Board Recommendation	72
Security Ownership of Management and Certain Beneficial Owners	73
Shareholder Proposals for 2011 Annual Meeting	74
Other Matters	74
Where You Can Find More Information	74
ANNEXES	
Annex A Agreement and Plan of Merger	A-1
Annex B Form of Voting and Support Agreement With Respect to Approximately 28% of the Voting Power of the Company	B-1
Annex C Form of Voting and Support Agreement With Respect to Approximately 27% of the Voting Power of the Company	C-1
Annex D Opinion of the Company s Financial Advisor	D-1
Annex E Georgia Business Corporation Code Article XIII Dissenters Rights	E-1

Summary Term Sheet

This summary, together with the section of this proxy statement entitled Questions and Answers About the Special Meeting and the Merger, highlights selected information from this proxy statement and may not contain all of the information that is important to you. To understand the merger fully and for a more complete description of the legal terms of the merger, you should read carefully this entire proxy statement and the documents we refer to herein. The merger agreement is attached as Annex A to this proxy statement. Before voting on the proposal to approve the merger agreement, we encourage you to read the merger agreement as it is the legal document that governs the merger.

Except as otherwise specifically noted in this proxy statement, we, our, us, and similar words in this proxy statement refer to Servidyne, Inc. In addition, we sometimes refer to Servidyne, Inc. as Servidyne or the Company, to Scientific Conservation, Inc. as SCI and to Scrabble Acquisition, Inc. as Merger Sub.

The Companies (page 21)
Servidyne, Inc.
1945 The Exchange
Suite 300
Atlanta, Georgia 30339-2029

Servidyne, Inc. is headquartered in Atlanta, Georgia, and operates globally through its wholly-owned subsidiaries. The Company provides comprehensive energy efficiency and demand response solutions, sustainability programs and other products and services. The Company serves a broad range of markets in the United States and internationally, including owners and operators of corporate, commercial office, hospitality, gaming, retail, light industrial, distribution, healthcare, government, multi-family and education facilities, as well as energy services companies and public and investor-owned utilities. Servidyne is publicly traded on The Nasdaq Global Market, or Nasdaq, under the symbol SERV.

Scientific Conservation, Inc.
2 Bryant Street, Suite 210
San Francisco, California 94105

Scientific Conservation, Inc. is a provider of energy efficiency solutions via predictive diagnostics and analytics for the $5 billion commercial building market. SCI s suite of energy management solutions uses the industry s first software-as-a-service (Saas) platform to help reduce annual energy spending by comparing predicted energy and system efficiencies against real-time operation. SCI s headquarters are in San Francisco, California, with its technology center in Atlanta, Georgia.

Scrabble Acquisition, Inc.
2 Bryant Street, Suite 210
San Francisco, California 94105

Scrabble Acquisition, Inc., a wholly-owned subsidiary of SCI, was organized solely for the purpose of entering into the merger agreement with us and completing the merger and has not conducted any other business operations.

The Merger (page 22)

The merger agreement provides that Merger Sub will merge with and into the Company, with the Company continuing as the surviving corporation and as a wholly-owned subsidiary of SCI. At the effective time of the merger, each share of Company common stock outstanding immediately prior to the effective time of the merger, other than shares held by us, SCI or Merger Sub, or by shareholders properly exercising dissenters rights under Georgia law, will be automatically converted into the right to receive the per share consideration of $3.50 in cash, without interest and less any applicable withholding taxes (which we refer to as the per share consideration). Any withheld amounts will be treated for all purposes as having been paid to the holder of Company common stock in respect of whose shares the withholding was made. As a result of the merger, the Company will become a direct wholly-owned subsidiary of SCI and will cease to be an independent, publicly-traded company.

Merger Consideration (page 48)

If the merger is completed, you will receive the per share consideration of $3.50 in cash, without interest and less any applicable withholding tax, in exchange for each share of Company common stock that you own.

After the merger is completed, you will have the right to receive the per share consideration, but you will no longer have any rights as a Company shareholder and will have no interest in SCI. Company shareholders will receive the per share consideration after exchanging their Company stock certificates in accordance with the instructions contained in the letter of transmittal to be mailed to our shareholders as soon as reasonably practicable after the closing of the merger.

Treatment of Stock Options, Stock Appreciation Rights and Warrants (page 52)

At the effective time of the merger, each stock option exercisable for shares of Company common stock that is in-the-money (i.e., when the exercise price of such stock option is greater than $3.50) will vest (if not previously vested), and the holder thereof will be entitled to receive in exchange therefor an amount in cash equal to the product of (i) the excess, if any, of (x) $3.50 over (y) the exercise price per share of Company common stock subject to such in-the-money stock option multiplied by (ii) the number of shares of Company common stock represented by such stock option. Each grant of stock appreciation rights that is in-the-money will vest (if not previously vested) and the holder thereof will be entitled to receive in exchange therefor an amount in cash equal to the product of (i) the excess, if any, of (x) $3.50 over (y) the exercise price of such in-the-money stock appreciation right, multiplied by (ii) the number of units represented by such stock appreciation rights. Each stock option and stock appreciation right that is outstanding and unexercised immediately prior to the effective time of the merger that is not in-the-money will expire and be cancelled as of the effective time for no consideration.

Each warrant that is in-the-money that is outstanding and unexercised immediately prior to the effective time of the merger will expire and be cancelled for no consideration.

As of July 27, 2011, none of the outstanding stock options or warrants of the Company were in-the-money, and 70,140 shares of common stock were subject to stock appreciation rights that were in-the-money, assuming a fair market value of $3.50 per share.

Treatment of Restricted Stock (page 52)

Each share of restricted stock of the Company that is outstanding immediately prior to the effective time of the merger will vest (if not previously vested) and the holder thereof will be entitled to receive the per share consideration in exchange therefor. As of July 27, 2011, no unvested shares of restricted stock were outstanding.

Effective Time of the Merger (page 45)

The closing of the merger will occur no later than the fifth business day after the conditions to the merger set forth in the merger agreement have been satisfied or waived or at such other time as agreed to by the Company, SCI and Merger Sub. Although we expect to complete the merger in our fiscal quarter ending October 31, 2011, we cannot assure you that the Company, SCI and Merger Sub will satisfy or waive all of the conditions to the merger.

Market Price and Dividend Data (page 15)

Our common stock is listed on Nasdaq under the symbol SERV. On June 24, 2011, the last full trading day prior to the public announcement of the merger, the closing price for our common stock was $2.26 per share. On July 27, 2011, the second to last trading day prior to the date of this proxy statement, the closing price for our common stock was $3.46 per share.

Material Federal Income Tax Consequences of the Merger (page 48)

The receipt of cash pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes, and may also be a taxable transaction under applicable state, local, or foreign income or other tax laws. Generally, for U.S. federal income tax purposes, a shareholder will recognize gain or loss equal to the difference between the amount of cash received by the shareholder in the merger and the shareholder s adjusted tax basis in the shares of Company common stock converted into cash in the merger. If the shares of Company common stock are held by a shareholder as capital assets, gain or loss recognized by such shareholder will be capital gain or loss, which will be long-term capital gain or loss if the shareholder s holding period for the shares of Company common stock exceeds one year. Capital gains recognized by an individual upon a disposition of a share of the Company that has been held for more than one year generally will be subject to a maximum U.S. federal income tax rate of 15% or, in the case of a share that has been held for one year or less, will be subject to tax at ordinary income tax rates. In addition, there are limits on the deductibility of capital losses. Because individual circumstances may differ, you should consult your own tax advisor to determine the particular tax effects to you.

Reasons for the Merger and Recommendation of the Special Committee and the Board of Directors (page 30)

In the course of reaching its decision to approve the merger agreement and to recommend that our shareholders vote to approve the merger agreement, a special committee of our board of directors, consisting of all four (4) of our non-management directors (which we refer to as the special committee), and our entire board of directors consulted with our senior management, financial advisors and legal counsel, reviewed a significant amount of information, and considered a number of factors, including, among others, the per share consideration to be received by holders of Company common stock in the merger and the current and historical market prices of Company common stock, the current and anticipated future competitive landscape of our industry, the formal support of the merger agreement from holders of approximately 56% of our shares of common stock, the status and history of discussions with other potential bidders, the Company s tangible book value and total book value per share, the written opinion of our financial advisor, Ladenburg Thalmann & Co. Inc. (who we refer to as Ladenburg), and the terms and conditions of the merger agreement, including our ability to, under certain circumstances, furnish information to, and conduct negotiations with, a third party if we receive an acquisition proposal superior to SCI s proposal.

For the reasons set forth above and under the caption The Merger Reasons for the Merger and Recommendation of the Special Committee and the Board of Directors, our board of directors, based upon the unanimous recommendation of the special committee, (i) unanimously determined the merger, the merger agreement and the transactions contemplated thereby to be advisable and fair to and in the best interests of the Company and its shareholders, (ii) approved and adopted the merger and the merger agreement, (iii) authorized and approved the execution, delivery and performance of the merger agreement by the Company, directed that the merger and merger agreement be submitted for approval by our shareholders at the special meeting, and (iv) recommended that our shareholders vote FOR approval of the merger agreement and FOR the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Opinion of the Company s Financial Advisor (page 33 and Annex D)

Ladenburg made a presentation to the special committee on June 24, 2011 and subsequently delivered its written opinion to the effect that, as of the date of the written opinion, and based upon and subject to the considerations described in the written opinion, the per share consideration of $3.50 per share in cash to be received by the holders of our common stock pursuant to the merger agreement was fair, from a financial point of view, to the holders of our common stock.

Table of Contents

The full text of the written opinion of Ladenburg which sets forth the assumptions made, procedures followed, matters considered, and limitations on the review undertaken in connection with the opinion is attached as Annex D to this proxy statement. You should read the opinion in its entirety. Ladenburg provided its opinion for the information and assistance of the special committee in connection with its consideration of the transaction contemplated by the merger agreement. The Ladenburg opinion is not a recommendation as to how any holder of our common stock should vote or act with respect to the transaction or any other matter. Ladenburg has received a fee of $150,000 in connection with the preparation and issuance of its opinion and rendering advice to the special committee with respect to the merger, and will be reimbursed for its reasonable expenses, including attorneys fees, none of which payments were contingent upon the execution of the merger agreement or the completion of the merger.

The Special Meeting of the Company s Shareholders (page 16)

Date, Time, Place. A special meeting of our shareholders will be held on August 26, 2011, at the Company s corporate headquarters located at 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029, at 11:00 a.m., local time, to:

- consider and vote upon a proposal to approve the merger agreement;
- consider and vote upon a proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers; and
- consider and vote on a proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.

Record Date and Voting Power. You are entitled to vote at the special meeting if you owned shares of our common stock at the close of business on July 20, 2011, the record date for the special meeting. You will have one (1) vote at the special meeting for each share of our common stock that you owned at the close of business on the record date. There are 3,675,782 shares of our common stock entitled to be voted at the special meeting as of the record date. As of July 20, 2011, our directors and executive officers beneficially owned approximately 26.88% of the shares entitled to vote at the special meeting (which includes stock options that may be exercised within sixty (60) days of July 20, 2011), and may have interests that are different from yours.

Quorum. The holders of a majority of the outstanding shares of our common stock entitled to vote must be present, either in person or by proxy, to constitute a quorum at the special meeting.

Required Vote. The approval of the merger agreement requires the affirmative vote of a majority of the shares of our common stock outstanding at the close of business on the record date. The affirmative vote of the holders of at least a majority of the shares present in person or by proxy at the special meeting and entitled to vote thereon, is required, (i) provided that a quorum is present, to approve the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and (ii) whether or not a quorum is present, to approve the proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.

Certain of our shareholders, which as of July 20, 2011 held approximately 56% of the outstanding shares of Company common stock, have entered into voting and support agreements (which we refer to as support agreements) pursuant to which the shareholders have agreed, among other things, to vote in favor of the merger and against alternative transactions, subject to, with respect to approximately 27% of the outstanding shares of Company common stock, termination of such voting obligations under certain circumstances which would then allow them to vote in their discretion as is more fully described elsewhere in this proxy statement.

Table of Contents

Interests of Company Directors and Executive Officers in the Merger (page 41)

In considering the recommendations of the Company s special committee and our board of directors with respect to the merger agreement, shareholders should be aware that the Company s directors and executive officers have interests in the merger, and have arrangements that are different from, or in addition to, those of the Company s shareholders generally. These interests could create potential conflicts of interest. These interests relate to or arise from:

- payment of severance and certain other separation benefits to two (2) executive officers who, as a result of the merger, are expected to lose employment with the Company following consummation of the merger;
- the expectation that the other two (2) Company executive officers will continue employment with the Company after the consummation of the merger;
- repayment of loans made to the Company by certain directors and executive officers;
- acceleration of vesting of all in-the-money stock appreciation rights to the extent not vested, and the cash out of any in-the-money stock appreciation rights held by certain executive officers;
- distribution of vested nonqualified deferred compensation plan accounts to directors and executive officers participating in such plans, and possible distribution of vested 401(k) plan accounts to those executive officers participating in such plan;
- reimbursement by the Company of certain personal legal expenses incurred by executive officers in connection with the merger up to a maximum of $5,000 each;
- indemnification, expense advancement and liability exculpation provisions in the merger agreement in favor of the Company s directors and officers; and
- the purchase by SCI of a six-year tail directors and officers liability insurance policy to cover the directors and officers currently covered by the Company s directors and officers liability insurance policy.

Litigation Relating to the Merger (page 50)

The Company, SCI, Merger Sub and the Company s board of directors have been named as defendants in two putative class action lawsuits filed in Georgia brought by persons claiming to be Company shareholders who are challenging the merger.

The complaints allege, among other things, that (a) the Company s board of directors breached their fiduciary duties by: (1) conducting an inadequate sales process that undervalued the Company; (2) agreeing to unfairly preclusive deal protection measures; and (3) approving merger terms that unfairly vest some of the board members with benefits not shared equally by other Company shareholders and (b) in one of the complaints, that the Company s board of directors failed to disclose material facts to shareholders in connection with the proposed transaction in this proxy statement. The complaint also alleges that SCI knowingly aided and abetted these fiduciary duty breaches. The complaints seek to enjoin the merger and other remedies.

The defendants believe the claims asserted in the lawsuits are without merit and intend to vigorously defend against them.

Conditions to Completion of the Merger (page 64)

The consummation of the merger by SCI and Merger Sub depends on the satisfaction or waiver of a number of customary conditions, including the following:

- the representations and warranties of the Company contained in the merger agreement, other than certain specified representations, must be true and correct as of the date of the merger agreement and on the closing date, except for inaccuracies which do not constitute and could not reasonably be expected to result in a material adverse effect on the Company, and we must comply with or perform in all material respects all of our covenants and obligations in the merger agreement;

approval of the merger agreement by the required shareholder vote, and holders of less than 5% in the aggregate of the shares of Company common stock entitled to vote have delivered dissenter s notice to the Company before the vote is taken;

the absence of certain legal prohibitions or restraints against the merger, or adversely affecting SCI;

the absence of certain pending or threatened proceedings by a governmental authority relating to the merger;

the absence of pending legal proceedings against the merger or adversely affecting SCI;

SCI s receipt of assurances that the Company has repaid all outstanding principal and interest due to certain affiliated lenders;

the delivery to SCI of certain final Phase I environmental site assessment reports on three (3) parcels of real estate owned by the Company, certifying the absence of certain adverse environmental conditions;

the delivery of certain title reports for the three (3) parcels of owned real property evidencing title owned free and clear of most encumbrances;

termination of the Company s deferred compensation plans, 401-K plan and severance plan; and

the absence of a material adverse effect on the Company.

Additionally, the consummation of the merger by the Company depends on the satisfaction or waiver of a number of other customary conditions.

Termination of the Merger Agreement (page 65)

The merger agreement may be terminated prior to the effective time of the merger (whether before or after the approval of the merger agreement by the required shareholder vote):

by mutual consent of SCI and us;

subject to certain limitations, by SCI or us if the merger has not been consummated by December 31, 2011;

subject to certain limitations, by SCI or us if a U.S. court of competent jurisdiction or other U.S. governmental body has issued a final and non-appealable order having the effect of permanently restraining, enjoining or otherwise prohibiting the merger;

by SCI or us if our shareholders have taken a final vote at the special meeting or any adjournment or postponement thereof and have voted not to approve the merger agreement;

by SCI (at any time prior to the approval of the merger agreement by the required shareholder vote) under certain circumstances involving competing transactions, a change in our board of directors recommendation that our shareholders vote to approve the merger agreement or if certain other triggering events have occurred;

by SCI if (i) we have breached any of our covenants or obligations under the merger agreement, or if any of our representations or warranties are inaccurate, such that the conditions to closing relating to such covenants, obligations, representations and warranties would not be satisfied, in each case, subject to a right to cure or (ii) a material adverse effect has occurred following the date of the merger agreement; or

by us if SCI has breached any of its covenants or obligations under the merger agreement, or if any of SCI s representations or warranties are inaccurate, such that the conditions to closing relating to such covenants, obligations, representations and warranties would not be satisfied, in each case, subject to a right to cure.

Termination Fees and Expenses (page 67)

If the merger agreement is terminated by SCI under certain circumstances involving competing transactions, a change in our board of directors recommendation that our shareholders vote to approve the merger agreement or certain other triggering events, we may be required to pay to SCI a termination fee of $460,000. If the merger agreement is terminated because our shareholders do not approve the merger agreement, we may be required to reimburse SCI s merger-related expenses up to a maximum of $450,000. In addition, in connection with a termination of the merger agreement due to the failure of the Company s shareholders to approve the merger, if we enter into an alternative transaction within twelve (12) months of the termination of the merger agreement, we may be required to pay SCI a termination fee of $460,000 in addition to the expense reimbursement mentioned above.

No Other Negotiations (page 58)

Under the merger agreement we are not permitted to take or resolve or publicly propose to take any of the following actions:

- solicit, initiate, encourage, assist, induce or facilitate the making, submission or announcement of any alternative acquisition proposal or acquisition inquiry or take any other action that could reasonably be expected to lead to an alternative acquisition proposal or acquisition inquiry;

- furnish or otherwise provide access to any information regarding the Company (or any subsidiary of the Company) to any person in connection with or in response to an alternative acquisition proposal or acquisition inquiry; or

- engage in discussions or negotiations with any person with respect to any alternative acquisition proposal or acquisition inquiry.

In addition, the merger agreement provides that (subject to certain exceptions) our board of directors may not resolve, directly or indirectly, agree or publicly propose to take any of the following actions:

- withdraw or modify in a manner adverse to SCI or Merger Sub our board of directors recommendation to our shareholders that our shareholders vote to approve the merger agreement;

- recommend the approval, acceptance or adoption of, or approve, endorse, accept or adopt, any alternative acquisition proposal; or

- approve or recommend, or cause or permit the Company (or any subsidiary of the Company) to execute or enter into any agreement or document constituting or relating to, or that contemplates or could reasonably be expected to result in an alternative acquisition transaction.

Notwithstanding these restrictions, under certain circumstances, and so long as we comply with certain terms of the merger agreement described under The Merger Agreement Limitation on Soliciting, Discussing or Negotiating Other Acquisition Proposals, our board of directors may (i) respond to a bona fide unsolicited acquisition proposal not obtained in violation of our covenants in the merger agreement, and (ii) recommend a superior offer and, in connection with such recommendation, withdraw or modify its recommendation that our shareholders vote to approve the merger agreement, where, among other things, our board of directors determines in good faith, after consultation with an independent financial advisor of nationally recognized reputation and its outside legal counsel, that failure to take such action would constitute a breach of its fiduciary duties to our shareholders under Georgia law. Such a recommendation change, however, would not relieve the Company from its obligation under the merger agreement to submit the merger to the shareholders at the special meeting.

Support Agreements (page 69 and Annexes B and C)

Concurrently with the execution and delivery of the merger agreement, certain of our shareholders, which as of July 20, 2011 held approximately 28% of the outstanding shares of Company common stock, including our Chairman and Chief Executive Officer and our Executive Vice President and certain of their family members and affiliated entities, executed support agreements pursuant to which such shareholders have agreed to vote in favor of the merger, and against competing transactions, and have granted an irrevocable proxy to SCI with respect to these matters.

Certain other of our shareholders, which as of July 20, 2011 held approximately 27% of the outstanding shares of Company common stock, executed support agreements pursuant to which such shareholders have agreed to vote in favor of the merger, and against competing transactions, and have granted a proxy to SCI with respect to these matters; provided, however, these support agreements, and the related proxies, will terminate upon the withdrawal or modification of the recommendation of our board of directors to the shareholders to approve the merger agreement. As a result, if the board of directors withdraws or modifies its recommendation to approve the merger agreement due to a superior offer, then these certain other shareholders will be released from their support agreements and may vote in favor of such competing offer.

As a result, so long as these support agreements are not terminated in connection with the withdrawal or modification of the recommendation of our board of directors, the approval of the merger agreement by our shareholders at the special meeting is assured.

Dissenters Rights (page 45 and Annex E)

Our shareholders have the right under Georgia law to exercise dissenters rights and to receive payment in cash for the fair value of their shares of our common stock. The fair value of shares of our common stock, as so determined, may be more or less than the per share consideration to be paid to non-dissenting Company shareholders in the merger. To preserve their rights, shareholders who wish to exercise dissenters rights must (a) deliver to us before the vote is taken at the special meeting written notice of their intent to demand payment for their shares, (b) not vote in favor of the approval of the merger agreement, and (c) follow specific procedures. Company shareholders must precisely follow these specific procedures to exercise dissenters rights, or their dissenters rights may be lost. These procedures are described in this proxy statement, and the provisions of Georgia law that grant dissenters rights and govern such procedures are attached as Annex E to this proxy statement. You are encouraged to read these provisions carefully and in their entirety.

Delisting and Deregistration of our Common Stock (page 48)

If the merger is completed, our common stock will be delisted from Nasdaq and deregistered under the Securities Exchange Act of 1934, as amended, or the Exchange Act. As such, we would no longer file periodic reports with the Securities and Exchange Commission, or the SEC, with respect to our common stock.

Questions and Answers About the Special Meeting And The Merger

The following questions and answers are intended to address some commonly asked questions regarding the special meeting and the merger. These questions and answers may not address all questions that may be important to you as a Company shareholder. We encourage you to refer to and read carefully this entire proxy statement, the annexes to this proxy statement, and the documents referred to in this proxy statement for a complete understanding of the special meeting and the merger.

Q: When and where is the special meeting?

A: The special meeting of our shareholders will be held on August 26, 2011, at our headquarters at 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029 at 11:00 a.m., local time.

Q: What am I being asked to vote on at the special meeting?

A: You are being asked to vote (1) to approve a merger agreement that provides for the acquisition of the Company by SCI; (2) to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers; and (3) to vote to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies in favor of the proposal to approve the merger agreement in the event that there are insufficient votes represented at the special meeting. The proposed acquisition would be accomplished through a merger of Scrabble Acquisition, Inc., a wholly-owned subsidiary of SCI, with and into the Company. As a result of the merger, the Company will become a wholly-owned subsidiary of SCI and the Company common stock will cease to be listed on Nasdaq, will not be publicly traded and will be deregistered under the Exchange Act.

Q: What will I receive in the merger?

A: As a result of the merger, our shareholders will receive the per share consideration of $3.50 cash, without interest and less any applicable withholding tax, for each share of Company common stock they own. For example, if you own 100 shares of Company common stock as of the closing date of the merger, you will be entitled to receive $350.00 in cash, without interest, less any applicable withholding tax in exchange for your shares.

Q: What will holders of stock options and stock appreciation rights of the Company receive as a result of the merger?

A: Each stock option exercisable for shares of Company common stock that is in-the-money (i.e., when the exercise price of the stock option is less than $3.50) will vest (if not previously vested), and the holder thereof will be entitled to receive in exchange therefor an amount in cash equal to the product of (i) the excess, if any, of (x) $3.50 over (y) the exercise price per share of Company common stock subject to such in-the-money stock option, multiplied by (ii) the number of shares of Company common stock represented by such stock option. Each stock appreciation right that is in-the-money will vest (if not previously vested), and the holder thereof will be entitled to receive in exchange therefor an amount in cash equal to the product of (i) the excess, if any, of (x) $3.50 over (y) the exercise price of such in-the-money stock appreciation rights, multiplied by (ii) the number of units represented by such stock appreciation rights. Each stock option and stock appreciation right that is outstanding and unexercised immediately prior to the effective time of the merger that is not in-the-money will expire and be cancelled, as of the effective time, for no consideration. As of July 27, 2011, no in-the-money stock options were outstanding and 70,140 shares of common stock were subject to in-the-money stock appreciation rights, assuming a fair market value of $3.50 per share.

Q: What do I need to do now?

A: We urge you to read this entire proxy statement carefully and to consider how the merger affects you. Then mail your completed, dated and signed proxy card in the enclosed return envelope, or vote via the Internet or telephone, as soon as possible so that your shares can be represented and voted at the special meeting. If you hold your shares in street name, follow the instructions you receive from your broker on how to vote your shares. Please do not send in your stock certificates with your proxy card.

Q: How does the Company s board of directors recommend that I vote?

A: Our board of directors unanimously recommends that you vote **FOR** the proposal to approve the merger agreement, **FOR** the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and **FOR** the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies in favor of the proposal to approve the merger agreement.

Q: What factors did our board of directors consider in making its recommendations?

A: In making its recommendations, our board of directors took into account, among other things, the unanimous recommendation of the special committee of the board; the per share consideration to be received by holders of Company common stock in the merger, and the current and historical market prices of Company common stock; the current and anticipated future competitive landscape of our industry; the status and history of discussions with other potential bidders; the Company s tangible book value and total book value per share; the written opinion of our financial advisor, Ladenburg; and the terms and conditions of the merger agreement, including our ability to, under certain circumstances, furnish information to, and conduct negotiations with, a third party, if we receive an acquisition proposal superior to SCI s proposal.

Q: Who is entitled to vote at the special meeting?

A: Only shareholders of record as of the close of business on July 20, 2011 are entitled to receive notice of the special meeting and to vote the shares of Company common stock that they held at that time at the special meeting, or at any adjournments or postponements of the special meeting.

Q: What vote of the shareholders is required to approve the proposals?

A: The voting requirements to approve the proposals are as follows:

The approval of the merger agreement requires the affirmative vote of the holders of at least a majority of the outstanding shares of our common stock of record as of July 20, 2011. There are 3,675,782 outstanding shares of our common stock entitled to be voted at the special meeting.

The approval, on an advisory basis, of the merger-related compensation for the Company s named executive officers requires the affirmative vote of the holders of at least a majority of the shares present, in person or by proxy, at the special meeting and entitled to vote thereon, provided a quorum is present.

The approval of the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement requires the affirmative vote of the holders at least a majority of the shares present, in person or by proxy, at the special meeting and entitled to vote thereon, whether or not a quorum is present.

Q: Have any shareholders already agreed to approve the merger agreement?

A: Yes. In connection with the merger agreement, certain shareholders of the Company, which as of July 20, 2011 held approximately 56% of the outstanding shares of common stock of the Company, have entered into support agreements pursuant to which the shareholders have agreed, among other things, to vote in favor of the merger and against alternative transactions, subject to, with respect to approximately 27% of the outstanding shares of common stock of the Company, termination of such support agreements under certain circumstances which would allow them to vote in their discretion, as is more fully described elsewhere in this proxy statement. See The Support Agreements.

Q: May I vote in person?

A: Yes. If your shares are not held in street name through a broker or bank, you may attend the special meeting and vote your shares in person, rather than signing and returning your proxy card or voting via the Internet or telephone. If your shares are held in street name, you must get a proxy from your broker or bank in order to attend the special meeting and vote.

Table of Contents

Q: How else can I cast a vote?

A: If your shares are registered in your name, you can vote your shares using any one of the following methods:

- complete and return a proxy card;
- vote through the Internet at the website shown on the proxy card;
- vote by telephone using the toll-free number shown on the proxy card; or
- vote in person at the special meeting.

Internet and telephone voting are available 24 hours a day, and if you use one of these methods, you do not need to return a proxy card. The deadline for voting through the Internet or by telephone is 1:00 a.m., Central Time, on August 26, 2011. You must have the enclosed proxy card available, and follow the instructions on such proxy card, in order to submit a proxy over the Internet or telephone.

If your shares are held in street name through a broker or bank, you may vote by completing and returning the voting form provided by your broker or bank, or by the Internet or telephone through your broker or bank if such a service is provided. To vote via the Internet or telephone through your broker or bank, you should follow the instructions on the voting form provided by your broker or bank.

Q: What happens if I do not return my proxy card, vote via the Internet or telephone, or attend the special meeting and vote in person?

A: Approval of the merger agreement requires the affirmative vote of the holders of a majority of the shares of our common stock outstanding on the record date. Therefore, if you do not return your proxy card, vote via the Internet or telephone, or attend the special meeting and vote in person, or instruct your broker or bank how to vote your shares if your shares are held in street name, your shares will not be counted for purposes of determining whether a quorum is present at the special meeting and it will have the same effect as a vote against approval of the merger agreement.

Q: May I change my vote after I have mailed my signed proxy card?

A: Yes. You may change your vote at any time before your proxy is voted at the special meeting using any one of the following methods:

- If you submitted a proxy card, you can execute and deliver a written notice of revocation to the Corporate Secretary, Servidyne, Inc., 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029, or you can complete, execute, and deliver to the Secretary of the Company a new, later-dated proxy card for the same shares.
- If you submitted the proxy you are seeking to revoke via the Internet or telephone, you may submit a later-dated new proxy using the same method of transmission (Internet or telephone) as the proxy being revoked, provided the new proxy is received by 1:00 a.m., Central Time, on August 26, 2011.
- You can attend the meeting and vote in person, although your attendance alone will not revoke your proxy.

If you have instructed a broker to vote your shares, you must follow directions received from your broker to change those instructions.

Q: If my broker holds my shares in street name, will my broker vote my shares for me?

A: Your broker will not be able to vote your shares without instructions from you. You should instruct your broker to vote your shares following the procedure provided by your broker. Without instructions, your shares will not be voted, which will have the same effect as if you voted against approval of the merger agreement. Broker non-votes will have no effect on (i) the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers or (ii) the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Broker non-votes occur on a matter up for vote when a broker, bank or other holder of shares you own in street name is not permitted to vote on that particular matter without instructions from you, you do not give such instructions, and the broker or other nominee indicates on its proxy card, or otherwise notifies us, that it does not have authority to vote its shares on that matter. Whether a broker has authority to vote its shares on uninstructed matters is determined by stock exchange rules.

Q: What should I do if I receive more than one set of voting materials?

A: You may receive more than one set of voting materials, including multiple copies of this proxy statement and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you may receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a shareholder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date, and return (or vote via the Internet or telephone with respect to) each proxy card and voting instruction card that you receive.

Q: What happens if I sell my shares of Company common stock before the special meeting?

A: The record date for the special meeting is earlier than the date of the special meeting and the date that the merger is expected to be completed. If you transfer your shares of Company common stock after the record date but before the special meeting, you will retain your right to vote at the special meeting, but will transfer the right to receive the per share consideration to be received by our shareholders in the merger.

Q: Will the merger be taxable to me?

A: Generally, yes. The exchange of shares of Company common stock for the cash per share consideration will be a taxable transaction to our shareholders for United States federal income tax purposes.

Tax matters can be complicated, and the tax consequences of the merger to you will depend on the facts of your own situation. We encourage you to consult your own tax advisor to fully understand the tax consequences of the merger to you.

Q: When do you expect the merger to be completed?

A: We are working toward completing the merger as quickly as possible and expect to consummate the merger in our fiscal quarter ending October 31, 2011. In addition to obtaining shareholder approval, we must satisfy all other closing conditions before completing the merger. See The Merger Agreement Conditions to Closing.

Q: Am I entitled to dissenters rights?

A: Yes. As a holder of Company common stock, you are entitled to dissenters rights under the Georgia Business Corporation Code, or the GBCC, in connection with the merger if you meet certain conditions, which conditions are described in this proxy statement under the caption The Merger Dissenters Rights.

Q: Should I send my Company stock certificates now?

A: No. As soon as reasonably practicable after the merger is consummated, you will be sent a letter of transmittal containing written instructions for exchanging your share certificates for the per share consideration. These instructions will tell you how and where to send in your certificates for your per share consideration. You will receive your cash payment after the paying agent receives your stock certificates and any other documents requested in the instructions.

Q: Where can I find more information about the Company?

A: We file certain information with the SEC. You may read and copy this information at the SEC s public reference facilities. This information is also available on the SEC s website at www.sec.gov and on our website at www.servidyne.com. Information contained on our website is not part of, or incorporated into, this proxy statement. You can also request copies of these documents from us. See Where You Can Find More Information on page 74.

Table of Contents

Q: Who will solicit and pay the cost of soliciting proxies?

A: We will bear the cost of soliciting proxies for the special meeting. Our board of directors is soliciting your proxy on our behalf. Our directors, officers and employees may solicit proxies by telephone, telegram, facsimile and electronic mail, by mail or in person. They will not be paid any additional amounts for soliciting proxies. We also will request that banking institutions, brokerage firms, custodians, trustees, nominees, fiduciaries and other like parties forward the solicitation materials to the beneficial owners of Company common stock held of record by such person, and we will, upon request of such record holders, reimburse forwarding charges and out-of-pocket expenses.

Q: Who can help answer my questions?

A: If you would like additional copies, without charge, of this proxy statement or if you have questions about the merger, including the procedures for voting your shares, you should contact:

Servidyne, Inc.
Attn: Corporate Secretary
1945 The Exchange
Suite 300
Atlanta, Georgia 30339-2029
(770) 953-0304

Table of Contents

Forward-Looking Information

Certain statements contained in this proxy statement, including without limitation, statements containing the words believes, anticipates, estimates, expects, plans, projects, forecasts and words of similar import, are forwa statement, as defined in Section 21E of the Exchange Act. Forward-looking statements are based on our current expectations, assumptions, beliefs, estimates and projections about our company and our industry. Such forward-looking statements involve known and unknown risks, uncertainties and other matters which may cause the actual past results, performance or achievements of the Company to be materially different from any future results, performance or uncertainties expressed or implied by such forward-looking statements. Those statements include, among other things, the risk that the merger may not be consummated in a timely manner if at all, the risk that the merger agreement may be terminated in circumstances which require our payment to SCI of a termination fee of $460,000 or reimbursement of expenses not to exceed $450,000, the risk that the Company s financial performance will not meet the projections summarized under the caption The Merger Projected Financial Information, risks regarding a loss of or substantial decrease in purchases by our major customers, risks regarding employee retention and other risks detailed in our current filings with the SEC, including our most recent filings on Form 10-K or Form 10-Q, which discuss these and other important risk factors concerning our operations. We caution you that reliance on any forward-looking statement involves risks and uncertainties, and that although we believe that the assumptions on which our forward-looking statements are based are reasonable, any of those assumptions could prove to be inaccurate, and, as a result, the forward-looking statements based on those assumptions could be incorrect. In light of these and other uncertainties, you should not conclude that we will necessarily achieve any plans and objectives or projected financial results referred to in any of the forward-looking statements. We do not undertake to release publicly any revisions of these forward-looking statements to reflect future events or circumstances except as we are required to do so by law.

Table of Contents

Market Price and Dividend Data

Our common stock is listed on Nasdaq under the symbol SERV. This table shows, for the periods indicated, the range of low and high per share closing sales prices for our common stock as reported on Nasdaq.

	Servidyne Common Stock Closing Price	
	Low	High
Year ended April 30, 2009:		
First Quarter(1)	$ 4.00	$ 5.66
Second Quarter	3.20	5.40
Third Quarter	1.29	3.76
Fourth Quarter	1.50	2.36
Year ended April 30, 2010:		
First Quarter	$ 1.63	$ 2.90
Second Quarter	1.75	2.50
Third Quarter	1.60	2.30
Fourth Quarter	1.60	4.47
Year ended April 30, 2011:		
First Quarter	$ 1.84	$ 3.35
Second Quarter	2.10	2.77
Third Quarter	2.18	2.65
Fourth Quarter	2.26	3.02
Year ended April 30, 2012:		
First Quarter (through July 27, 2011)	$ 2.18	$ 3.48

(1) Adjusted to reflect a 105:100 stock split effected on June 16, 2008.

The following table sets forth the closing per share sales price of our common stock, as reported on Nasdaq on June 24, 2011, the last full trading day before the public announcement of the merger, and on July 27, 2011, the second to last trading day before the date of this proxy statement:

	Servidyne Common Stock Closing Price
June 24, 2011	$ 2.26
July 27, 2011	3.46

Following the merger there will be no further market for our common stock and our stock will be de-listed from Nasdaq and deregistered under the Exchange Act.

Historically, we have paid a quarterly cash dividend to our shareholders. Under the merger agreement, we have agreed to limit any dividends (whether in cash, shares or property or any combination thereof) on our common stock before the completion of the merger to a quarterly cash dividend of $0.01 per share.

The Special Meeting

General

This proxy statement is being furnished to our shareholders in connection with the solicitation of proxies by our board of directors to be used at the special meeting of shareholders to be held at our corporate headquarters located at 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029, on August 26, 2011 at 11:00 a.m., local time, and at any adjournment or postponement of that meeting. This proxy statement and the enclosed form of proxy are being sent to our shareholders on or about August 1, 2011.

Purpose of Special Meeting

At the special meeting, we are asking holders of record of our common stock to consider and vote on the following proposals:

- the approval of the Agreement and Plan of Merger, dated as of June 26, 2011, among SCI, Merger Sub, a wholly-owned subsidiary of SCI, and the Company;

- the approval, on an advisory basis, of the merger-related compensation for the Company s named executive officers; and

- the approval of the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the merger agreement.

The only matters expected to be presented at the special meeting are the matters outlined above. If any other matters properly come before the special meeting, the persons named in the enclosed proxy card will vote the shares represented by all properly executed proxies on such matters in accordance with their discretion.

A copy of the merger agreement is attached to this proxy statement as Annex A. You should review the merger agreement and this proxy statement carefully and in their entirety before deciding how to vote.

Recommendation of the Board of Directors

After careful consideration, both the special committee, consisting of all four (4) of our non-management directors, and our entire board of directors unanimously determined the merger, the merger agreement and the transactions contemplated thereby to be advisable and fair to and in the best interests of the Company and its shareholders and approved and adopted the merger and the merger agreement. **Therefore, our board of directors unanimously recommends that you vote FOR approval of the proposal to approve the merger agreement, FOR the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and FOR the proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement.**

Record Date; Stock Entitled to Vote

Our board of directors has established the close of business on July 20, 2011 as the record date for the special meeting. Only holders of record of our common stock at the close of business on the record date are entitled to notice of and to vote at the special meeting. For each share of our common stock that you owned on the record date, you are entitled to cast one (1) vote on each matter voted upon at the special meeting. As of the close of business on the record date, there were 3,675,782 shares of our common stock outstanding and entitled to vote, which were held by 275 holders of record. These numbers do not reflect outstanding stock options and stock appreciation rights, which are not entitled to vote at the special meeting.

Quorum

A quorum of shareholders is necessary to hold the special meeting. The presence in person or representation by proxy at any meeting of our shareholders of a majority of the outstanding shares of our common stock entitled to vote at the meeting will constitute a quorum. You will be deemed to be present if you attend the meeting or if you submit a proxy card that is received at or prior to the meeting that is not timely revoked.

Abstentions and broker non-votes, which are discussed below, are counted for purposes of determining whether a quorum is present at a special meeting. Shares held by us in our treasury do not count toward a quorum.

If a quorum is not present, the special meeting may be postponed or adjourned by the affirmative vote of the holders of a majority of the shares present, in person or by proxy, at the special meeting and entitled to vote thereat, to solicit additional proxies, without notice other than announcement at the special meeting (unless otherwise required by our bylaws or law), until a quorum is present or represented. At any subsequent reconvening of the special meeting, all proxies will be voted in the same manner as the proxies would have been voted at the original convening of the special meeting, except for any proxies that have been effectively revoked or withdrawn prior to the subsequent meeting.

Vote Required

The approval of the merger agreement requires the affirmative vote of the holders of at least a majority of the shares of our common stock outstanding at the close of business on the record date for the special meeting. Because the vote on the proposal to approve the merger agreement is based on the total number of shares outstanding, rather than the number of actual votes cast, your failure to vote, or your decision to abstain from voting, on this proposal will have the same effect as a vote against the proposal. Similarly, a broker non-vote will also have the same effect as a vote against the proposal. Brokers and other nominees will not have discretionary authority on the proposal to approve the merger agreement.

The affirmative vote of the holders of at least a majority of the shares present, in person or by proxy at the special meeting and entitled to vote thereon, is required, (i) provided a quorum is present, to approve the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and (ii) whether or not a quorum is present, the proposal to adjourn the special meeting to a later date, if necessary or appropriate, to solicit additional proxies if there are insufficient votes in favor of the proposal to approve the merger agreement. Abstentions will have the same effect as a vote against these proposals. Broker non-votes will not affect the outcome of these two proposals.

Broker non-votes occur on a matter up for vote when a broker, bank or other holder of shares you own in street name is not permitted to vote on that particular matter without instructions from you, you do not give such instructions, and the broker or other nominee indicates on its proxy card, or otherwise notifies us, that it does not have authority to vote its shares on that matter. Whether a broker has authority to vote its shares on uninstructed matters is determined by stock exchange rules.

Shares Owned by Our Directors and Executive Officers

As of July 20, 2011, our directors and executive officers beneficially owned 1,060,204 shares of our common stock, which represented approximately 26.88% of the shares of our common stock outstanding on that date. These figures include stock options that may be exercised within sixty (60) days of July 20, 2011.

Voting; Proxies

If your shares of our common stock are registered in your name, you can vote those shares using one of the following methods:

complete and return the enclosed proxy card;

vote through the Internet at the website shown on the enclosed proxy card;

vote by telephone using the toll-free number shown on the enclosed proxy card; or

vote in person at the special meeting.

Voting by Proxy. All shares represented by properly executed proxies received in time for the special meeting will be voted at the special meeting in the manner specified by the shareholders giving those proxies. Properly executed proxies that do not contain voting instructions will be voted **FOR** the proposal to approve the merger agreement, **FOR** the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and **FOR** the proposal to adjourn the special meeting to solicit additional proxies, if necessary or appropriate, provided that no proxy that is specifically marked **AGAINST** the proposal to approve the merger agreement will be voted in favor of the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers or the adjournment proposal, unless it is specifically marked **FOR** such proposals.

Although it is not currently expected, if the proposal to adjourn the special meeting to solicit additional proxies is approved, the special meeting may be adjourned for the purpose of soliciting additional proxies to approve the proposal to approve the merger agreement. Other than for the purposes of adjournment to solicit additional proxies, whether or not a quorum exists, holders of a majority of the outstanding common stock, present in person or represented by proxy at the special meeting and entitled to vote thereat may adjourn the special meeting. Any signed proxies received by us in which no voting instructions are provided on such matter will be voted in favor of an adjournment in these circumstances.

Any adjournment may be made without notice (if the adjournment is not for more than sixty days from the record date), other than by an announcement made at the special meeting of the time, date and place of the adjourned meeting. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow our shareholders who have already sent in their proxies to revoke them at any time prior to their use at the special meeting as adjourned or postponed.

Voting by Internet or Telephone. Internet and telephone voting are available 24 hours a day, and if you use one of these methods, you do not need to return a proxy card. The deadline for voting through the Internet or by telephone is 1:00 a.m., Central Time, on August 26, 2011. You must have the enclosed proxy card available, and follow the instructions on such proxy card, in order to submit a proxy over the Internet or telephone.

Voting in Person. If you plan to attend the special meeting and wish to vote in person, you will be given a ballot at the special meeting. Please note, however, that if your shares are held in street name, which means your shares are held of record by a broker, bank or other nominee, and you wish to vote at the special meeting, you must bring to the special meeting a proxy from the record holder of the shares (your broker, bank or nominee) authorizing you to vote at the special meeting.

Shares Held in Street Name. If your shares are held in a stock brokerage account or by a bank or other nominee, then your broker or bank has enclosed a voting instruction card for you to use to indicate your voting preference. It may provide that you can deliver your instructions by telephone or via the Internet. While you are welcome to attend the meeting, you are not the record holder, and you would not be permitted to vote unless you obtain a signed proxy from your nominee who is the holder of record.

Whether or not you expect to attend the special meeting, please complete, date, sign and promptly return the accompanying proxy (or vote via the Internet or telephone or follow the instructions given to you by your broker or nominee) so that your shares may be represented at the meeting.

Revocation of Proxies

You may change your vote at any time before your proxy card is voted at the special meeting by:

- completing, executing and delivering a written notice of revocation to the Corporate Secretary, Servidyne, Inc., 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029;

completing, executing and delivering to the Corporate Secretary of the Company a new, later-dated proxy card for the same shares; or

attending the meeting and voting in person.

If you submitted the proxy alone and you are seeking to revoke via the Internet or telephone, you may submit a later-dated new proxy using the same method of transmission (Internet or telephone) as the proxy being revoked, provided the new proxy is received by 1:00 a.m., Central Time, on August 26, 2011.

Attendance at the special meeting alone will not constitute a revocation of a proxy absent compliance with one of the foregoing methods of revocation. If your shares are held in a stock brokerage account or by a bank or other nominee, you must follow the instructions given to you by the broker or nominee to change your voting instructions.

Solicitation of Proxies

We will bear the cost of this proxy solicitation. Our directors, officers, and other employees may, without compensation other than reimbursement for actual expenses, solicit proxies by mail, in person or by telecommunication. We may reimburse brokers, fiduciaries, custodians, and other nominees for out-of-pocket expenses incurred in assisting in the distribution of our proxy materials to, and obtaining instructions relating to such materials from, beneficial owners.

Householding of Special Meeting Materials

Some banks, brokers and other nominee record holders may be participating in the practice of householding proxy statements and annual reports. This means that only one copy of our proxy statement may have been sent to multiple shareholders in each household. We will promptly deliver a separate copy of the proxy statement to any shareholder upon written or oral request to the Company s Corporate Secretary which may be contacted as set forth below under Assistance. If you are one of multiple shareholders sharing an address and would like to request householding in the future, please contact your broker and the Company s Corporate Secretary and inform them of your request. Be sure to include your name, the name of your brokerage firm and your account number.

Shareholder List

A list of our shareholders entitled to vote at the special meeting will be available for examination by any Company shareholder at the special meeting.

Other Business

We do not expect that any matter other than the (i) proposal to approve the merger agreement, (ii) proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers, and (iii) proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies, will be brought before the special meeting. If, however, other matters are properly presented at the special meeting, the persons named as proxies will vote in accordance with their best judgment with respect to those matters.

Servidyne Shareholder Account Maintenance

Our transfer agent is Computershare. All communications concerning accounts of our shareholders of record, including address changes, name changes, inquiries as to requirements to transfer common stock and similar issues may be handled by calling Computershare Customer Service, toll-free, at (800) 568-3476 or by writing to:

Computershare
P.O. Box 43078
Providence, Rhode Island 02940-3078

Assistance

If you need assistance in completing your proxy card or have questions regarding the special meeting, please contact:

Servidyne, Inc.
Attn: Corporate Secretary
1945 The Exchange
Suite 300
Atlanta, Georgia 30339-2029
(770) 953-0304

The Companies

Servidyne, Inc.

Servidyne, Inc. provides comprehensive energy efficiency and demand response solutions, sustainability programs and other building performance-enhancing products and services to owners and operators of existing buildings, energy services companies and public and investor-owned utilities. The Company serves a broad range of markets in the United States and internationally, including owners and operators of corporate, commercial office, hospitality, gaming, retail, light industrial, distribution, healthcare, government, multi-family and education facilities, as well as energy services companies and public and investor-owned utilities. Servidyne is publicly traded on Nasdaq under the symbol SERV.

The Company was organized under Delaware law in 1960 to succeed to the business of A. R. Abrams, Inc., which was founded in 1925 by Alfred R. Abrams as a sole proprietorship. In 1984, the Company changed its state of incorporation from Delaware to Georgia. In 2006, the Company changed its name from Abrams Industries, Inc. to Servidyne, Inc.

The Company s principal executive offices are located at 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029, and its telephone number is (770) 953-0304. Additional information regarding the Company is contained in the Company s filings with the SEC. See Where You Can Find More Information.

Scientific Conservation, Inc.

Scientific Conservation, Inc. is a provider of energy efficiency solutions via predictive diagnostics and analytics for the $5 billion commercial building market. SCI s suite of energy management solutions uses the industry s first software-as-a-service (Saas) platform to help reduce annual energy spending by comparing predicted energy and system efficiencies against real-time operation. SCI s headquarters are in San Francisco, California, with its technology center in Atlanta, Georgia.

SCI s principal executive offices are located at 2 Bryant Street, Suite 210, San Francisco, California 94105, and its telephone number is (415) 625-4500.

Scrabble Acquisition, Inc.

Scrabble Acquisition, Inc. is a wholly-owned subsidiary of SCI. Merger Sub was organized solely for the purpose of entering into the merger agreement with us and completing the merger and has not conducted any other business operations. Merger Sub s principal executive offices are located at 2 Bryant Street, Suite 210, San Francisco, California 94105, and its telephone number is (415) 625-4500.

Proposal 1 Approval of the Merger Agreement

The Merger

Background of the Merger

Beginning in the early 1960s, the Company engaged in real estate activities, including the development, purchase, management, ownership and sale of shopping centers and other income-producing properties, primarily located in the Southeast and Midwest. In 2001, the Company acquired the assets and operating business of Servidyne Systems, Inc., an energy engineering and maintenance management company. Through the subsequent acquisitions and integration of the assets and operating businesses of The Wheatstone Energy Group, Inc. (2003), iTendant, Inc. (2004) and Building Performance Engineers, Inc. (2004), the Company shifted its strategy away from real estate activities and towards providing building performance and energy efficiency solutions for existing buildings. In order to grow this newly-created Building Performance Efficiency, or BPE, Segment, the Company redeployed capital previously invested in its Real Estate Segment primarily through the sale of commercial income-producing properties and raw land.

In its fiscal year ended April 2009, the Company s shareholders equity and available cash declined dramatically from prior levels. These adverse changes were a result of continuing losses from the BPE Segment operations, due in large part to the challenging macro-economic environment, increasing regulatory compliance costs, and the acquisition and initial capitalization of the Company s lighting distribution business (acquired in June 2008). At the same time, the economic recession caused substantial devaluation of the Company s remaining real estate assets, which had been the Company s traditional source of capital. In order to improve its liquidity and fund the growth of its BPE Segment, in the summer of 2009, the Company began a process intended to attract new capital into the Company.

From the summer of 2009 through the fall of 2010, thirty-four (34) financial and strategic parties were approached (including several investment banks) regarding potential investments in the Company. Nash Equity Capital, or NEC, which through its principal, Mr. Charles Nash, had provided financial advisory services to the Company for many years, and Energy Environmental Enterprises, a consulting firm with strong ties to the electric utility industry, were engaged to assist the Company in this process and to conduct initial approaches and communications with potential investors. All parties contacted during this process declined to invest in the Company due to, among other reasons, its weakened balance sheet and the historical lack of profitability of the Company and its BPE Segment.

During the search for new capital, one of the contacted parties, a large family of funds, indicated a potential interest in purchasing the BPE Segment from the Company rather than investing in the Company, and on June 9, 2010, delivered a written indication of interest to do so for a cash purchase price of $8 million. This entity is referred to herein as Interested Party #1. In response, the board of directors at a meeting held on June 9, 2010, empowered a special committee to review, consider, negotiate and, if it deemed appropriate in its sole discretion, recommend to the full board of directors, a sale of the BPE Segment, either on a stand alone basis or as part of the sale of the entire Company. The special committee consisted of all four (4) non-management members of the board of directors.

At a meeting of the special committee held on June 23, 2010, the law firm of Kilpatrick Townsend & Stockton LLP, or Kilpatrick Townsend, was engaged as counsel to the special committee and NEC was engaged as financial advisor to the special committee. At this meeting, Kilpatrick Townsend advised the board regarding its fiduciary duties under applicable law in light of the indication of interest from Interested Party #1. Discussions with Interested Party #1 continued through the month of July 2010, as it engaged in a preliminary due diligence investigation of the Company.

At a meeting held on July 27, 2010, the special committee reviewed with management and Mr. Nash of NEC the current financial outlook for the Company, based on a May 2010 internal financial report. The members of the special committee were concerned about the Company s cash levels and the BPE Segment s continuing losses, and concluded that the search for external financing was becoming more urgent. At that time, the written indication of interest from Interested Party #1 to purchase the BPE Segment for $8 million was the only firm indication of interest in an investment in or an acquisition of the Company, although three other strategic investors had indicated some general interest in the BPE Segment. Kilpatrick Townsend again advised the special committee regarding its fiduciary duties in the current situation, and emphasized the importance that the special committee be fully informed regarding all potentially available alternatives before deciding on any particular course of action. The special committee decided that given the capital needs of the Company and the risk that the BPE Segment might not achieve sufficient profitability as early as previously projected, there was a need to secure additional capital rapidly. Management, therefore, was instructed by the special committee to continue negotiations with Interested Party #1 in an attempt to negotiate the most favorable transaction possible for consideration by the special committee, and at the same time to continue efforts to attract potential investors in or purchasers of the BPE Segment or the Company as a whole.

Discussions by management and NEC with potential investors continued, and in early August 2010 the Company received a revised indication of interest from Interested Party #1 (dated August 5) for a $9 million cash purchase price and a new indication of interest (dated August 9) from a strategic entity (which we refer to herein as Interested Party #2). At a meeting on August 10, 2010, the special committee considered these two (2) indications of interest, both of which proposed an acquisition of all assets of the BPE Segment and one (1) of which required that the Company agree to exclusive negotiations as a condition of further discussions. At this meeting management reported that the Company s recent financial performance and level of available cash were both lower than forecasted. The special committee instructed management and NEC to continue immediate discussions with both of these entities, and to attempt to negotiate a higher purchase price and a shorter exclusivity period. The special committee also discussed the potential of engaging an additional financial advisor to further canvass the market for potential interest in acquiring the BPE Segment, and directed Mr. Robert McWhinney, the chairman of the special committee at that time, to begin the process of familiarizing potential additional financial advisors for the Company, and to secure fee proposals for their proposed services. The special committee also discussed with management the need to substantially reduce operating expenses in order to conserve cash and expedite the achievement of profitability, and directed management to develop a comprehensive plan to do so in the near term.

Management and NEC engaged in further negotiations with both of these parties during the next several days, in an effort to cause them to improve the terms of their offers. Interested Party #1 did improve its indication during that period but Interested Party #2 did not. At a meeting held on August 13, 2010, the special committee considered the indications of interest from both parties. After reviewing the terms of both indications, the special committee decided that the revised indication of interest from Interested Party #1 was clearly economically superior, less conditional, and appeared to be more certain of closing. This revised offer from Interested Party #1, dated August 12, 2010, contemplated a payment of $10 million in cash at closing (an increase of $1 million from the August 5 offer) and included a new provision for the assumption of $1 million of debt, in return for 100% of the assets of the BPE Segment, and contemplated a 60-day exclusivity period. The offer from Interested Party #2, which had not been improved from its offer dated August 9, 2010, was for $10 million in cash, with no assumption of debt or proposed exclusivity period, and was subject to a financing condition. The special committee determined that the economic terms reflected in the indication of interest from Interested Party #1 were the more favorable of the two proposals, and an exclusivity agreement for thirty (30) days was entered into with this entity, and discussions with Interested Party #2 were halted.

The BPE Segment generated lower than forecasted operating results in the quarter ended July 31, 2010, and the Company experienced a substantial deterioration in its cash position. When these results became known, Interested Party #1 communicated to the Company that it would defer any further discussions of a potential transaction with the Company until such time as the BPE Segment could demonstrate it had achieved a level of sustainable results above breakeven. In light of the disappointing quarterly financial results and the response of Interested Party #1, management redoubled efforts to identify substantial potential reductions in the BPE Segment s operating expenses in order to achieve sustainable results above breakeven. The resulting plan identified approximately $900,000 in potential annual operating expenses reductions at the BPE Segment, of which in excess of $700,000 were subsequently implemented during the fall of 2010. Subsequently the

Table of Contents

salary of the Company s Chairman and CEO and the fees paid to the non-management directors were also voluntarily reduced as an additional operating expense reduction.

During August-September 2010, management and NEC continued to try to generate interest from potential bidders for the BPE Segment or the Company as a whole, including Interested Party #2. Interested Party #1 indicated that while it was encouraged by the expense reductions being implemented at the BPE Segment, it would not engage in any further discussions of a potential transaction with the Company until such time that it could review the financial results of the quarter ended October 2010 to determine whether the BPE Segment had indeed achieved a level of sustainable results above breakeven. Despite the profitable operating results actually achieved by the BPE Segment in the fiscal quarter ended October 2010 and in subsequent quarters, Interested Party #1 never subsequently re-engaged in meaningful negotiations with the Company. Conversations were held during this period with two (2) other strategic entities regarding a potential acquisition of the BPE Segment and with another strategic entity regarding a potential merger with the Company, but none of those parties put forth any concrete proposals.

At a meeting held on October 4, 2010, the special committee considered and discussed specific financial proposals made by three (3) merger and acquisition advisory firms with respect to assisting the Company in further canvassing the market for the potential sale of the BPE Segment or the Company as a whole.

In October 2010, a group of Company directors and officers loaned $500,000 to the Company to fulfill bonding requirements for a large contract with the State of Georgia. The loan was necessary because the Company s existing bonding company was reluctant to bond the project due to concerns about the nature, large size and length of the project, as well as the average monthly rate at which the Company was depleting its available cash.

During November 2010 the Company received an improved indication of interest from Interested Party #2 to acquire the BPE Segment for a total enterprise value of $14 million, but such indication was subject to a financing contingency that was considered by the special committee to be very significant, and $2 million of the purchase price would be escrowed for two (2) years to cover indemnification obligations of the Company, and another $2 million of the purchase price was contingent earn-out payments based on achievement of earnings performance thresholds. After discussion, the special committee determined that the lack of firm financing, the conditional nature of the offer and the lack of firmness as to a substantial portion of the purchase price made this indication of interest relatively unattractive. This view, taken together with the fact that discussions were ongoing with four (4) other potential strategic parties regarding an investment in or acquisition of the BPE Segment or the Company, led the special committee to decide not to enter into an exclusivity arrangement with Interested Party #2 at that time, but rather to proceed to engage an additional financial advisor to further canvass the market for potential investors or acquirors of the BPE Segment.

On December 2, 2010, the Company engaged VRA Partners, or VRA, as an additional financial advisor to assist the special committee in the potential sale of the BPE Segment. VRA was selected to assist the special committee due to its broad experience in selling small to medium size companies such as the Company and/or the BPE Segment. VRA immediately began discussions with management of the Company to assess the value of the BPE Segment and to prepare marketing materials to more broadly canvass the market for a potential purchaser. VRA worked with management to identify potential financial and strategic entities that could have an interest in the potential purchase of the BPE Segment. VRA engaged in continuing discussions with Interested Party #2 and with another strategic entity that had already expressed an interest in purchasing the BPE Segment (which we refer to as Interested Party #3). At the direction of the special committee, the Company did not publicize these efforts to market the BPE Segment for sale, due to concerns that widespread public knowledge of such proposed sale could harm employee morale and the Company s relations with its suppliers and customers, and could make the Company more vulnerable to attack from competitors. These risks were judged by the special committee to be more significant than the potential benefit of a public announcement of the offering of the BPE Segment, particularly given the private canvassing of the market that previously had been accomplished by the Company and its financial advisors.

In mid-December the Company was informed that one of its most substantial long-term customers would henceforth utilize its own in-house lighting services company to self-perform most energy efficiency improvements instead of subcontracting such work to entities such as BPE. This entity had provided 41%, 45% and 41%, respectively, of the BPE Segment s project revenue during the prior three (3) fiscal years, and until then represented a substantial portion of the Company s expected revenues over the next eighteen (18) months, so the loss of this business resulted in substantial reductions of future short-term and long-term BPE revenues and profitability, which in turn led to substantially reduced valuations of the BPE Segment. After being informed of these developments, Interested Party #2 revised its indication of interest in the BPE Segment to reduce the overall valuation from $14 million to $11 million, $10 million of which would be a cash payment at closing and $1 million of which would be assumed debt. The indication was subject to other substantial contingencies, but the previous financing contingency purportedly was removed. The special committee nevertheless remained concerned that this entity did not appear to have cash available to effect such a transaction (and in subsequent offers from Interested Party #2, the financing condition did in fact reappear).

At a meeting held on February 4, 2011, the special committee considered the status of the Company s efforts to sell the BPE Segment. VRA reported at this meeting that fourteen (14) potential purchasers had been contacted, and out of this number only two (2) indications of interest had been received (from Interested Parties #2 and #3), and that responses were being awaited from a number of others. Management also collectively indicated that better-than-forecasted operating results and improved cash flows for the quarter ended January 2011 caused them to be more comfortable with respect to the ability of the Company to weather its liquidity demands than they had been during the last several quarters. This was based on the improved operating and financial performance of the BPE Segment, the cost reductions that had been implemented in the fall of 2010, margins being wider, cash usage being more stable, and the strong order backlog that the Company had generated. At this meeting, the updated indication of interest from Interested Party #2 and a new indication of interest from Interested Party #3 were considered. The aggregate purchase prices indicated by these entities were $9.7 million (with no debt being assumed) and $7.54 million, respectively, both being for proposed purchases of the BPE Segment. The special committee concluded that the offer from Interested Party #3 was so far below the Company s expectation as to not be worthwhile to continue to pursue. With respect to the indication of interest from Interested Party #2, the special committee decided that the proposed financing conditionality and the overall purchase price would have to be improved substantially for the Company to be interested in engaging in further discussions. These decisions were based largely on the improvement in the operating performance and financial condition of the Company during the last quarter, which afforded the Company more flexibility with which to explore better potential strategic opportunities for the shareholders. At this time, VRA was instructed to continue exerting efforts with entities that it had contacted, other than Interested Party #2 and Interested Party #3, and that the special committee would wait another two (2) or three (3) weeks before considering again whether to broaden the search to additional potential prospects.

Efforts to generate interest in a potential purchase of the BPE Segment continued through February and early March 2011. During this time, in addition to the previous written indications of interest from Interested Parties #2 and #3, one other strategic entity indicated orally to the Company that it was interested in purchasing the BPE Segment for less than $5 million. Another strategic entity responded to the Company that it might be willing to invest in the BPE business, but would not be interested in buying 100% of the business. Another strategic investor delivered a written indication of interest that was vague and unclear as to its intent. No other entities that had been contacted by VRA or by the Company provided any concrete expression of interest in a potential transaction, although several indicated that they had not rejected the opportunity and might yet respond.

The special committee considered the status of the search for investors or purchasers at its meeting on March 9, 2011. At the meeting, the projected revenues and profitability of the BPE Segment were reviewed, and the only three (3) indications of interest that had previously been received based on those projected financial metrics were reviewed, which had indicated purchase prices of $9.7 million, $7.5 million, and $5 million or less, respectively, for the BPE Segment. The special committee concluded that this range of valuations was generally consistent with customary financial modeling given the actual trailing four (4) quarters operating results of the BPE Segment. Given this, the special committee concluded that there was no reasonable basis upon which to believe that further canvassing of the market would result in any significantly higher offers for the BPE Segment at that time.

As an alternative, management began exploring the possibility of accessing the public markets for investors in the Company, as opposed to a sale of the BPE Segment. The Board of Directors considered a proposal made by Ladenburg Thalmann & Co. Inc. to serve as the Company s financial advisor in a public offering of securities. Ladenburg reported to the board that it was seeing increased interest in the public markets for investments in profitable small cap publicly traded stocks in selected industry sectors, including the energy efficiency/green buildings industry. Given the apparent improvement in public capital market receptivity and the increasingly profitable BPE operations, the board of directors considered that an investment in the Company represented a significant increase in the upside potential for shareholders of the Company. Based on these factors, the special committee decided to defer further efforts to sell the BPE Segment, and to instead focus on a capital raising transaction.

On March 14, 2011, Ladenburg was engaged to act as the Company s placement agent for the offering of up to $7 million of securities in an SEC-registered offering. Immediately prior to the Ladenburg engagement, all discussions with strategic parties regarding the potential sale of the BPE Segment were suspended. Preliminary discussions by Ladenburg with institutional sources indicated to Ladenburg that expected pricing of these securities by the Company would result in very substantial dilution to existing shareholders if $3-$5 million of new capital were to be raised. However, during the initial stages of this process, Ladenburg s efforts were suspended by the Company as the proposal by SCI to acquire the entire Company had been received.

During the latter half of March 2011, M. Todd Jarvis, the Company s President and Chief Operating Officer, began discussions with a business acquaintance at SCI regarding the possibility of certain of SCI s product offerings being incorporated into the offerings of the Company. At a meeting at SCI s offices in Atlanta, Mr. Jarvis met Mr. Russ McMeekin, SCI s Chief Executive Officer, at which Mr. Jarvis discussed the potential of using SCI technology in the Company s offerings and explained the Company s ongoing attempts to raise capital. Mr. Jarvis then made a detailed presentation of the Company s capabilities and business value proposition to Mr. McMeekin and other SCI employees on April 20-21, 2011. In response to this presentation, Mr. McMeekin indicated that SCI would not be interested in making a minority investment in the Company, but might be interested in acquiring the entire company.

On Friday, May 6, 2011, the Company received a written indication of interest from SCI to acquire all the stock of the Company in an all-cash transaction, with an indicated range of potential purchase prices between $3.25 and $4.00 per share. The letter contained numerous conditions to SCI s willingness to make an actual offer, including debt of the Company not exceeding certain levels at closing, the Company maintaining minimum cash levels through closing, holders of at least 61% of the Company s common stock executing voting agreements to support the transaction (which was intended to cover all the members of the Edward Abrams and Bernard Abrams families and their respective affiliated entities), the completion of all due diligence, approval of the board of directors of SCI, key employees of the Company being supportive of the transaction and various other closing conditions. SCI requested that the Company enter into a binding exclusivity agreement that would require that no conversations or negotiations with any other parties regarding a potential transaction with the Company could take place for a 45-day period. The exclusivity agreement also provided that the Company would reimburse expenses that SCI incurred in investigating a potential transaction with the Company if the Company breached the terms of the exclusivity agreement or if the Company terminated discussions with SCI and then entered into a comparable transaction with another party within six (6) months.

Company management discussed the content of the SCI indication of interest and exclusivity agreement with each of the directors individually, counsel and financial advisors in advance of a meeting of the board of directors that was held on the following Thursday, May 12, 2011. At such meeting, it was first confirmed that the existing special committee of the board (the activities of which had been suspended when it decided to pursue a public offering rather than a sale of BPE), acting pursuant to its existing charter, was the appropriate body, rather than the full Board of Directors, to be responsible for all negotiations and discussions with SCI regarding this matter. At this meeting, the special committee discussed the Company s current financial condition, with management noting that the fiscal first quarter that would end July 31, 2011, appeared to be strong from a revenue standpoint, but that the Company had limited visibility into the subsequent fiscal quarters, and that there was continuing execution risk due to the Company s reliance on a limited number of large contracts. The special committee reviewed the status of the Company s efforts to raise capital in a public offering and its discussions with other potential investors over the prior year, and concluded that these efforts did not appear particularly promising at this stage. The special committee gathered information about SCI, including its financial backing, its recent $19 million capital raise, and the substantial experience in business combinations of the executives and principals behind SCI. The special committee considered the advisability of engaging a financial advisor for purposes of rendering a fairness opinion with respect to the transaction, and possibly also to provide advice in connection with the transaction. The indicative purchase price range was discussed, and it was noted that the market for the Company s stock, and outside investor valuations that had been made known to the Company over the last year and a half, had relatively consistently valued the Company, and that SCI s indication, even at the lower end of the range, was substantially higher than any of these prior valuations.

The special committee concluded that it would be in the best interest of the Company to enter into the exclusivity agreement with SCI for the purpose of pursuing a potential transaction with SCI, with certain specified changes in the terms of the exclusivity agreement as proposed by SCI, including the imposition of a cap on reimbursable expenses. In coming to such conclusion, the special committee considered, among other factors: (1) the attractiveness of the indicative price range versus the Company s historical trading prices and the valuations of the Company that had been received from other outside investors; (2) the relative slow progress of the Company s capital raising efforts, which could jeopardize the Company s ability to continue to conduct business in the near future; (3) the failure of the Company s extensive search for other acquisition candidates to develop any superior offer; (4) the all-cash nature of the offer; (5) the contemplated lack of a financing condition in the definitive agreement; (6) the apparent financial resources of SCI, which suggested it could indeed close the transaction; (7) the background of the principals involved in SCI, which supported the bona fide nature of the offer; and (8) the serious risks the Company faces in executing its growth strategy in light of its unsatisfied capital needs, which suggested that continuing to operate on a stand-alone basis posed significant challenges, and that an attractive acquisition proposal should be seriously considered.

After the exclusivity agreement was entered into on May 12, 2011, SCI proceeded to engage in a comprehensive due diligence investigation. The Company provided extensive documentation, and meetings of management of the Company took place with SCI personnel as well as its financial advisor, Roth Capital Partners, LLC, in Atlanta over the next two weeks. An initial draft of a merger agreement without a purchase price was provided to the Company by SCI s counsel on the evening of Friday, May 27, 2011. The Company s counsel and lawyers for SCI had engaged in discussions that same day regarding the delivery of the agreement, the desired timing of the transaction and certain other issues. The most significant issue was SCI s stated condition that 61% of the voting power of the Company s stock be committed to vote in favor of the merger without provision for termination of these voting agreements if the Company pursued its fiduciary out under the merger agreement, which Company counsel indicated was a structure that the special committee was not likely to support.

The special committee considered the first draft of the merger agreement at its meeting held on Tuesday, May 31, 2011. The major issues raised by such first draft were discussed by the special committee with counsel, including: (1) the voting lockups requested by SCI; (2) the relatively low level of dissenting shareholders (1% of the total shares) SCI indicated it was willing to allow; (3) various closing conditions to SCI s obligations; and (4) the termination fees and expenses sought by SCI in the event the merger was not consummated under certain circumstances. This draft of the merger agreement did not include a specific purchase price, which SCI indicated it would provide only upon substantial completion of its due diligence investigation. The special committee also voted to engage Ladenburg to serve as its financial advisor and to render a fairness opinion, which selection was based on the Company s recent experience with Ladenburg in its efforts to help the Company raise capital in the public markets, and Ladenburg s resulting current

Table of Contents

familiarity with the Company, Ladenburg s reputation and experience in similar transactions and Ladenburg s pricing of its services.

At its meeting on Wednesday, June 8, 2011, the special committee discussed with counsel and Ladenburg the need to employ a process designed to obtain the best price per share reasonably obtainable, as opposed to merely achieving a fair price. Kilpatrick Townsend advised the special committee regarding its fiduciary duties in light of the offer by SCI. Management reported that SCI s initial phase of financial and business due diligence was substantially complete, but that legal due diligence and various follow-up questions regarding financial and business matters were continuing. The special committee discussed with counsel the major issues arising from the initial draft of the merger agreement, which included the 61% share lockup, various closing conditions related to cash, indebtedness and the retention of employees, termination fees and reimbursement of expenses and treatment of existing equity awards. Counsel was directed by the special committee to deliver a specific markup of the draft merger agreement back to SCI consistent with the guidance provided by the special committee during the meeting. The marked-up draft of the merger agreement was returned to SCI on June 8. During the next few days SCI continued its due diligence investigation, increasingly focusing on risks it perceived to be associated with the real estate assets owned by the Company. On June 10, 2011, SCI conveyed orally a specific non-binding offer of $3.25 per share, attributing the price coming in at the lower end of its previously expressed range primarily due to concerns over the risks posed by the Company s currently owned real estate. A discussion of open issues among counsel for both companies took place on Monday, June 13, 2011.

At its meeting on Tuesday, June 14, 2011, the special committee discussed with its counsel and financial advisors whether the Company should demand, in light of the purchase price coming in at the low end of SCI s previously expressed range of potential purchase prices, that SCI release it from its exclusivity obligations so that it could further canvass the market for potential buyers, or alternatively that it seek a go shop after signing of the merger agreement to allow such canvassing. The special committee considered the existing operating and liquidity pressures being experienced by the Company and the risks they posed to the Company s ability to increase shareholder value through future growth of its operations, as well as the substantial canvassing of the market for potential purchasers or investors that had already been undertaken by the Company and its financial advisors over the preceding year and a half, coupled with the special committee s desire to not lose the potential SCI offer, which, even at the low end of SCI s previously expressed range, was an all-cash offer at a very substantial premium to current market prices without financing conditions. Based on these factors, the special committee concluded that it would not seek to negotiate a termination of the exclusivity period or a go shop with SCI, but instead would focus on negotiating an increase in the purchase price offered and more reasonable termination fees and expense reimbursements, so that a competing offer from any other interested party would not be discouraged after the merger agreement was publicly announced.

At this June 14, 2011 meeting of the special committee, the status of current negotiations with SCI was reviewed with counsel, including: (1) SCI s willingness to consider allowing voting agreements for Mr. Bernard Abrams side of the Abrams family (representing approximately 27% of the total shares) to terminate upon exercise of the board s fiduciary out; (2) SCI s continuing insistence on a 5.5% termination fee plus an uncapped expense reimbursement under many circumstances upon which the merger agreement could be terminated; (3) new proposed closing conditions added by SCI related to SCI s developing due diligence investigation of the Company s current and formerly-owned real estate assets, including new closing conditions calling for delivery of an appraisal of the Company s owned headquarters facility and clean Phase I environmental reports on each of the Company s owned real properties; and (4) the complexity of the closing cash and indebtedness conditions. Positive developments from negotiations were also noted, such as SCI s apparent acquiescence to the Company s proposal that all in-the-money equity incentives be accelerated to the extent not vested, and cashed-out at closing. It was agreed by the special committee that the Company would counter on price with a $3.75 per share offer, and would demand substantially lower termination fees and a cap on expense reimbursements.

After receipt of a revised draft merger agreement later that day and its review by counsel and discussion with Mr. Gilbert Danielson, the recently-elected Chairman of the special committee, Mr. Danielson then

Table of Contents

engaged in telephone negotiations with Mr. McMeekin, SCI s CEO, on Wednesday, June 15, 2011. Mr. Danielson proposed a purchase price of $3.75 per share, a termination fee in the range of 2.75% to 3.25% of the purchase price and that there be no closing conditions related to retention of employees or with respect to the Company s real estate. During a subsequent telephone conversation on Thursday, June 16, 2011, Mr. McMeekin for the first time raised the concept of SCI agreeing to substantially lower termination fees and to cap expense reimbursements if the Company would agree to release the customer and employee non-solicitation restrictions that were imposed on SCI in the existing confidentiality agreement with the Company, in the event the Company terminated the merger agreement in connection with the board s exercise of its fiduciary out.

At a meeting of the special committee on June 16, 2011, the material outstanding terms of the transaction other than purchase price were discussed, which included various closing conditions and the request that the no-solicitation provisions be terminated in exchange for substantially lower termination fees and capped expense reimbursements. The special committee provided guidance to Mr. Danielson on the material business negotiations.

Mr. Danielson had several more discussions with Mr. McMeekin regarding these material business points over the next few days. During those conversations, Mr. McMeekin agreed to increase the purchase price to $3.50 per share, from the $3.25 previously offered, and various other material points were proposed by Mr. Danielson, including a 2.75% termination fee payable only in more limited circumstances, the elimination of the no-solicitation provisions in the existing SCI confidentiality agreement if the termination fee is triggered, capping and limitation of separate expense reimbursements, elimination of various closing conditions relating to cash, indebtedness, retention of employees and real estate matters, and changes to various other specific provisions in the draft merger agreement.

Company counsel delivered to SCI a revised draft of the merger agreement that reflected these positions on Wednesday, June 22, 2011. Further telephone discussions between Mr. Danielson and Mr. McMeekin over the next several days, as well as negotiations between counsels to the parties, resulted in tentative resolution of all outstanding issues in the draft merger agreement, with the exception of final agreement on the purchase price and the ability of the Company to deliver the requisite shareholder voting agreements.

The special committee considered the negotiations that had taken place during the week at a meeting held on the morning of Friday, June 24, 2011. At this meeting, Ladenburg reviewed the written materials underlying its fairness opinion analysis that had been distributed to the members of the board of directors the previous day. At the conclusion of this presentation, Ladenburg indicated orally that it was of the opinion that the $3.50 purchase price was fair from a financial point of view to the shareholders of the Company. Ladenburg reviewed the rationale for entering into an agreement with SCI providing for the acquisition of the Company in an all-cash transaction for $3.50 per share. The key reasons were:

- The Company s common stock has low volume, resulting in limited liquidity and trading, making it difficult for investors to monetize their equity investment.

- Neither the Company s current size, nor the lack of immediate high growth opportunities, warrant the public status of the Company and the significant expenses incurred as a result.

- The Company is not projected to become profitable in the near term, and would need additional working capital in order to address its liquidity requirements, which would likely result in significant dilution to existing shareholders.

- The proposed merger is the result of a one and a half-year process and extensive marketing by the Company and its advisors to raise capital and/or sell the BPE Segment.

The merger would provide liquidity for shareholders to monetize their shares at a greater than 50% premium to the current share price, and offers the highest current valuation in light of the Company s current capital structure, liquidity requirements, limited growth opportunities, and resulting diminished equity value.

The special committee then reviewed with counsel the negotiations that had taken place during the week and the current status of discussions on the major issues. Counsel advised on the fiduciary duties of the special committee in light of the offer by SCI. The special committee then unanimously determined the merger, the merger agreement and the transactions contemplated thereby, including the purchase price of $3.50 per share, to be advisable and fair to and in the best interests of the Company and its shareholders, and approved and adopted the merger and merger agreement, approved the support agreements and the transactions contemplated thereby, and recommended to the board, among other things, that it approve and adopt the merger agreement and recommend that the Company s shareholders do the same.

The Board immediately thereafter unanimously adopted the special committee s recommendation, determining the merger, the merger agreement and the transactions contemplated thereby to be advisable and fair to and in the best interests of the Company and its shareholders, approving and adopting the merger and merger agreement, approving the support agreements and the transactions contemplated thereby, authorizing and approving the execution, delivery and performance of the merger agreement, directing that the merger agreement and the merger be submitted for consideration by the Company s shareholders at the special meeting and recommending that the shareholders of the Company approve and adopt the merger agreement.

The Board discussed the need for the Bernard Abrams family shareholders to enter into voting agreements with SCI before SCI or the Company would be willing to enter into the merger agreement, and the status and expected timing of such agreement by such shareholders. The Bernard Abrams family shareholders all entered into voting agreements with SCI, and the merger agreement was executed and delivered by both parties, on Sunday, June 26, 2011.

Reasons for the Merger and Recommendation of the Special Committee and the Board of Directors

In the course of reaching its decision to approve the merger agreement and to recommend that our shareholders vote to approve the merger agreement, the special committee and our board of directors consulted with our senior management, financial advisors and legal counsel, reviewed a significant amount of information and considered a number of factors, including, among others, the following:

the business, competitive position, strategy and prospects of the Company; the risk that we will not be able to successfully implement our strategy and achieve our prospects without an infusion of new capital; the fact that we are not projected to become profitable in the near term; our continuing needs for substantial additional working capital in order to address our liquidity requirements, which necessitated turning to certain of our directors and executive officers for loans in recent history, and in the future could result in significant dilution to existing shareholders; our recent history of consolidated and operating net losses; the possibility that our key employees might be at risk if liquidity pressures necessitated further expense reductions or if competitors succeeded in portraying the Company as financially vulnerable; the fact that our reliance on a small number of large customer contracts heightens the risk that we will not be able to successfully execute a continuing growth strategy; the competitive position of current and likely competitors in the industry in which we compete; and current industry, economic, and market conditions;

the possible alternatives to the merger (including the possibility of continuing to operate as an independent entity and the perceived risks and capital needs associated with that alternative); the range of potential benefits to our shareholders of the possible alternatives, and the timing and the likelihood of accomplishing the goals of such alternatives; and the special committee s and our board s assessment that none of these alternatives to the merger were reasonably likely to present superior opportunities for the Company or to create greater value for our shareholders, taking into account risks of execution as well as business, competitive, industry, and market risks;

the fact that our discussions with other potential investors and acquirors during a more than one and a half-year marketing process by the Company and our multiple financial advisors to raise capital and/or sell the BPE Segment did not result in any indications of interest that were as financially attractive and/or certain of closing as the merger;

the $3.50 per share to be paid as the consideration in the merger represents a meaningful premium over historical trading prices of Company common stock. The $3.50 per share consideration represents a 53.5% premium over $2.28, the closing price of Company common stock on June 22, 2011, two (2) trading days prior to our board s approval of the merger; a 47.4% premium over $2.37, the volume weighted average of the closing prices of Company common stock for the month ending June 22, 2011; and a 35.7% premium over $2.58, the volume weighted average of the closing prices of Company common stock for the six months ending June 22, 2011;

the Company s tangible book value and total book value per share, which at January 31, 2011, were $1.26 and $3.59, respectively, and were projected to decrease in future periods;

the financial analyses reviewed with our board of directors by representatives of Ladenburg on June 24, 2011, and the oral opinion of Ladenburg rendered to the special committee on that day, which opinion was subsequently confirmed by delivery of a written opinion to the effect that, as of the date of the written opinion and based upon and subject to the considerations described in the written opinion, the $3.50 per share consideration in cash to be received by the holders of Company common stock in the merger was fair, from a financial point of view, to such shareholders (a copy of the full text of the Ladenburg opinion is attached to this proxy statement as Annex D; and you are urged to read the opinion carefully and in its entirety for a description of, among other things, the procedures followed, assumptions made, matters considered, and qualifications and limitations on the review undertaken by Ladenburg in rendering its opinion);

the value of the consideration to be received by our shareholders and the fact that the consideration would be paid in cash, which provides certainty and immediate value to our shareholders, coupled with the fact that our common stock historically has had very low volume, resulting in limited liquidity and trading, making it difficult for investors to monetize their equity investment in the Company;

the Company s current size, coupled with the lack of sufficient immediate high-growth opportunities, do not warrant the public status of the Company and the significant expenses incurred as a result, particularly in relation to the Company s relatively small size;

the fact that holders of approximately 56% of our outstanding shares of common stock have executed voting agreements evidencing their support for the SCI acquisition, while certain of these shareholders who are holders of 27% of the total shares outstanding are not obligated to vote for the merger with SCI if our board changes its recommendation supporting the merger due to the existence of a superior offer under the circumstances provided for in the merger agreement, so that those shareholders could still vote for a superior offer if one were to materialize;

the fact that the special committee, consisting entirely of non-management directors, was involved in extensive efforts over more than one and a half years to seek an investor in or acquiror of the BPE Segment or the Company, and then was involved in extensive negotiations with SCI with respect to the merger, and in each such process was provided broad authority and sufficient resources, including access to the Company s management and counsel and financial advisors, to effectively fulfill its responsibilities to the Company and its shareholders;

the fact that the merger is not subject to any financing condition, and the likelihood that the proposed acquisition would be completed, in light of the financial capabilities of SCI;

the fact that the terms of the merger agreement provided reasonable certainty of consummation, because it was subject to and included conditions that the special committee believed would be reasonably likely to be satisfied;

the fact that the provisions of the merger agreement were determined through arms length negotiations between us and our counsel, on the one hand, and SCI and its counsel, on the other hand; and

the special committee s understanding, after consultation with financial and legal advisors, that the termination fee (and the circumstances when such fee is payable) set forth in the merger agreement was reasonable and customary in light of the benefits of the merger contemplated by the merger agreement, commercial practice and transactions of similar size and nature.

In the course of its deliberations, our board of directors also considered a variety of risks and other potentially negative factors, including the following:

the fact that we will no longer exist as an independent public company and our shareholders will forgo any future increase in our value that might result from our possible growth;

the risks and contingencies related to the announcement and pendency of the merger, including the effect of the merger on our customers, employees, suppliers and our relationships with other third parties;

the conditions to SCI s obligation to complete the merger and the right of SCI to terminate the merger agreement in certain circumstances, including for certain breaches by us of our representations, warranties, covenants and agreements in the merger agreement;

the risks of noncompletion of the merger, including the expenditure of significant financial advisory and legal fees and the diversion of management attention;

the fact that under the terms of the merger agreement, we cannot solicit other acquisition proposals and must pay to SCI a termination fee of $460,000 and/or reimburse its merger-related expenses up to a maximum of $450,000 if the merger agreement is terminated under certain circumstances, which might have the effect of discouraging other parties from proposing an alternative transaction that might be more advantageous to our shareholders than the merger;

the fact that holders of approximately 56% of our outstanding shares of common stock have executed voting agreements agreeing to vote in favor of the SCI acquisition (notwithstanding that certain of these shareholders who are holders of 27% of the total shares outstanding are not obligated to vote for the SCI merger if our board changes its recommendation supporting the merger), which might similarly have the effect of discouraging other parties from proposing an alternative transaction that might be more advantageous to our shareholders than the merger;

the fact that the income realized by shareholders as a result of the merger generally will be taxable to our shareholders;

the interests that our directors and executive officers have or may have with respect to the merger, in addition to their interests as shareholders of the Company generally, as described in The Merger Interests of Company Directors and Executive Officers in the Merger; and

the fact that, pursuant to the merger agreement, we are subject to a variety of other restrictions on the conduct of our business prior to closing of the merger or termination of the merger agreement, which may delay or preclude actions that would be advisable if we were to remain an independent company.

The foregoing discussion of the factors considered by the special committee and our board of directors is not intended to be exhaustive, but rather includes material factors that the special committee and our board considered in approving and recommending the merger. In view of the wide variety of factors considered by the special committee and our board in connection with its evaluation of these transactions and the complexity of these factors, the special committee and our board of directors did not consider it practical to, nor did they attempt to, quantify, rank or otherwise assign any specific or relative weights to the specific factors considered in reaching their determination. The special committee and our board of directors considered all of these factors as a whole, and determined that the transaction was in the best interests of the Company and its shareholders. In considering the factors described above, individual directors may have assigned different weights to different factors.

It should be noted that portions of the explanation of the special committee and our board of directors reasoning and other information presented in this section are forward-looking in nature and, therefore, should be read along with the factors discussed under the caption Forward-Looking Information on page 14 of this proxy statement.

Table of Contents

For the reasons set forth above, the board of directors, based upon the unanimous recommendation of the special committee, unanimously determined the merger, the merger agreement and the transactions contemplated thereby to be advisable and fair to and in the best interests of the Company and its shareholders, approved and adopted the merger and the merger agreement, authorized and approved the execution, delivery and performance of the merger agreement by the Company, directed that the merger and merger agreement be submitted for approval by our shareholders at the special meeting, and recommends that our shareholders vote FOR approval of the merger agreement and FOR the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Opinion of the Company s Financial Advisor

Ladenburg made a presentation to the special committee on June 24, 2011 and subsequently delivered its written opinion to the special committee. The opinion stated that, as of June 24, 2011, based upon and subject to the assumptions made, matters considered, procedures followed and limitations on Ladenburg s review as set forth in the opinion, the per share consideration to be received by our shareholders in the merger is fair, from a financial point of view, to our shareholders.

The full text of Ladenburg s written opinion dated as of June 24, 2011, which sets forth the assumptions made, matters considered, procedures followed, and limitations on the review undertaken by Ladenburg in rendering its opinion, is attached as Annex D to this proxy statement and is incorporated herein by reference. Ladenburg s opinion is not intended to be, and does not constitute, a recommendation to you as to how you should vote or act with respect to the merger or any other matter relating thereto. The summary of the Ladenburg opinion set forth in this proxy statement is qualified in its entirety by reference to the full text of the opinion. We urge you to read the opinion carefully and in its entirety.

Ladenburg s opinion is for the use and benefit of the special committee in connection with its consideration of the merger. Ladenburg s opinion may not be used by any other person or for any other purpose without Ladenburg s prior written consent. Ladenburg s opinion should not be construed as creating any fiduciary duty on its part to any party.

Ladenburg was not requested to opine as to, and its opinion does not in any manner address, the relative merits of the merger as compared to any alternative business strategy that might exist for us, whether we should complete the merger, and other alternatives to the merger that might exist for us. Ladenburg does not express any opinion as to the underlying valuation or future performance of the Company or the price at which our securities might trade at any time in the future.

Ladenburg s analysis and opinion are necessarily based upon market, economic and other conditions, as they existed on, and could be evaluated as of, June 24, 2011. Accordingly, although subsequent developments may affect its opinion, Ladenburg assumed no obligation to update, review or reaffirm its opinion to us or any other person.

In arriving at its opinion, Ladenburg took into account an assessment of general economic, market and financial conditions, as well as its experience in connection with similar transactions and securities valuations generally. In so doing, among other things, Ladenburg:

Reviewed drafts of the merger agreement and the support agreements dated as of June 23, 2011.

Reviewed publicly available financial information and other data with respect to the Company that it deemed relevant, including the Company s Annual Report on Form 10-K for the year ended April 30, 2010, its Quarterly Report on Form 10-Q for the quarter ended January 31, 2011, and the amended versions of such filings.

Reviewed non-public information and other data with respect to the Company, including unaudited financial statements for the year ended April 30, 2011, financial projections for the four (4) year period ending April 30, 2015 (the Projections), and other internal financial information and management reports provided to Ladenburg by the Company.

Considered the historical financial results and present financial condition of the Company.

Reviewed certain publicly available information concerning the trading of, and the trading market for, the Company s common stock.

Reviewed and analyzed the Company s projected unlevered free cash flows derived from the Projections and prepared a discounted cash flow analysis.

Reviewed and analyzed certain financial characteristics of publicly-traded companies that were deemed to have characteristics comparable to the Company.

Reviewed and analyzed certain financial characteristics of target companies in transactions where such target company was deemed to have characteristics comparable to that of the Company.

Reviewed and analyzed the premiums paid in certain other transactions that were deemed appropriate.

Reviewed the premiums and discounts implied by the per share consideration over the Company s stock price for various periods.

Reviewed and discussed with the Company s management and other Company representatives certain financial and operating information furnished by them, including financial analyses and the Projections with respect to the Company s business and operations.

Performed such other analyses and examinations as were deemed appropriate.

In arriving at its opinion, with our consent, Ladenburg relied upon and assumed, without assuming any responsibility for independent verification, the accuracy and completeness of all of the financial and other information that was supplied or otherwise made available to Ladenburg and Ladenburg further relied upon the assurances of Company management that they were not aware of any facts or circumstances that would make any such information inaccurate or misleading. With respect to the financial information and the Projections reviewed, Ladenburg assumed that such information was reasonably prepared on a basis reflecting the best currently available estimates and judgments, and that such information provided a reasonable basis upon which it could make its analysis and form an opinion. The Projections were solely used in connection with the rendering of Ladenburg s fairness opinion. Material portions of the Projections are summarized under the caption Projected Financial Information starting on page 39 of the proxy statement. Shareholders should not place undue, if any, reliance upon such Projections, as they are not necessarily an indication of what our revenues and profit margins will be in the future. The Projections were prepared by the Company s management and are not to be interpreted as projections of future performance (or guidance) by the Company. Ladenburg did not evaluate the solvency or fair value of the Company under any applicable foreign, state or federal laws relating to bankruptcy, insolvency or similar matters. Ladenburg did not physically inspect our properties and facilities and did not make or obtain any evaluations or appraisals of our assets and liabilities (including any contingent, derivative or off-balance sheet assets and liabilities). Ladenburg did not attempt to confirm whether the Company had good title to its assets.

Ladenburg assumed that the merger will be consummated in a manner that complies in all respects with applicable foreign, federal, state and local laws, rules and regulations. Ladenburg assumed, with our consent, that the final executed forms of the merger agreement do not differ in any material respect from the drafts Ladenburg reviewed and that the merger will be consummated on the terms set forth in the merger agreement, without further amendments thereto, and without waiver by the Company of conditions to any of its obligations thereunder or in the alternative that any such amendments or waivers thereto will not be detrimental to the Company or its shareholders in any material respect.

In connection with rendering its opinion, Ladenburg performed certain financial, comparative and other analyses as summarized below. Each of the analyses conducted by Ladenburg was carried out to provide a different perspective on the merger, and to enhance the total mix of information available. Ladenburg did not form a conclusion as to whether any individual analysis, considered in isolation, supported or failed to support its opinion. Further, the summary of Ladenburg s analyses described below is not a complete description of the analyses underlying Ladenburg s opinion. The preparation of a fairness opinion is a complex process involving various determinations as to the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and, therefore, a fairness opinion is not readily susceptible to partial analysis or summary description. In arriving at its opinion, Ladenburg made qualitative judgments as to the relevance of each analysis and factors that it considered. Also, Ladenburg may have given various analyses more or less weight than other analyses, and may have deemed various assumptions more or less probable than other assumptions, so that the range of valuations resulting from any particular analysis described below should not be taken to be Ladenburg s view of the value of our assets. The estimates contained in Ladenburg s analyses and the ranges of valuations resulting from any particular analysis are not necessarily indicative of actual values or actual future results, which may be significantly more or less favorable than suggested by such analyses. Also, analyses relating to the value of businesses or assets neither purport to be appraisals nor do they necessarily reflect the prices at which businesses or assets may actually be sold. Accordingly, Ladenburg s analyses and estimates are inherently subject to substantial uncertainty. Ladenburg believes that its analyses must be considered as a whole and that selecting portions of its analyses or the factors it considered, without considering all analyses and factors collectively, could create a misleading or incomplete view of the process underlying the analyses performed by Ladenburg in connection with the preparation of its opinion.

The summaries of the financial reviews and analyses include information presented in tabular format. To fully understand Ladenburg s financial reviews and analyses, you must read the tables together with the accompanying text of each summary. The tables alone do not constitute a complete description of the financial analyses, including the methodologies and assumptions underlying the analyses, and if viewed in isolation could create a misleading or incomplete view of the financial analyses Ladenburg performed.

The analyses performed were prepared solely as part of Ladenburg s analysis of the fairness to our shareholders of the per share consideration to be received by our shareholders in the merger from a financial point of view, and were provided to the special committee in connection with the delivery of Ladenburg s opinion. Ladenburg s opinion was just one of the several factors the special committee took into account in making its determination to approve the merger, including those described elsewhere in this proxy statement.

Stock Performance Review. Ladenburg reviewed the daily closing market price and trading volume of our common stock for the 12-month period ended June 22, 2011 and noted that the low volume of the Company s common stock had resulted in limited liquidity and trading. The Company s common stock traded at a price per share of between $1.84 and $3.02, and a mean and median volume of 6,932 and 2,560 shares, respectively.

Valuation Overview. Ladenburg generated an indicated valuation range for us based on a discounted cash flow analysis, a comparable company analysis and a comparable transaction analysis each as more fully discussed below. Ladenburg weighted the three approaches equally and arrived at an indicated equity value per share range of approximately $2.00 to approximately $2.90. Ladenburg noted that the $3.50 per share consideration is higher than this indicated equity value per share range.

Discounted Cash Flow Analysis. A discounted cash flow analysis estimates value based upon a company s projected future free cash flow discounted at a rate reflecting risks inherent in its business and capital structure. Unlevered free cash flow represents the amount of cash generated and available for principal, interest and dividend payments after providing for ongoing business operations.

While the discounted cash flow analysis is the most scientific of the methodologies used, it is dependent on projections and is further dependent on numerous industry-specific and macroeconomic factors.

Ladenburg utilized the Projections, which forecast a compound annual growth rate, or CAGR, of approximately 12.9% in revenue from FY 2011 through FY2015. The projections also forecast an improvement in EBITDA margin from FY2011 to FY2015, from approximately -5.5% to 6.3%. For purposes of Ladenburg s analyses, EBITDA means earnings before interest, taxes, depreciation and amortization, as adjusted for add-backs for discontinued operations and gains from sale of properties. Ladenburg noted that the Company does not project to become EBITDA positive before FY2013.

To arrive at a present value, Ladenburg utilized discount rates ranging from 16.5% to 18.5%. This was based on an estimated weighted average cost of capital of 17.4% (based on an estimated weighted average cost of debt of 7.5% and 19.9% estimated cost of equity). The cost of equity calculation was based on the capital asset pricing model and was derived utilizing the unlevered beta of the comparable companies, the Company s capital structure, the appropriate equity risk and size premiums and a company specific risk factor, reflecting the risks associated with the Projections, including, but not limited to achieving the projected revenue growth and increasing EBITDA margins throughout the projection period.

Ladenburg presented a range of terminal values at the end of the forecast period by applying a range of terminal exit multiples based on revenue. Ladenburg determined to utilize terminal revenue multiples of between 0.60x and 0.70x by examining the range indicated by the comparable companies and comparable transactions, and taking into account certain company-specific factors, such as our size and projected profitability.

Utilizing terminal revenue multiples of between 0.60x and 0.70x, Ladenburg calculated a range of indicated enterprise values and then deducted net debt of approximately $3.9 million as of April 30, 2011 (which includes approximately $6.0 million in interest bearing debt less approximately $2.1 million in cash) to derive a per share range of indicated equity values of approximately $2.20 to approximately $3.10, based on approximately 3.7 million shares and in-the-money stock appreciation rights, or SARs, outstanding, utilizing the treasury stock method. For purposes of Ladenburg s analyses, enterprise value means equity value plus all interest-bearing debt less cash.

Comparable Company Analysis. A selected comparable company analysis reviews the trading multiples of publicly traded companies that are similar to the Company with respect to business and revenue model, operating sector, size and target customer base.

Ladenburg identified the following six (6) companies that it deemed comparable to the Company. The selected comparable companies provide energy and facilities services, have a market capitalization of less than $300 million and revenues greater than $10 million.

TRC Companies Inc.

PowerSecure International, Inc.

Lime Energy Co.

Orion Energy Systems, Inc.

Comverge, Inc.

Fortress International Group, Inc.

All of the comparable companies are substantially larger than the Company in terms of revenue, with latest twelve months, or LTM, revenue ranging from approximately $67.4 million to approximately $240.0 million, compared with the Company s revenue for FY 2011 of approximately $26.2 million.

Ladenburg noted that all of the comparable companies (except Comverge) had higher LTM EBITDA than the Company, with LTM EBITDA margins ranging from approximately -5.6% to 7.5%, compared with the Company s LTM EBITDA for FY 2011 of approximately -5.5%. In addition, the Company is substantially more leveraged than the comparable companies, with debt to total capital ratios for the comparable companies ranging from 0.4% to 25.5%, compared with the Company s ratio of approximately 41.9% as of April 30, 2011.

Multiples utilizing enterprise value were used in the analyses. For comparison purposes, all operating profits including EBITDA were normalized to exclude unusual and extraordinary expenses and income.

Ladenburg generated the following multiples worth noting with respect to the comparable companies:

Enterprise Value Multiple of	Mean	Median	High	Low
LTM revenue	0.79x	0.82x	1.26x	0.29x
CY 2011 revenue	0.75x	0.73x	1.01x	0.48x
CY 2012 revenue	0.66x	0.68x	0.85x	0.39x

Ladenburg selected an appropriate multiple range for us by examining the range indicated by the comparable companies and taking into account certain company-specific factors. Ladenburg selected multiples below the mean of the comparable companies to reflect our lower EBITDA margins, higher leverage, and smaller size and the risks associated with achieving the Projections. Based on the above factors, Ladenburg applied the following multiples to our respective statistics:

FY 2011 revenue multiples of 0.45x to 0.55x

FY 2012E revenue multiples of 0.40x to 0.50x

FY 2013E revenue multiples of 0.35x to 0.45x

and calculated a range of indicated enterprise values for us by weighting the above indications equally and then deducted net debt of approximately $3.9 million as of April 30, 2011, and an estimated $2.2 million of additional working capital assumed necessary to meet current liquidity requirements and achieve Projections to derive a minority-level indicated equity value range. Ladenburg then applied a control premium of 30.0% and generated a per share range of equity values of approximately $2.00 to approximately $3.00, based on approximately 3.7 million shares and in-the-money SARs outstanding, utilizing the treasury stock method.

None of the comparable companies have characteristics identical to us. An analysis of publicly traded comparable companies is not mathematical; rather it involves complex considerations and judgments concerning differences in financial and operating characteristics of the comparable companies and other factors that could affect the public trading of the comparable companies.

Comparable Transaction Analysis. A comparable transaction analysis involves a review of merger, acquisition and asset purchase transactions involving target companies that are in related industries to the Company. The comparable transaction analysis generally provides the widest range of values due to the varying importance of an acquisition to a buyer (i.e., a strategic buyer willing to pay more than a financial buyer) in addition to the potential differences in the transaction process (i.e., competitiveness among potential buyers).

Ladenburg identified the following twenty-nine (29) transactions announced since January 2008 involving target companies providing construction, energy, and facilities services for which detailed financial information was available.

Target	Acquirer
Xnergy	Blue Earth Inc. *(OTCBB:BBLU)*
MACTEC, Inc.	AMEC plc *(LSE:AMEC)*
USM Service Holdings, Inc.	EMCOR Group Inc. *(NYSE:EME)*

OTAK, Inc.	HanmiGlobal Co., Ltd. *(KOSE:A053690)*
Colombus/Worthington Air and Brothers Air and Heat	American Residential
Delta Mechanical Contractors LLC	Iron Eagle Group, Inc. *(OTCPK:IEAG)*
Fisk Corporation	Tutor Perini Corporation *(NYSE:TPC)*
The Dwyer Group Inc.	TZP Group
The Linc group, Inc.	ABM Industries Inc. *(NYSE:ABM)*
Eastern Research Group, Inc.	AEA Technology Group plc *(LSE:AAT)*
PBSJ Corp.	WS Atkins plc *(LSE:ATK)*
ColonialWebb Contractors Co. Inc.	Comfort systems USA Inc. *(NYSE:FIX)*
Tishman Construction Corporation	AECOM Technical Services, Inc.

Target	Acquirer
The LPA Group Incorporated	Michael Baker Corporation *(AMEX:BKR)*
Spaw Maxwell Company LP	Balfour Beatty Construction LLC
Ecos Consulting, Inc.	Advantage IQ, Inc.
SAIC Energy, Environment & Infrastructure, LLC	SAIC, Inc. *(NYSE:SAI)*
Malcolm Pirnie, Inc.	Arcadis US, Inc.
RT Dooley- A Balfour Beatty Company	Balfour Beatty Construction Group, Inc.
Cardno TBE	Cardno Limited *(ASX:CDD)*
Acro Electric, Inc.	Acro Energy Technologies Corp. *(TSXV:ART)*
Applied Energy Management Inc.	Lime Energy Co. *(NASDAQ:LIME)*
Willdan Energy Solutions	Willdan Group, Inc. *(NASDAQ:WLDN)*
Barnhart, Inc.	Heery International, Inc.
Conditioned Air Mechanical Services, Inc.	Comfort Systems USA Inc.*(NYSE:FIX)*
Maverick Engineering, Inc.	Platinum Energy Resources Inc. *(OTCPK:PGRI)*
Safety and Ecology Corporation	Homeland Security Capital Corporation *(OTCBB:HOMS)*
Riddleberger Brothers, Inc.	Comfort Systems USA Inc. *(NYSE:FIX)*
Southern Management Company	ABM Industries Inc. *(NYSE:ABM)*

Based on the information disclosed with respect to the targets in each of the comparable transactions, Ladenburg calculated and compared the enterprise values as a multiple of LTM revenue.

Ladenburg noted the following with respect to the multiples generated:

Multiple of Enterprise Value to	Mean	Median	High	Low
LTM revenue (without earnouts)	0.56x	0.51x	1.47x	0.07x
LTM revenue (with earnouts)	0.61x	0.52x	2.02x	0.07x

Ladenburg selected multiples for us somewhat below the mean of the comparable transactions multiples due to our lower profitability and size. Based on such factors, Ladenburg applied a multiple range of 0.50x to 0.60x to our LTM revenue, calculated a range of indicated enterprise values and then deducted net debt of approximately $3.9 million as of April 30, 2011, and an estimated $2.2 million of additional working capital assumed necessary to meet current liquidity requirements and achieve Projections to derive an indicated per share equity value range of approximately $1.90 to approximately $2.60, based on approximately 3.7 million shares and in-the-money SARs outstanding utilizing the treasury stock method.

None of the target companies in the comparable transactions have characteristics identical to us. Accordingly, an analysis of comparable business combinations is not mathematical; rather it involves complex considerations and judgments concerning differences in financial and operating characteristics of the target companies in the comparable transactions and other factors that could affect the respective acquisition values.

Premiums Paid / Implied Transaction Premium Analysis. The premiums paid analysis involves the examination of the acquisition premiums derived in transactions where a controlling interest of a public company was acquired and the comparison of the observed premiums to the premium implied by the per share consideration paid in the merger. Ladenburg reviewed the one-day, one-week and one-month premium for all controlling interest transactions where:

The transaction was announced on or after January 2009;

The target market capitalization was between $5 million and $300 million; and

The target company is based in the United States.

Ladenburg reviewed 265 transactions that met these criteria and calculated the mean and median of the acquisition premiums. They were 36.5% and 35.5%, for the one-day premium, 40.9% and 38.5%, for the one-week premium, and 48.8% and 40.8% for the one-month premium. The acquisition premiums in transactions that occurred in 2011 were lower, and were 31.2% and 33.6%, for the one-day premium, 33.1% and 34.4%, for the one-week premium, and 36.9% and 34.2% for the one-month premium.

Also, Ladenburg reviewed the premium/discount implied by the per share consideration with respect to our closing market stock price for various periods. The merger consideration represents a one-day premium of approximately 53.5%, a one week premium of 58.4%, and a one-month premium of 44.0%, each of which was significantly higher than the premiums observed in the premiums paid analysis.

None of the target companies in the premiums paid analysis have characteristics identical to us. Accordingly, an analysis of comparable business combinations is not mathematical; rather it involves complex considerations and judgments concerning differences in financial and operating characteristics of the target companies in the acquisition premiums analysis and other factors that could affect the respective acquisition values.

Conclusion. Based on the information and analyses set forth above, Ladenburg delivered its written opinion to the special committee, which stated that, as of June 24, 2011, based upon and subject to the assumptions made, matters considered, procedures followed and limitations on its review as set forth in the opinion, the per share consideration to be received by the Company s shareholders in the merger is fair, from a financial point of view, to the Company s shareholders. Ladenburg s opinion does not express an opinion about the fairness of the amount or nature of the compensation, if any, to any of our officers, directors or employees, or class of such persons, relative to the compensation to our shareholders.

As part of its investment banking business, Ladenburg regularly is engaged in the evaluation of businesses and their securities in connection with mergers, acquisitions, corporate restructurings, negotiated underwritings, private placements and for other purposes. We determined to use the services of Ladenburg because it is a recognized investment banking firm that has substantial experience in similar matters. Ladenburg has received a fee of $150,000 in connection with the preparation and issuance of its opinion and rendering advice to the special committee with respect to the merger, and will be reimbursed for its reasonable expenses, including attorneys fees, none of which payments were contingent upon the execution of the merger agreement or the completion of the merger. Also, we have agreed to indemnify Ladenburg and related persons and entities for certain liabilities that may relate to, or arise out of, its engagement. Ladenburg has previously provided certain capital raising services to the Company, for which it received a $25,000 retainer.

In the ordinary course of business, Ladenburg, certain of Ladenburg s affiliates, as well as investment funds in which Ladenburg or its affiliates may have financial interests, may acquire, hold or sell long or short positions, or trade or otherwise effect transactions in debt, equity, and other securities and financial instruments (including bank loans and other obligations) of, or investments in, the Company, or any other party that may be involved in the merger and their respective affiliates.

Projected Financial Information

The Company does not, as a matter of course, make public forecasts or projections as to future performance or financial data and is especially wary of making projections for extended earnings periods due to the inherent unpredictability of the underlying assumptions and estimates. However, in the course of the process resulting in the merger agreement, our management prepared and provided to Ladenburg non-public, projected financial information for the four (4) year period ending April 30, 2015 (the Projections), which was based on our management s estimate of our future financial performance as of the date the Projections were prepared. We have included below the material portions of the Projections to give our shareholders access to certain non-public information prepared for purposes of considering and evaluating the merger. The inclusion of this information should not be regarded as an indication that the Company, its board of directors, the special committee or Ladenburg considered, or now considers, this information to be a reliable prediction of actual future results, and such data should not be relied upon as such.

Table of Contents

The Projections were not prepared with a view to public disclosure and are included in this proxy statement only because they were provided to Ladenburg. Nor were they prepared with a view toward compliance with the published guidelines of the SEC or guidelines established by the American Institute of Certified Public Accountants. Deloitte & Touche LLP, our independent registered public accounting firm, has not examined, compiled or performed any procedures with respect to the Projections, and accordingly does not provide any form of assurance with respect to the Projections.

The Projections are subjective in many respects, and thus susceptible to various interpretations based on actual experience and business developments. Moreover, since the Projections cover multiple years, such information by its nature becomes less reliable with each successive year. The reliability of the Projections is also negatively affected by the difficulty the Company has historically encountered in predicting when revenues from large contracts will be recognized.

The Projections are considered forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, and are subject to the risks and uncertainties described under Forward-Looking Information on page 14. Accordingly, there can be no assurance that the assumptions made in preparing the Projections will prove accurate, and actual results may be materially different than those contained in the Projections.

Furthermore, the Projections:

- while presented with numerical specificity, necessarily are based on numerous assumptions, many of which are beyond our control, including industry performance, general business, economic, regulatory, market and financial conditions, as well as matters specific to our business, and may not prove to have been, or may no longer be, accurate;

- do not necessarily reflect revised or updated prospects for our business, changes in general business, economic, regulatory, market and financial conditions, or any other transaction or event that has occurred or that may occur and that was not anticipated at the time the Projections were prepared;

- are not necessarily indicative of current values or future performance, which may be significantly more favorable or less favorable than as set forth below; and

- should not be regarded as a representation or a guarantee that the Projections will be achieved.

In light of the foregoing factors and the uncertainties inherent in the Projections, shareholders are cautioned not to place undue, if any, reliance on the Projections.

The Projections are summarized in the following table:

	Year Ended April 30,			
	2012	**2013**	**2014**	**2015**
	(In millions)			
Revenue	$ 29.1	$ 35.0	$ 38.7	$ 42.6
EBITDA	(0.8)	0.8	1.8	2.7
Unlevered Free Cash Flows	(1.8)	(0.5)	0.7	1.2

Non-GAAP Measures

Neither EBITDA nor unlevered free cash flows in the foregoing table are financial measures under U.S. generally accepted accounting principles (GAAP).

The Company believes EBITDA earnings before interest, taxes, depreciation and amortization is a useful non-GAAP measurement of the Company s performance, because it facilitates comparison of the Company s performance across reporting periods on a consistent basis by excluding items that the Company does not believe are indicative of its core operating performance. EBITDA has limitations as an analytical tool. Some of these limitations are:

- EBITDA does not reflect the Company s cash capital expenditures, or future requirements for capital expenditures, or contractual commitments;
- EBITDA does not reflect changes in, or cash requirements for, working capital needs;
- EBITDA does not reflect the significant interest expense or the cash requirements necessary to service interest or principal payments on indebtedness; and
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replaced in the future, and EBITDA does not reflect any cash requirements for such replacements.

Unlevered free cash flows is EBITDA less capital expenditures, changes in net working capital and taxes. The Company believes this measure is useful because it represents the amount of cash generated and available for principal, interest and dividend payments after providing for ongoing operations.

You should not consider EBITDA or unlevered free cash flows as alternatives to, or more meaningful indicators of, the Company s operating performance or liquidity than earnings before taxes, as set forth in the Company s consolidated statements of operations, or cash flow measures as set forth in the Company s consolidated statements of cash flows, or other financial measures determined in accordance with GAAP. Moreover, other companies in the Company s industry may calculate EBITDA and unlevered free cash flows differently, potentially limiting their usefulness as comparative measures.

Interests of Company Directors and Executive Officers in the Merger

In considering the recommendation of the Company s special committee and board of directors with respect to the merger agreement, shareholders should be aware that the Company s directors and executive officers have interests in the merger, and have arrangements that are different from, or in addition to, those of the Company s shareholders generally. These interests could create potential conflicts of interest.

The special committee and the board of directors were aware of these interests, and considered them, among other matters, in reaching its decisions to approve the merger agreement and to recommend that the Company s shareholders vote in favor of adopting the merger agreement.

These interests relate to or arise from:

- payment of severance and certain other separation benefits to two (2) executive officers who, as a result of the merger, are expected to lose employment with the Company following consummation of the merger;
- the expectation that the other two (2) Company executive officers will continue employment after the consummation of the merger;
- repayment of loans made to the Company by certain directors and executive officers;
- acceleration of vesting of all in-the-money stock appreciation rights to the extent not vested, and the cash out of any in-the-money stock appreciation rights, held by executive officers;

distribution of vested nonqualified deferred compensation plan accounts to directors and executive officers, and possible distribution of vested 401(k) plan accounts to those executive officers participating in such plan;

reimbursement by the Company of certain personal legal expenses incurred by executive officers in connection with the merger;

indemnification, expense advancement and liability exculpation provisions in the merger agreement in favor of the Company s directors and officers; and the purchase by SCI of a six-year tail directors and officers liability insurance policy to cover the directors and officers currently covered by the Company s directors and officers liability insurance policy.

Merger-Related Compensation

In accordance with Item 402(t) of the SEC s Regulation S-K, the following table sets forth for the Company s chief executive officer and for its two most highly compensated executive officers, other than the chief executive officer, serving as such at the end of the Company s fiscal year ended April 30, 2011, sometimes referred to collectively as the named executive officers certain compensation related to the merger.

Name	Cash(1)	Equity(2)	Pension/ NQDC(3)	Perquisites/ Benefits(4)	Other(5)	Total
Alan R. Abrams Chairman of the Board and Chief Executive Officer	$ 254,457	$ 26,790	$ 807,620	$ 35,034	$ 5,000	$ 1,128,901
M. Todd Jarvis President and Chief Operating Officer		66,300	170,293		5,000	241,593
J. Andrew Abrams Executive Vice President	145,190		690,750	35,034	5,000	875,974

(1) Represents severance payable pursuant to the terms of the Company s 1993 Salaried Employees Severance Plan.

(2) Represents the difference between the aggregate exercise prices of stock appreciation rights whose exercise prices are less than $3.50 per share and the aggregate per share merger consideration for the shares obtainable upon exercise of the rights assuming a fair market value of $3.50 per share.

(3) Represents the officer s vested account balances as of April 30, 2011 in the Company s 401(k) plan and its nonqualified senior management deferred compensation plan. All plan participants are entitled under the preexisting terms of the plans to distributions of their account balances in connection with the termination of such plans at the closing of the merger or in connection with the termination of their employment.

(4) Consists of (a) payment by the Company of up to $15,000 each in outplacement services and (b) estimated health insurance premiums of $20,034 each to continue health insurance coverage at the Company s expense for eighteen (18) months following the closing of the merger.

(5) Represents the right to be reimbursed by the Company for up to $5,000 in personal legal expenses incurred in connection with the merger.

For additional information on the compensation and benefits described above, see the relevant portions of the following discussion.

Severance and Other Separation Benefits for Alan R. Abrams and J. Andrew Abrams

In connection with the consummation of the merger, it is anticipated that two of the Company s four (4) executive officers Chairman and Chief Executive Officer Alan R. Abrams, and Executive Vice President J. Andrew Abrams, will lose employment with the Company, as a result of the merger.

On June 24, 2011, the compensation committee of the Company s board of directors determined that all employees whose employment is terminated as a result of the merger would be entitled to severance under the Company s 1993 Salaried Employees Severance Plan, or the Plan, in the amounts determined pursuant to the preexisting terms of the Plan. The Plan provides for the payment of severance to full-time salaried employees of the Company and its subsidiaries, based generally on the length of service of an employee and his or her base salary. Severance under the Plan is generally payable on regular Company paydays at the same rate per pay period as the terminated employee s base salary, or in a lump sum at the option of the Company, in each case less any applicable deductions.

Table of Contents

The merger agreement provides that such severance payments shall be made to, among other employees, two (2) executive officers, who as a result of the merger are expected to lose employment with the Company Alan R. Abrams, Chairman of the Board and Chief Executive Officer, and J. Andrew Abrams, Executive Vice President upon the closing of the merger. These severance payments will be made in a lump sum at the closing of the merger. The compensation committee also approved certain other separation benefits for these executive officers, consisting of reimbursement of outplacement services and personal legal fees incurred in connection with the merger up to a maximum of $5,000 each, and continuation of medical insurance at the Company s expense for eighteen (18) months following the closing of the merger. The amount of such payments and benefits are set forth in the table above under Merger-Related Compensation.

Continuation of Employment and Personal Legal Fee Reimbursement for M. Todd Jarvis and Rick A. Paternostro

It is expected that the Company s other two (2) executive officers M. Todd Jarvis, President and Chief Operating Officer, and Rick A. Paternostro, Chief Financial Officer will continue employment with the Company or SCI following closing of the merger. However, these officers do not have employment agreements, offer letters, or similar written or oral arrangements, or understandings concerning the terms of their post-closing employment, so the compensation and benefits such executive officers might receive in the event they continue employment with the Company or SCI following the closing are unknown at this time.

On June 24, 2011, the compensation committee of the board of directors approved Company reimbursement of personal legal fees incurred by these two (2) executive officers in connection with the merger, up to a maximum of $5,000 each.

Repayment of Insider Loans

On October 14, 2010, the Company borrowed an aggregate of $500,000 from four (4) directors and executive officers. Each of the notes evidencing these loans bears interest at 12% per annum and matures on May 14, 2012, subject to acceleration under certain specified circumstances, including the closing of the merger. The notes are collectively secured by a security deed on real property granted by a subsidiary of the Company.

Pursuant to the terms of the notes and the merger agreement, the following individuals will be entitled to repayment of the aggregate principal amount set forth opposite their names at the effective time of the merger, plus all accrued and unpaid interest thereon to such date.

Name	**Aggregate Principal Amount**
Samuel E. Allen, Director	$ 400,000
Alan R. Abrams, Chairman of the Board and Chief Executive Officer	50,000
Herschel Kahn, Director	25,000
J. Andrew Abrams, Executive Vice President	25,000

Acceleration and Cash out of In-the-Money Stock Appreciation Rights

Under the terms of the merger agreement, all stock appreciation rights (SARs) exercisable for shares of Company common stock, which are in-the-money that is, those SARs whose exercise prices are less than the per share merger consideration of $3.50 will be vested at the effective time of the merger, to the extent not already vested, and will be cancelled in exchange for a cash payment to the holders thereof equal to the difference between the aggregate exercise prices of the in-the-money SARs held by such holder and the aggregate per share merger consideration, for the shares obtainable upon exercise of such SARs, assuming a fair market value of $3.50 per share.

The number and value of the in-the-money SARs held by each of Messrs. Alan R. Abrams, M. Todd Jarvis and Rick A. Paternostro are set forth below. None of the SARs reflected below is currently vested.

Table of Contents

Name	Number of In-the-Money SARs	Cash Out Value
Alan R. Abrams Chairman of the Board and Chief Executive Officer	19,000	$ 26,790
M. Todd Jarvis President and Chief Operating Officer	50,000	66,300
Rick A. Paternostro Chief Financial Officer	20,000	28,200

Neither Mr. J. Andrew Abrams nor any outside director hold any in-the-money SARs.

The merger agreement also provides for the cash out of in-the-money stock options, and the acceleration of vesting of restricted stock. However, there are no in-the-money stock options or unvested shares of restricted stock currently outstanding.

Retirement Plan Accounts and Deferred Compensation Plans Accounts Distribution

The merger agreement requires the Company to terminate its 401(k) plan the day prior to the effective date of the merger, unless SCI otherwise notifies the Company. It is currently expected that SCI will notify the Company not to terminate the 401(k) plan. The merger agreement also requires the Company to terminate its senior management deferred compensation plan and its directors deferred compensation plan, both of which are nonqualified deferred compensation plans.

In connection with the termination of these plans or with respect to the 401(k) plan, in connection with the termination of the participant s employment with the Company participants will be entitled to a distribution of their account balances. If the 401(k) plan is not terminated and a participant s employment continues after the closing of the merger, such participant will not be entitled to a distribution of their vested 401(k) account balance. The accounts of participants in the senior management deferred compensation plan and directors deferred compensation plan will be paid out within 12 months of the effective time of the merger. Any distribution of accounts of participants in the 401(k) plan will be in accordance with IRS requirements. The respective account balances of the Company s directors and executive officers, as of April 30, 2011, were as follows:

Name	401(k) Plan	Senior Management Plan	Directors Plan
Alan R. Abrams Chairman and Chief Executive Officer	$ 576,308	$ 231,312	
Samuel E. Allen Director			$ 178,245
Gilbert L. Danielson Director			294,215
Herschel Kahn Director			42,045
Robert T. McWhinney, Jr. Director			

M. Todd Jarvis President and Chief Operating Officer	170,293		
J. Andrew Abrams Executive Vice President	505,788	44,408	140,554
Rick A. Paternostro Chief Financial Officer	146,785		

44

Table of Contents

Indemnification, Expense Advancement and Exculpatory Provisions

The merger agreement provides that all rights to indemnification and advancement of expenses by the Company, and exculpation from liabilities for violations of fiduciary duties existing in favor of directors and officers of the Company, as of the date of the merger agreement, for their acts and omissions as directors and officers occurring prior to the effective time of the merger whether provided in the Company s articles of incorporation, in the Company s bylaws, or in indemnification agreements shall survive the merger, and shall continue in full force and effect for a period of six (6) years from the effective date of the merger.

Directors and Officers Insurance

The merger agreement provides that SCI shall obtain, prior to the effective time of the merger, a six-year, pre-paid tail on the existing policy of directors and officers liability insurance maintained by the Company (or a substitute policy) in order to extend the liability insurance coverage of the directors and officers who are currently covered by the Company s directors and officers liability insurance policy.

Effective Time of the Merger

The merger will become effective upon the filing of the certificate of merger with the Secretary of State of Georgia or at such later time as is agreed upon by SCI and us and specified in the certificate of merger. The filing of the certificate of merger will occur as soon as practicable on or after the closing date, which closing date will be not later than the fifth (5^{th}) business day after satisfaction or waiver of the conditions to the closing of the merger described in the merger agreement. We currently anticipate the merger to be completed in our fiscal quarter ending October 31, 2011; however, because the merger is subject to certain closing conditions, we cannot predict the exact timing.

Dissenters Rights

The discussion of the provisions set forth below is not a complete summary regarding your dissenters rights under Georgia law and is qualified in its entirety by reference to the text of the relevant provisions of Georgia law, which are attached to this proxy statement as Annex E. Shareholders intending to exercise dissenters rights should carefully review Annex E. Failure to follow precisely any of the statutory procedures set forth in Annex E may result in a termination or waiver of these rights.

Pursuant to the provisions of the GBCC, holders of our common stock have the right to dissent from the merger and to receive the fair value of their shares in cash. Holders of our common stock who fulfill the requirements described below will be entitled to assert dissenters rights. Failure to affirmatively vote against the proposal to approve the merger agreement does not constitute a waiver of dissenters rights. Shareholders considering initiation of a dissenters proceeding should review this section in its entirety. A dissenters proceeding may involve litigation.

The following is a brief summary of Article 13 of the GBCC, which sets forth the procedures for demanding and perfecting statutory dissenters rights. Failure to follow the procedures set forth in Article 13 precisely could result in the loss of dissenters rights. This proxy statement constitutes notice to holders of Company common stock concerning the availability of dissenters rights under Article 13. A shareholder of record wishing to assert dissenters rights must hold the shares of stock on the date of making a demand for dissenters rights with respect to such shares and must continuously hold such shares through the effective time of the merger.

Preliminary Procedural Steps. Pursuant to the provisions of Article 13 of the GBCC, if the merger is consummated, you must:

give to the Company, prior to the vote at the special meeting with respect to the approval of the merger agreement, written notice of your intent to demand payment for your shares of Company common stock (which we refer to as the shares);

not vote in favor of the approval of the merger agreement; and

Table of Contents

comply with the statutory requirements summarized below. If you perfect your dissenters rights, you will receive the fair value of your shares as of the effective date of the merger, plus accrued interest from the effective date of the merger.

You may assert dissenters rights as to fewer than all of the shares registered in your name only if you dissent with respect to all shares beneficially owned by any one beneficial shareholder and you notify us in writing of the name and address of each person on whose behalf you are asserting dissenters rights. The rights of a partial dissenter are determined as if the shares as to which that holder dissents and that holder s other shares were registered in the names of different shareholders.

Written Dissent Demand. Voting against the proposal to approve the merger agreement will not satisfy the written demand requirement. In addition to not voting in favor of the proposal to approve the merger agreement, if you wish to preserve the right to dissent and seek appraisal, you must give a separate written notice of your intent to demand payment for your shares if the merger agreement is approved and the merger is effected. Any shareholder who returns a signed proxy card but fails to provide instructions as to the manner in which his or her shares are to be voted will be deemed to have voted in favor of the proposal to approve the merger agreement and will not be entitled to assert dissenters rights.

Any written objection to the merger agreement and the merger satisfying the requirements discussed above should be addressed to Servidyne, Inc., 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029, Attn: Corporate Secretary.

If our shareholders approve the proposal to approve the merger agreement at the special meeting, we must deliver a written dissenters notice (which we refer to as the Dissenters Notice) to all of our shareholders who satisfy the foregoing requirements. The Dissenters Notice must be sent within ten days after the effective date of the merger and must:

- state where dissenting shareholders should send the demand for payment and where and when dissenting shareholders should deposit certificates for the shares;
- inform holders of uncertificated shares to what extent transfer of these shares will be restricted after the demand for payment is received;
- set a date by which the Company must receive the demand for payment (which date may not be fewer than thirty (30) nor more than sixty (60) days after the Dissenters Notice is delivered); and
- be accompanied by a copy of Article 13 of the GBCC.

A record shareholder who receives the Dissenters Notice must demand payment and deposit his or her certificates with us in accordance with the Dissenters Notice. Dissenting shareholders will retain all of the rights of a shareholder until those rights are cancelled or modified by the consummation of the merger. A record shareholder who does not demand payment or deposit his or her share certificates as required, each by the date set in the Dissenters Notice, is not entitled to payment for his or her shares under Article 13 of the GBCC.

Except as described below, we must, within ten (10) days of the later of the effective date of the merger or receipt of a payment demand, offer to pay to each dissenting shareholder who complied with the payment demand and deposit requirements described above the amount we estimate to be the fair value of the shares, plus accrued interest from the effective date of the merger. Our offer of payment must be accompanied by:

recent financial statements of the Company;

our estimate of the fair value of the shares;

an explanation of how the interest was calculated;

a statement of the dissenter s right to demand payment under Section 14-2-1327 of the GBCC; and

a copy of Article 13 of the GBCC.

If the dissenting shareholder accepts our offer by written notice to us within thirty (30) days after our offer or is deemed to have accepted our offer by failure to respond within thirty (30) days of our offer, we must pay for the shares within sixty (60) days after the later of the making of the offer or the effective date of the merger.

If the merger is not consummated within sixty (60) days after the date set forth demanding payment and depositing share certificates, we must return the deposited certificates and release the transfer restrictions imposed on uncertificated shares. We must send a new Dissenters Notice if the merger is consummated after the return of certificates and repeat the payment demand procedure described above.

Section 14-2-1327 of the GBCC provides that a dissenting shareholder may notify us in writing of his or her own estimate of the fair value of such holder s shares and the interest due, and may demand payment of such holder s estimate, if:

he or she believes that the amount offered by us is less than the fair value of his or her shares or that we have calculated incorrectly the interest due; or

we, having failed to consummate the merger, do not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty (60) days after the date set for demanding payment.

A dissenting shareholder waives his or her right to demand payment under Section 14-2-1327 unless he or she notifies us of his or her demand in writing within thirty (30) days after we make or offer payment for the dissenting shareholder s shares. If we do not offer payment within ten (10) days of the later of the merger s effective date or receipt of a payment demand, then the shareholder may demand the financial statements and other information required to accompany our payment offer, and we must provide such information within ten days after receipt of the written demand. The shareholder may notify us of his or her own estimate of the fair value of the shares and the amount of interest due, and may demand payment of that estimate.

Litigation. If a demand for payment under Section 14-2-1327 remains unsettled, we must commence a nonjury equity valuation proceeding in the Superior Court of Cobb County, Georgia, within sixty (60) days after receiving the payment demand and must petition the court to determine the fair value of the shares and accrued interest. If we do not commence the proceeding within those sixty (60) days, the GBCC requires us to pay each dissenting shareholder whose demand remains unsettled the amount demanded. We are required to make all dissenting shareholders whose demands remain unsettled parties to the proceeding and to serve a copy of the petition upon each of them. The court may appoint appraisers to receive evidence and to recommend a decision on fair value. Each dissenting shareholder made a party to the proceeding is entitled to judgment for the fair value of such holder s shares plus interest to the date of judgment.

The court in an appraisal proceeding commenced under the foregoing provision must determine the costs of the proceeding, excluding fees and expenses of attorneys and experts for the respective parties, and must assess those costs against us, except that the court may assess the costs against all or some of the dissenting shareholders to the extent the court finds they acted arbitrarily, vexatiously or not in good faith in demanding payment under Section 14-2-1327. The court also may assess the fees and expenses of attorneys and experts for the respective parties against us if the court finds we did not substantially comply with the requirements of specified provisions of Article 13 of the GBCC, or against either us or a dissenting shareholder if the court finds that such party acted arbitrarily, vexatiously or not in good faith with respect to the rights provided by Article 13 of the GBCC.

If the court finds that the services of attorneys for any dissenting shareholder were of substantial benefit to other dissenting shareholders similarly situated, and that the fees for those services should be not assessed against us, the court may award those attorneys reasonable fees out of the amounts awarded the dissenting shareholders who were benefited. No action by any dissenting shareholder to enforce dissenters rights may be brought more than three years after the effective date of the merger, regardless of whether notice of the merger and of the right to dissent were given by us in compliance with the Dissenters Notice and payment offer requirements.

Table of Contents

The full text of Article 13 of the GBCC has been reprinted in its entirety and is included as Annex E to this proxy statement. If you intend to dissent from the proposal to approve the merger agreement, you should review carefully the text of Annex E and should also consult with your attorney. We will not give you any further notice of the events giving rise to dissenters rights or any steps associated with perfecting dissenters rights, except as indicated above or otherwise required by law.

We have not made any provision to grant you access to any of the corporate files of the Company, except as may be required by the GBCC, or to obtain legal counsel or appraisal services at the expense of the Company.

Any dissenting shareholder who perfects his or her right to be paid the fair value of his or her shares will recognize taxable gain or loss upon receipt of cash for such shares for federal income tax purposes. See Material Federal Income Tax Consequences of the Merger below.

You must do all of the things described in this section and as set forth in Article 13 of the GBCC in order to preserve your dissenters rights and to receive the fair value of your shares in cash (as determined in accordance with those provisions). If you do not follow each of the steps as described above, you will have no right to receive cash for your shares as provided in the GBCC. In view of the complexity of these provisions of Georgia law, shareholders of the Company who are considering exercising their dissenters rights should consult their legal advisors.

Accounting Treatment

The merger will be accounted for as a purchase transaction for financial accounting purposes.

Form of the Merger

Subject to the terms and conditions of the merger agreement and in accordance with Georgia law, at the effective time of the merger, Scrabble Acquisition, Inc., a wholly-owned subsidiary of SCI and a party to the merger agreement, will merge with and into the Company. We will survive the merger as a wholly-owned Georgia subsidiary of SCI.

Merger Consideration

At the effective time of the merger, each outstanding share of Company common stock, other than shares of common stock held by us, any of our wholly-owned subsidiaries, SCI, Merger Sub, any other wholly-owned subsidiary of SCI or Merger Sub, if any, and shares held by shareholders who perfect their dissenters rights (as described in Dissenters Rights), will be converted into the right to receive the per share consideration of $3.50 in cash, without interest and less any applicable withholding tax. Treasury shares and shares held by SCI or Merger Sub will be cancelled immediately prior to the effective time of the merger.

As of the effective time of the merger, all shares of Company common stock will no longer be outstanding and will automatically be cancelled and will cease to exist, and each holder of a certificate representing any shares of our common stock (other than shareholders who have perfected their dissenters rights) will cease to have any rights as a shareholder, except the right to receive the per share consideration. The price of $3.50 per share was determined through arm s-length negotiations between SCI and us.

Delisting and Deregistration of the Company s Common Stock

If the merger is completed, our common stock will be delisted from and will no longer be traded on Nasdaq and will be deregistered under the Exchange Act.

Material Federal Income Tax Consequences of the Merger

The following is a summary of certain U.S. federal income tax consequences of the merger to our shareholders whose shares of our common stock are converted into the right to receive cash in the merger. The following summary is based on the Internal Revenue Code of 1986, as amended, Treasury regulations promulgated thereunder, judicial decisions, and administrative rulings, all of which are subject to change, possibly with retroactive effect. The summary applies only to shareholders who hold our common stock as capital assets and does not address all of the U.S. federal income tax consequences that may be relevant to particular shareholders in light of their individual circumstances or to shareholders who are subject to special rules, including: non-U.S. persons, U.S. expatriates, insurance companies, dealers or brokers in securities or currencies, tax-exempt organizations, financial institutions, mutual funds, pass-through entities, and investors in such entities, shareholders who hold their shares of our common stock as a hedge or as part of a hedging, straddle, conversion, synthetic security, integrated investment, or other risk-reduction transaction or who are subject to alternative minimum tax or shareholders who acquired their shares of our common stock upon the exercise of employee stock options or otherwise as compensation. Further, this discussion does not address any U.S. federal estate and gift or alternative minimum tax consequences or any state, local, or foreign tax consequences relating to the merger.

The Merger. The receipt of cash pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes, and may also be a taxable transaction under applicable state, local, or foreign income or other tax laws. Generally, for U.S. federal income tax purposes, a shareholder will recognize gain or loss equal to the difference between the amount of cash received by the shareholder in the merger and the shareholder s adjusted tax basis in the shares of our common stock converted into cash in the merger. If shares of our common stock are held by a shareholder as capital assets, gain or loss recognized by such shareholder will be capital gain or loss, which will be long-term capital gain or loss if the shareholder s holding period for the shares of our common stock exceeds one (1) year. Capital gains recognized by an individual upon a disposition of a share of our common stock that has been held for more than one (1) year generally will be subject to a maximum U.S. federal income tax rate of 15% or, in the case of a share that has been held for one (1) year or less, will be subject to tax at ordinary income tax rates. For corporations, capital gain is taxed at the same rate as ordinary income. In addition, there are limits on the deductibility of capital losses. The amount and character of gain or loss must be determined separately for each block of our common stock (i.e., shares acquired at the same cost in a single transaction) converted into cash in the merger.

Backup Withholding. A shareholder (other than certain exempt shareholders, including, among others, all corporations and certain foreign individuals) whose shares of Company common stock are converted into the per share consideration may be subject to backup withholding at the then applicable rate (under current law, the backup withholding rate is 28%) unless the shareholder provides the shareholder s taxpayer identification number, or TIN, and certifies under penalties of perjury that such TIN is correct (or properly certifies that it is awaiting a TIN), and certifies as to no loss of exemption from backup withholding and otherwise complies with the applicable requirements of the backup withholding rules. A shareholder that does not furnish a required TIN or that does not otherwise establish a basis for an exemption from backup withholding may be subject to a penalty imposed by the Internal Revenue Service, or the IRS. Each shareholder should complete and sign the Substitute Form W-9 included as part of the letter of transmittal that will be sent to shareholders promptly following the closing of the merger so as to provide the information and certification necessary to avoid backup withholding. Backup withholding is not an additional tax. Rather, the amount of the backup withholding can be credited against the U.S. federal income tax liability of the person subject to the backup withholding, provided that the required information is given to the IRS. If backup withholding results in an overpayment of tax, a refund can be obtained by the shareholder by filing a U.S. federal income tax return.

THE SUMMARY OF U.S. FEDERAL INCOME TAX CONSEQUENCES SET FORTH ABOVE IS FOR GENERAL INFORMATION ONLY AND IS BASED ON THE LAW IN EFFECT ON THE DATE HEREOF. SHAREHOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS TO DETERMINE THE PARTICULAR TAX CONSEQUENCES TO THEM (INCLUDING THE APPLICATION AND EFFECT OF ANY STATE, LOCAL OR FOREIGN INCOME AND OTHER TAX LAWS) OF THE MERGER.

Regulatory Approvals

We and SCI have agreed to use reasonable best efforts to file, as soon as practicable, all notices, reports and other documents required to be filed with any governmental entity with respect to the merger. The completion of the merger is subject to certain closing conditions including the receipt of any governmental authorization or other consent, approval or waiver from any other person necessary to complete the merger. We will not be required to make any filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Certain Relationships between SCI and the Company

There are no material relationships between SCI and Merger Sub or any of their respective affiliates, on the one hand, and the Company or any of our affiliates, on the other hand, other than in respect of the merger agreement, and the memorandum of understanding and confidentiality agreement described below.

We entered into a non-binding memorandum of understanding with SCI, dated May 12, 2011, in order to form a strategic alliance to advance cloud-based energy management and predictive diagnostics solutions for building owners and their tenants. As part of this arrangement, the Company and SCI will (i) refer certain of their existing customers to each other, including by cross-marketing certain products to existing customers, and (ii) evaluate the migration of customer data to SCI s cloud-based infrastructure.

On April 12, 2011 we entered into a confidentiality agreement with SCI, pursuant to which both the Company and SCI are required to hold and treat confidential information of the other party in confidence and are precluded from disclosing such information except in limited circumstances. These non-disclosure obligations will continue until April 12, 2016, except with respect to information that constitutes a trade secret for which the obligations will continue for so long as the information remains a trade secret. Additionally, until April 12, 2016, neither the Company nor SCI may knowingly and in violation of the confidentiality agreement call on, divert, solicit or, directly or indirectly, provide services, or accept business or orders from the other party s customers, or knowingly, directly or indirectly, solicit for employment or engagement, or advise or recommend to any other person or entity that such person or entity employ or engage or solicit for employment or engagement, any such person or entity employed or engaged by the other party.

Litigation Relating to the Merger

The Company, SCI, Merger Sub and the Company s board of directors have been named as defendants in two putative class action lawsuits challenging the merger. The cases, brought by alleged shareholders of the Company and captioned *Manzoor Hussain v. Servidyne Inc. et al.* (Civil Action No. 2011-CV-202977), and *Brian Jacobs v. Servidyne, Inc. et al.* (Civil Action No. 2011-CV-203489), were filed on July 7, 2011 and July 22, 2011, respectively, in the Superior Court of Fulton County, Georgia.

The complaints allege, among other things, that (a) the Company s board of directors breached their fiduciary duties by: (1) conducting an inadequate sales process that undervalued the Company; (2) agreeing to unfairly preclusive deal protection measures; and (3) approving merger terms that unfairly vest some of the board members with benefits not shared equally by other Company shareholders and (b) in the complaint filed by Brian Jacobs, that the Company s board of directors failed to disclose material facts to shareholders in connection with the proposed transaction in this proxy statement. The complaint also alleges that SCI knowingly aided and abetted these fiduciary duty breaches. The complaint seeks to enjoin the merger and other remedies including, among other things, an alternative prayer for rescissory damages in both complaints, but only in the event that the merger is completed and cannot be rescinded.

Both complaints also seek reimbursement of all costs and reasonable attorneys and expert s fees incurred in connection with the litigation.

The defendants believe the claims asserted in the lawsuits are without merit and intend to vigorously defend against them.

The Merger Agreement

The following description sets forth the material provisions of the merger agreement but does not purport to describe all of the terms of the merger agreement. The full text of the merger agreement is attached to this proxy statement as Annex A. You are urged to read the merger agreement in its entirety because it is the legal document that governs the merger. The merger agreement should be read in conjunction with the disclosures in our filings with the SEC available at the SEC s website, www.sec.gov. The provisions contained in the merger agreement are intended to govern the contractual rights and relationships, and to allocate risks, between the Company, Merger Sub and SCI with respect to the merger.

The merger agreement contains representations and warranties that the Company, Merger Sub and SCI made to each other. Those representations and warranties were made as of specific dates and are subject to qualifications and limitations agreed to by the parties in connection with negotiating the terms of the merger agreement. Moreover, certain of these representations and warranties are subject to contractual standards of materiality that may be different from those generally applicable to disclosures to shareholders, and in some cases may have been made solely for the purpose of allocating risk among the parties, and to provide contractual rights and remedies to the parties rather than to establish matters as facts. Accordingly, you should not rely on the representations and warranties as characterizations of the actual state of affairs of the Company without considering the entirety of public disclosure about the Company as set forth in the Company s SEC filings.

The Merger

At the effective time of the merger, Merger Sub will merge with and into the Company. The Company will continue as the surviving corporation and will become a wholly-owned subsidiary of SCI. SCI, as the sole shareholder of the Company following the merger, will have the corporate power and authority to control all aspects of the corporate and business affairs of the Company following the merger. Merger Sub has no material assets or operations of its own and will cease to exist following the merger.

Closing and Effective Time of the Merger

The consummation of the merger will occur on a day to be agreed upon by the parties, which will be no later than the fifth (5^{th}) business day following the satisfaction or waiver of all of the conditions to closing described in the merger agreement. The merger will become effective upon the filing of the certificate of merger with the Secretary of State of the State of Georgia or at such later time as is agreed upon by SCI and us and specified in the certificate of merger. Although we expect to complete the merger as soon as reasonably practicable after the special meeting, we cannot assure you that the conditions to the merger will be satisfied (or waived, to the extent permitted) or, if satisfied or waived, the date by which they will be satisfied or waived. In addition, because the merger is subject to closing conditions, we cannot predict the exact timing of the effective time of the merger. See The Merger Agreement Conditions to the Merger beginning on page 64.

Merger Consideration; Conversion of Shares

At the effective time of the merger, each outstanding share of Company common stock (other than shares of common stock held by us, any of our wholly-owned subsidiaries, SCI, Merger Sub, any other wholly-owned subsidiary of SCI or Merger Sub, if any, or any Company shareholder who properly exercises dissenters rights) will be converted into the right to receive the per share consideration of $3.50 in cash, without interest and subject to any applicable withholding taxes, upon surrender of the certificate representing such share of Company common stock in the manner provided in the merger agreement.

Each share of Company common stock held by us, one of our wholly-owned subsidiaries, SCI, Merger Sub, or any other wholly-owned subsidiary of SCI or Merger Sub, if any, immediately prior to the effective time of the merger will be cancelled and retired and will not be entitled to any merger consideration.

Table of Contents

At the effective time of the merger, each outstanding share of common stock of Merger Sub will be converted into one (1) share of common stock of the Company as the surviving corporation in the merger.

The per share consideration will be adjusted as appropriate to reflect the effect of any stock split or other like change with respect to Company common stock occurring after the date of the merger agreement and prior to the effective time of the merger.

Dissenters Rights

Shares of Company common stock held by a record shareholder who has properly exercised its right to dissent in accordance with Article 13 of the GBCC and who has otherwise complied with all the applicable provisions of such article of the GBCC will not be converted into or represent the right to receive the per share consideration, but will instead be entitled to receive the fair value of such shares in accordance with Article 13 of the GBCC. At the effective time of the merger, such dissenting shares will no longer be outstanding, will automatically be cancelled and will cease to exist, and such holder will cease to have any rights with respect thereto, except the rights specified in Article 13 of the GBCC. See The Merger Dissenters Rights on page 45.

Treatment of Stock Options; Stock Appreciation Rights and Warrants

At the effective time, each unexercised outstanding stock option or stock appreciation right of the Company that is out-of the money (i.e., when the exercise price of such stock option is greater than $3.50), whether or not vested, will expire and be cancelled as of the effective time for no consideration.

At the effective time, each unexercised outstanding stock option that is in-the-money (i.e., when the exercise price of such stock option is less than $3.50) will vest (if not vested) and be cancelled and settled, and the holder thereof will be entitled to receive an amount in cash, without interest, equal to the product of (i) the excess, if any, of (x) $3.50 over (y) the exercise price per share of Company common stock subject to such in-the-money stock option, multiplied by (ii) the number of shares of Company common stock represented by such stock option (other than shares for which such stock option had previously been exercised, if any). As of July 27, 2011, no in-the-money stock options were outstanding.

At the effective time, each stock appreciation right that is in-the-money will vest (if not previously vested) and the holder thereof will be entitled to receive in exchange therefor an amount in cash equal to the product of (i) the excess, if any, of (x) $3.50 over (y) the exercise price of such in-the-money stock appreciation rights multiplied by (ii) the number of units represented by such stock appreciation right (other than stock appreciation rights for which such grant had previously been exercised, if any). As of July 27, 2011, 70,140 shares of common stock were subject to in-the-money stock appreciation rights, assuming a fair market value of $3.50 per share.

At the effective time, each outstanding and unexercised warrant to purchase shares of Company common stock that is in-the-money will expire and be cancelled for no consideration. As of July 27, 2011, none of the outstanding warrants of the Company were in-the-money.

Treatment of Restricted Stock

Each share of restricted stock of the Company that is outstanding immediately prior to the effective time of the merger will vest (if not previously vested) and the holder thereof will be entitled to receive the per share consideration in exchange for each such restricted share, less any applicable withholding taxes. As of July 27, 2011, no unvested shares of restricted stock were outstanding.

Payment Procedures

SCI will select and enter into an agreement with a reputable bank or trust company, reasonably acceptable to us, that will act as paying agent in the merger. Promptly after the effective time of the merger, SCI will deposit with the paying agent an amount of cash sufficient to pay the per share consideration to our shareholders.

Promptly after the effective time of the merger, the paying agent will mail to each record holder of Company common stock a letter of transmittal and instructions for surrendering stock certificates in exchange for the per share consideration. Upon surrender of a shareholder s stock certificates to the paying agent, together with a duly executed letter of transmittal and such other documents as may be reasonably required by the paying agent or SCI, such stock certificates will be cancelled and the shareholder will be entitled to receive the appropriate per share consideration, less any applicable withholding taxes.

In the event of a transfer of ownership of any shares of Company common stock that is not registered in the transfer records of the Company, the merger consideration for shares of Company common stock may be paid to a person other than the person in whose name the surrendered certificate is registered if:

- the certificate is properly endorsed or otherwise is in proper form for transfer, and
- the person requesting such payment has paid any fiduciary or surety bonds and any transfer or other similar taxes required by reason of payment of the merger consideration to such person.

Each certificate representing Company common stock that is not surrendered as discussed above will, from and after the effective time of the merger, be deemed to represent only the right to receive the per share consideration. No interest will be paid or accrue on any cash payable to holders of Company common stock pursuant to the merger agreement. Any portion of the amount deposited by SCI with the paying agent that has not been distributed to our shareholders within 360 days after the effective date of the merger will be returned to SCI upon demand, and any of our shareholders who have not surrendered their stock certificates to the paying agent by such time will be required to look only to SCI for the payment of any per share consideration to which such shareholder may be entitled.

Stock certificates should not be surrendered by our shareholders before the effective time of the merger and should be delivered only pursuant to instructions set forth in the letter of transmittal that will be mailed to our shareholders following the effective time of the merger. In all cases, the merger consideration will be paid only in accordance with the procedures set forth in the merger agreement and such letters of transmittal.

If any certificate formerly representing shares of Company common stock is lost, stolen or destroyed, then SCI may require the record holder of such certificate to provide an affidavit to that effect and post a bond as an indemnity to SCI prior to receiving any payment of the per share consideration.

If any certificate representing shares of Company common stock has not been surrendered by the earlier of (i) the 5^{th} anniversary of the effective date of the merger, or (ii) the date immediately prior to the date on which such certificate would become escheatable to a government body, then such cash amount will become the property of the Company.

Articles of Incorporation and Bylaws of the Company Following the Merger

Pursuant to the merger agreement, our articles of incorporation will be amended and restated in their entirety at the effective time of the merger to conform to the articles of incorporation of Merger Sub as in effect immediately prior to the effective time of the merger, except that the name of the surviving corporation will be Servidyne, Inc. Our bylaws will be amended and restated at the effective time of the merger to conform to the bylaws of Merger Sub as in effect immediately prior to the effective time of the merger.

Directors and Officers of the Company Following the Merger

Following the merger, none of our directors or officers will serve as directors or officers of the Company and the directors and officers of Merger Sub will be the initial directors and officers of the Company following the merger.

53

Table of Contents

Representations and Warranties

In the merger agreement, we have made customary representations and warranties to SCI and Merger Sub, including representations relating to:

- our subsidiaries;
- our and our subsidiaries proper organization, good standing, qualifications, power to operate our and their businesses and other similar corporate matters;
- our articles of incorporation, bylaws, charters and codes of conduct;
- our capitalization, including our outstanding common stock, stock options, stock appreciation rights and equity plan;
- the accuracy and preparation of documents we have filed with the SEC since April 30, 2008;
- our SEC disclosure controls and procedures, and our internal control over financial reporting;
- our financial statements and accounting, including the presentation and preparation of our financial statements, disclosure to our auditors of fraud and material weaknesses in accounting and material complaints with respect to our accounting practices or our filings with respect to securities;
- the absence of certain adverse changes or events since January 31, 2011;
- title to our assets;
- our accounts receivables and certain information about our customers and our inventory;
- our property, including material items of equipment, owned real property, leased real property and improvements;
- our intellectual property;
- certain specified types of contracts, including material contracts;
- the sale of our products and the performance of certain services;
- our liabilities;
- compliance with certain legal requirements;
- the absence of certain unlawful business practices;
- certain governmental authorizations necessary to conduct our business;
- grants, subsidies and incentives provided to us by governmental bodies;

tax matters;

employee and labor matters and our benefit plans;

environmental matters;

our material insurance policies;

certain transactions with our affiliates;

certain pending and threatened legal proceedings as of the effective date of the merger agreement;

our authority to enter into the merger agreement and perform our obligations thereunder;

the inapplicability of certain anti-takeover statutes;

the form and accuracy of statements in this proxy statement;

our discussions with third parties relating to an acquisition proposal;

- the vote required to approve the merger agreement;
- the fact that neither the merger agreement nor the consummation of the merger conflict with or will result in a violation of our organizational documents, certain legal requirements, certain governmental authorizations, any material contract or any other contract that could lead to a material adverse effect, and that neither the merger agreement nor the consummation of the merger will result in the imposition of any encumbrance on any of our assets or potentially cause the release of our source code from escrow to a third party;
- the fairness opinion received by the special committee; and
- our payment of fees to brokers, finders and investment bankers entitled to a fee with respect to the merger.

In the merger agreement, SCI and Merger Sub have made customary representations and warranties to us, including representations relating to:

- their proper organization, good standing, qualifications, power and authority to enter into the merger agreement and consummate the merger and the other transactions contemplated by the merger agreement, and other similar corporate matters;
- the absence of conflicts between the merger agreement and the consummation of the merger and their certificates or articles of incorporation, as applicable, and bylaws;
- governmental approvals;
- the absence of false or misleading statements with respect to information supplied by them for inclusion in this proxy statement;
- the absence of legal proceedings;
- SCI s ability to pay the merger consideration; and
- the payment of brokerage fees.

Certain representations and warranties made by us in the merger agreement provide exceptions for items that do not constitute or are not reasonably likely to result in a material adverse effect. For purposes of the merger agreement, a material adverse effect means an effect, change, claim, event or circumstance that, considered individually or together with all other effects, changes, claims, events and circumstances, is or could reasonably be expected to be or to become materially adverse to, or has or could reasonably be expected to have or result in a material adverse effect on (a) our and our subsidiaries business, financial condition, capitalization, assets (tangible or intangible), intellectual property, liabilities (contingent or otherwise), operations or financial performance taken as a whole, or (b) our ability to consummate the merger or any of the other transactions contemplated by the merger agreement or to perform any of our covenants or obligations under the merger agreement (provided that it will be considered a material adverse effect if we materially breach our covenant regarding expenditures prior to the closing of the merger); *provided*, *however*, that none of the following will be deemed, either alone or in combination, to constitute, and none of the following will be taken into account in determining whether there has been or would be, a material adverse effect: (x) any effect, changes, claims, events or circumstances (i) generally affecting (A) the industry in which we primarily operate to the extent they do not disproportionately affect the Company and its subsidiaries, taken as a whole, in relation to other companies in the industries in which we and our subsidiaries primarily operate, or (B) the economy, or financial or capital markets, in the United States to the extent they do not disproportionately affect the Company and its subsidiaries, taken as a whole, in relation to other companies in the industries in which we and our subsidiaries primarily operate, (ii) arising out of, resulting from or attributable to (A) changes (after the effective date of the merger agreement) in legal requirements or GAAP or in accounting or auditing standards, (B) the direct result of the announcement or pendency of the merger agreement or the anticipated consummation of the merger on relationships, contractual or otherwise, with employees, customers, suppliers, distributors or partners, (C) acts of war, sabotage or terrorism, or any escalation or worsening of any such acts of war, sabotage or terrorism threatened or underway as of the effective date of the merger agreement, or (D) any decline in the market price, or change in trading volume, of the capital stock of the Company or any failure to meet projections or internal projections (it being understood that, without limiting the applicability of the provisions contained in clause (i) or (ii) above, the cause or causes of any such decline, change or failure may be deemed to constitute, in and of itself and themselves, a material adverse effect) or (y) the delivery by our auditors of a going-concern opinion (it being understood that the cause or causes of the rendering of such going-concern opinion may be deemed to constitute, in and of itself and themselves, a material adverse effect).

Conduct of Our Business Prior to the Merger

Affirmative Covenants. We have agreed that, until the earlier of the effective time of the merger or the termination of the merger agreement, except with the prior written consent of SCI, we and our subsidiaries will:

- conduct our business in the ordinary course of business in accordance with past practices and in compliance with all applicable legal and material contractual requirements;

- use reasonable efforts to maintain and preserve intact our current business organization, keep available the services of our current officers and other key employees and maintain our relations and goodwill with all of our suppliers, customers, landlords, creditors, licensors, licensees, employees and other persons having material business relationships with us;

- keep in full force all of our material insurance policies (other than any such policies that are immediately replaced with substantially similar policies);

- provide all notices, assurances and support required by any of our contracts relating to our intellectual property to ensure that no condition under such material contract occurs that could result in, or could increase the likelihood of any release from escrow of any of our source code;

- notify SCI in writing of (i) any notice from any person or entity alleging that such person or entity s consent is or may be required in connection with any of the transactions contemplated by the merger agreement, and (ii) any legal proceeding commenced, or, to our knowledge, threatened against, relating to, involving or otherwise affecting us; and

- to the extent requested by SCI, cause our officers to report regularly to SCI concerning the status of our business.

Negative Covenants. We have agreed that, until the earlier of the effective time of the merger or the termination of the merger agreement, except with the prior written consent of SCI, we and our subsidiaries will not, among other things:

- amend our articles of incorporation or bylaws or create any new subsidiaries;

- issue, sell, deliver or agree or commit to issue, sell or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any of our securities, except for shares of Company common stock issued pursuant to Company equity awards outstanding as of the effective date of the merger agreement;

- directly or indirectly acquire, repurchase or redeem any of our securities except in connection with tax withholdings and exercise price settlements upon the exercise of Company stock options or stock appreciation rights;

split, combine, subdivide or reclassify any shares of our capital stock, or declare, set aside or pay any dividend or other distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of our capital stock, or make any other actual, constructive or deemed distribution in respect of the shares of our capital stock, except for our customary quarterly dividends;

Table of Contents

propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization, except for the merger and the other transactions contemplated by the merger agreement;

(i) redeem, prepay, defease, cancel, incur, create, assume or otherwise acquire or modify in any material respect any long-term or short-term debt for borrowed monies or issue or sell any debt securities or calls, options, warrants or other rights to acquire any debt securities or enter into any agreement having the economic effect of any of the foregoing, (ii) assume, guarantee, endorse or otherwise become liable or responsible for the obligations of any other individual or entity, (iii) subject to certain exceptions, make any loans, advances or capital contributions to or investments in any other individual or entity, or (iv) subject to certain exceptions, mortgage, pledge or otherwise encumber any of our assets;

subject to certain exceptions, (i) enter into, adopt, amend (including acceleration of vesting), modify or terminate certain benefits arrangements, (ii) increase the compensation payable to any member of the board of directors, officer or employee, (iii) hire any new director or executive officer, (iv) grant or pay any severance or termination pay to (or amend any such existing arrangement with) any current or former member of the board of directors, officer, employee or independent contractor, except in the ordinary course of business with respect to any employee or independent contractor, (v) increase benefits payable under any existing severance or termination pay policies or similar employment agreements, (vi) amend, modify or terminate any Company benefit plan or agreement in a manner that would increase the liability of the Company or any of its subsidiaries, or (vii) accelerate the vesting or payment of, or fund or in any other way secure the payment, compensation or benefits under, any of our plans to the extent not required by the terms of the merger agreement or the terms of the applicable plan in effect on the date of the merger agreement;

commence any legal proceeding or settle any pending or threatened legal proceeding;

except as may be required as a result of a change in applicable law or in GAAP, make any material change in any of our accounting methods, principles or practices used by it or change an annual accounting period;

make or change any material tax election or take certain actions with respect to tax matters;

acquire any other entity or any material equity interest therein, sell or otherwise dispose of, lease or license any of our (or our subsidiaries) properties or assets (other than software licensing in the ordinary course of business), which are material to us and our subsidiaries taken as a whole, or acquire, lease or license any material right or asset from others, or waive or relinquish any material right;

acquire, lease or license any material right or other asset from any person (other than in the ordinary course of business consistent with past practice, and other than commercial off-the-shelf software), or waive or relinquish any material right;

make any expenditures that deviate from the forecast provided to SCI in excess of $10,000 with respect to any particular line item of such forecast, or aggregate expenditures that exceed such forecast by more than $2,000,000 for the entire pre-closing period;

make any changes or modifications to any investment or risk management policy or other similar policies (including with respect to hedging), any cash management policy, or material changes or modifications to any method of doing business (except for changes in product prices);

permit any insurance policy naming us (or any subsidiary) as a beneficiary or a loss payable payee to lapse, be cancelled or expire unless a new policy with substantially identical coverage is in effect as of the date of lapse, cancellation or expiration;

enter into, or amend in any material respect, terminate or fail to renew, any material contract, any customer energy services contract with revenues in excess of $10,000, or any contract pursuant to which we license or grant any interest in intellectual property (other than pursuant to a contract materially similar to our standard form);

change any of our product return policies, product maintenance polices, service policies, product modification, upgrade policies, personnel policies or other business or investment policies in any material respect;

subject to limited exceptions, enter into any material transaction with any of our affiliates (other than our subsidiaries);

abandon or permit to lapse any right to any material patent or patent application;

enter into any material transaction or take any action outside the ordinary course or inconsistent with past practices; or

take any action that is intended or is reasonably likely to result in (i) the representations and warranties made by us in the merger agreement (see Representations and Warranties) becoming untrue such that the conditions of the Merger (see Conditions to the Merger) would not be satisfied, or (ii) a violation of the merger agreement.

Limitation on Soliciting, Discussing or Negotiating Other Acquisition Proposals

We have agreed not to and to ensure that our subsidiaries do not, and not to permit any person that is a Company (or any subsidiary) representative to, directly or indirectly:

solicit, initiate, encourage, assist, induce or facilitate the making, submission or announcement of any acquisition proposal or acquisition inquiry (including by approving any transaction, or approving any person becoming an interested shareholder, for purposes of Section 14-2-1131 *et seq* of the GBCC) or take any other action that could reasonably be expected to lead to an alternative acquisition proposal or acquisition inquiry;

furnish or otherwise provide access to any information regarding the Company (or any subsidiary) to any person in connection with or in response to an alternative acquisition proposal or acquisition inquiry;

engage in discussions or negotiations with any person with respect to any alternative acquisition proposal or acquisition inquiry, *provided* that the Company, the special committee and the board of directors of the Company will not be prohibited from taking and disclosing to the Company s shareholders a position with respect to a tender or exchange offer by a third party pursuant to Rules 14d-9 and 14e-2 promulgated under the Exchange Act; or

resolve or publicly propose to take any of the actions referred to above.

Notwithstanding the foregoing, prior to the approval of the merger agreement by the required shareholder vote, we may furnish non-public information regarding the Company (and our subsidiaries) to, and may enter into discussions or negotiations with, any person in response to an unsolicited, bona fide, written alternative acquisition proposal that is submitted to us by such person (and not withdrawn) if:

neither the Company (or any subsidiary) nor any representative of the Company (or our subsidiaries) has breached or taken any action inconsistent with any of these no-solicitation provisions or with the shareholder meeting provisions in the merger agreement (as described below under Proxy Statement; Shareholders Meeting), the provisions in the confidentiality agreement between SCI and the Company, or the provisions in any standstill or similar agreement under which the Company (or any of our subsidiaries) has any rights;

there has been no material breach of any support agreement (see The Support Agreements);

the special committee or our board of directors reasonably determines in good faith, after having consulted with an independent financial advisor of nationally recognized reputation and our outside legal counsel, that such alternative acquisition proposal constitutes or is reasonably likely to result in a superior offer;

Table of Contents

the special committee or our board of directors reasonably determines in good faith, after having consulted with our outside legal counsel, that the failure to take such action would constitute a breach by our board of directors of its fiduciary obligations to our shareholders under applicable Georgia law;

at least two (2) business days prior to furnishing any such non-public information to, or entering into discussions or negotiations with, such person, we:

give SCI written notice of the identity of such person and of our intention to furnish non-public information to, or enter into discussions or negotiations with, such person,

receive from such person, and deliver to SCI a copy of, an executed confidentiality agreement containing (i) customary limitations on the use and disclosure of all non-public written and oral information furnished to such person by or on behalf of the Company (and our subsidiaries), and (ii) other provisions no less favorable to the Company than the provisions of the confidentiality agreement between SCI and the Company; and

at least twenty-four (24) hours prior to furnishing any non-public information to such person, we furnish such non-public information to SCI (to the extent such non-public information has not been previously furnished by us to SCI).

If we (or any subsidiary) or any of our (or our subsidiaries) representatives receives an alternative acquisition proposal, acquisition inquiry or any request for non-public information, then we will promptly (and in no event later than twenty-four (24) hours after receipt of such alternative acquisition proposal or acquisition inquiry):

advise SCI in writing of such alternative acquisition proposal, acquisition inquiry or request (including the identity of the person making or submitting such acquisition proposal, acquisition inquiry or request and the material terms and conditions thereof); and

provide SCI with copies of all documents and written communications (and written summaries of all oral communications) received by us (or any subsidiary) or any of our (or our subsidiaries) representatives setting forth the terms and conditions of, or otherwise relating to, such alternative acquisition proposal or acquisition inquiry.

We will keep SCI fully informed with respect to the status of any such acquisition proposal, acquisition inquiry or request and any modification or proposed modification thereto, and will promptly, and in no event later than twenty-four (24) hours after transmittal or receipt of any correspondence or communication, provide SCI with a copy of any correspondence or written communication between us (or any subsidiary) or any of our (or our subsidiaries) representatives and the person that made or submitted such acquisition proposal, acquisition inquiry or request, or any representative of such person.

We have agreed that we will not, and will ensure that each of our subsidiaries will not, release or permit the release of any person from, or amend, waive or permit the amendment or waiver of any provision of, any confidentiality, non-solicitation, no-hire, standstill or similar agreement or provision to which we or any of our subsidiaries is or becomes a party or under which we or any of our subsidiaries has or acquires any rights (including the standstill provision contained in any confidentiality agreement entered into by us pursuant to the no-solicitation provisions of the merger agreement), and will use our best efforts to enforce or cause to be enforced each such agreement or provision at the request of SCI.

Promptly after the date of the merger agreement, we requested that each person that had entered into a confidentiality agreement or similar agreement in connection with a possible acquisition proposal or investment in the Company (or any subsidiary) return or destroy all confidential information previously furnished to such person by or on behalf of the Company (or any subsidiary).

For the purposes of the merger agreement, an acquisition proposal means any offer or proposal (other than an offer or proposal made or submitted by SCI or any of its subsidiaries) contemplating or otherwise relating to any acquisition transaction. For purposes of the merger agreement, an acquisition transaction means any transaction or series of transactions involving: (a) any merger, consolidation, amalgamation, share exchange, business combination, joint venture, issuance of securities, acquisition of securities, reorganization, recapitalization, tender offer, exchange offer or other similar transaction: (i) in which we or any of our subsidiaries is a constituent or participating corporation, (ii) in which a person or group (as defined in the Exchange Act and the rules thereunder) of persons directly or indirectly acquires beneficial or record ownership of securities representing 15% or more of the outstanding securities of any class (or instruments convertible into or exercisable or exchangeable for 15% or more of any such class) of us or any of our subsidiaries, or (iii) in which we or any of our subsidiaries issues securities representing 15% or more of the outstanding securities of any class of the Company or our subsidiaries, (b) any sale, lease, exchange, transfer, license, sublicense, acquisition or disposition of any business or businesses or assets that constitute or account for 15% or more of the consolidated net revenues, consolidated net income, consolidated assets, or consolidated book value of the Company or our subsidiaries, or 15% or more of the market value of the assets of the Company or our subsidiaries, or (c) any liquidation or dissolution of the Company or our subsidiaries.

For the purposes of the merger agreement, a superior offer means an unsolicited, bona fide, written offer by a third party to purchase, in exchange for consideration consisting exclusively of cash or publicly traded equity securities or a combination thereof, all of the outstanding shares of Company common stock that: (i) was not obtained or made as a direct or indirect result of a breach of or any action inconsistent with any of the no-solicitation or shareholder meeting provisions in the merger agreement or any of the provisions in the confidentiality agreement with SCI or a breach of any standstill or similar agreement or provision under which we (or any subsidiary) has any rights or obligations, and (ii) contains terms and conditions that our board of directors determines in good faith, after consultation with an independent financial advisor of nationally recognized reputation and our outside legal counsel, to be (A) more favorable from a financial point of view to our shareholders than the terms of the merger, and (B) likely to be consummated. An offer that would otherwise be a superior offer will not be deemed a superior offer if any financing required to consummate the transaction contemplated thereby is not committed and is not reasonably capable of being obtained by such third party, or if the consummation of such transaction is contingent on any such financing being obtained.

Proxy Statement; Shareholders Meeting

We agreed to file this proxy statement with the SEC as promptly as practicable, but no more than fifteen (15) business days, following the effective date of the merger agreement, respond promptly to any comments made by the SEC with respect to this proxy statement and cause this proxy statement, a form of proxy and other associated materials to be mailed to our shareholders as promptly as practicable after the earlier of (i) receiving notice from the SEC that it is not reviewing this proxy statement, or (ii) the conclusion of any SEC staff review. If any event occurs, or if we become aware of any information, that must be disclosed in an amendment or supplement to this proxy statement, we have agreed to promptly inform SCI thereof and promptly file an appropriate amendment or supplement to this proxy statement with the SEC and, if appropriate, mail such amendment or supplement to our shareholders. Additionally, SCI has agreed to promptly inform us if any event occurs, or if SCI becomes aware of any information, that must be disclosed in an amendment or supplement to this proxy statement, and we have agreed to promptly file an appropriate amendment or supplement with the SEC and, if appropriate, mail such amendment or supplement to our shareholders in such case.

Pursuant to the merger agreement, we have agreed to take all action necessary under all applicable legal requirements to call, give notice of and hold a meeting of our shareholders for the purpose of obtaining our shareholders approval of the merger agreement, to be held as promptly as practicable following the mailing of this proxy statement to our shareholders.

Subject to certain limitations set forth below (see Board Recommendation), the proxy statement is required to include a statement to the effect that the special committee and our entire board of directors (i) have unanimously authorized and approved the execution, delivery and performance of the merger agreement by the Company, (ii) have unanimously directed that the merger agreement be submitted for approval by our shareholders at the special meeting of shareholders; and (iii) unanimously recommend that our shareholders vote to approve the merger agreement.

Our obligation to call, give notice of and hold the special meeting will not be limited or otherwise affected by the making, commencement, disclosure, announcement or submission of any superior offer or other acquisition proposal or by any withdrawal or change in the board of directors recommendation (see Board Recommendation). We have agreed that unless the merger agreement is terminated in accordance with its terms, we will not submit any alternative acquisition proposal to a vote of our shareholders and we will not, without SCI s prior written consent, adjourn, postpone or cancel (or propose to adjourn, postpone or cancel) the special meeting of shareholders, except to the extent required to obtain the requisite shareholder approval.

Board Recommendation

The unanimous recommendation of our board of directors that our shareholders vote to approve the merger agreement is referred to as the Board Recommendation.

We have agreed that our board of directors will not:

- subject to exceptions described below, withdraw or modify in a manner adverse to SCI or Merger Sub, or permit the withdrawal or modification in any manner adverse to SCI or Merger Sub of, the Board Recommendation (the Board Recommendation will be deemed to have been modified by our board of directors in a manner adverse to SCI and Merger Sub if the Board Recommendation is no longer unanimous);

- recommend the approval, acceptance or adoption of, or approve, endorse, accept or adopt, any alternative acquisition proposal;

- approve or recommend, or cause or permit the Company (or any subsidiary) to execute or enter into any letter of intent, memorandum of understanding, agreement in principle, merger agreement, acquisition agreement, option agreement, joint venture agreement, partnership agreement or similar document or contract constituting or relating directly or indirectly to, or that could reasonably be expected to result in an alternative acquisition transaction; or

- resolve, agree or publicly propose to, or permit the Company (or any subsidiary) or any representative of the Company (or any subsidiary) to agree or publicly propose to, take any of the actions referred to in the preceding three bullets.

Notwithstanding the first of the forgoing four (4) bulleted requirements, at any time prior to the approval of the merger agreement by our shareholders, our board of directors may withdraw or modify the Board Recommendation if: (i) an unsolicited, bona fide, written alternative acquisition proposal is made to us and is not withdrawn, (ii) such acquisition proposal did not result directly or indirectly from a breach of or any action inconsistent with any of the no-solicitation or shareholder meeting provisions in the merger agreement (as described above under Limitation on Soliciting, Discussing or Negotiating Other Acquisition Proposals) or any of the provisions in the confidentiality agreement with SCI or from a breach of any standstill or similar agreement or provision under which we (or any subsidiary) has any rights, or any voting agreement, (iii) we provide SCI with written notice, at least seventy-two (72) hours before any meeting of our board of directors at which our board of directors will consider whether such acquisition proposal is a superior offer, which notice must specify the date and time of such meeting, the reasons for holding such meeting, the terms and conditions of the acquisition proposal that is the basis of the potential action by the board of directors (including a copy of any draft contract relating to such acquisition proposal) and the identity of the person making such acquisition proposal, (iv) our board of directors reasonably determines in good faith, after having consulted with an independent financial advisor of nationally recognized reputation and our outside legal counsel, that such acquisition proposal constitutes a superior offer, (v) our board of directors reasonably determines in good faith, after having consulted with our outside legal counsel, that, in light of such superior offer, the failure to withdraw or modify the Board Recommendation would constitute a breach by our board of directors of its fiduciary obligations to the our shareholders under applicable Georgia law, (vi) at least four (4) business days prior to withdrawing or modifying the Board Recommendation our board of directors delivers to SCI a written notice with certain required information regarding the acquisition proposal,

(vii) throughout the period between the delivery of such notice and withdrawal or modification of the Board Recommendation, we engage (to the extent requested by SCI) in good faith negotiations with SCI to amend the merger agreement, and (viii) at the time of withdrawing or modifying the Board Recommendation, our board of directors reasonably determines in good faith, after having consulted with an independent financial advisor of nationally recognized reputation and our outside legal counsel, that a failure to make such withdrawal or modification of its recommendation would constitute a breach by our board of directors of its fiduciary obligations to our shareholders under applicable Georgia law in light of such superior offer (after taking into account any changes to the terms of the merger agreement proposed by SCI as a result of such negotiations).

Under the merger agreement, any change in the form or amount of the consideration payable in connection with a superior offer, and any other material change to any of the terms of a superior offer, will be deemed to be a new superior offer (or other alternative acquisition proposal), requiring a new notice of a proposed change in the Board Recommendation and a new advance notice period. However, the advance notice period applicable to any such change to a superior offer will be three business days rather than four (4) business days. We have agreed to keep confidential, and not to disclose to the public or to any person, any and all information regarding any negotiations that take place (as described immediately above) (including the existence and terms of any proposal made on behalf of SCI or the Company during such negotiations).

Employee Matters

Unless otherwise requested by SCI, we will take all actions necessary or appropriate to terminate any Company benefit plan that contains a cash or deferred arrangement intended to qualify under section 401(k) of the Internal Revenue Code of 1986, as amended, and will provide notice to SCI specifying certain facts with respect to such termination.

Prior to the effective time of the merger, we (and our subsidiaries) may not communicate with employees of the Company (or any subsidiary) regarding post-closing employment matters, including employee benefits and compensation, without the prior approval of SCI.

We will make certain lump sum, cash severance payments to individuals pursuant to the merger agreement, some of which are described in The Merger Interests of Company Directors and Executive Officers in the Merger.

Regulatory Approvals

We and SCI have agreed to use our commercially reasonable efforts to file, as soon as reasonably practicable after the date of the merger agreement, all notices, reports and other documents required to be filed by such party with any government authority with respect to the merger and the other transactions contemplated by the merger agreement, and to promptly submit any additional information requested by such government authority. We and SCI will respond as promptly as practicable to any inquiries or requests received from any state attorney general, foreign antitrust or competition authority or other government authority in connection with antitrust or competition matters.

We will not be required to make any filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

Public Statements

We have agreed to not, and to not permit any of our subsidiaries or any representative of the Company (or any subsidiary) to, make any disclosure to any employee, to the public or otherwise regarding the merger or any of the other transactions contemplated by the merger agreement or if an alternative acquisition proposal has been disclosed, announced, commenced, submitted or made, regarding such acquisition proposal. However, such disclosure may be made, if: (i) SCI has given its prior approval to such disclosure, or (ii) we (A) have been advised by our outside legal counsel that such disclosure is required by applicable law, and (B) prior to making any such disclosure, have provided SCI with reasonable advance notice of our intention to make such disclosure and certain information regarding such disclosure.

Additional Agreements

We have agreed to use reasonable efforts to take, or to cooperate with SCI in taking, all actions necessary or advisable to consummate the merger and the other transactions contemplated by the merger agreement, including (i) making all filings (if any) and giving all notices (if any) required to be made and given in connection with the transactions, (ii) using reasonable efforts to obtain all consents required to be obtained in connection with the merger, and (iii) using reasonable efforts to lift any restraint, injunction or other legal bar to the transactions.

Shareholder Litigation

We have agreed to promptly notify SCI in writing of, and give SCI the opportunity to participate in the defense and settlement of, any shareholder claim or litigation (including any class action or derivative litigation) against or otherwise involving us and/or any of our directors or officers relating to the merger agreement and the merger and the other transactions contemplated by the merger agreement. We have agreed not to compromise or settle any such claim or litigation in full or in part without SCI s prior written consent.

Access to Information

We have agreed, subject to certain exceptions and any applicable legal restrictions, to give SCI and its representatives reasonable access upon reasonable notice to our representatives and assets and to all existing books, records, tax returns, work papers and other documents and information relating to us and our subsidiaries. We have also agreed to provide SCI and its representatives with copies of such documents and information and with such additional financial, operating and other data as SCI and its representatives may reasonably requests.

We have agreed to allow SCI s senior officers to meet with our chief financial officer and other officers responsible for our financial statements and internal controls to discuss such matters as SCI may deem necessary or appropriate. We have also agreed to provide SCI with reasonable access to our office building and land identified as the gold property in order to permit SCI to cause an appraiser to conduct a valuation of such property.

Indemnification, Expense Advancement and Exculpation; Directors and Officers Insurance

The merger agreement provides that all rights to indemnification, advancement of expenses and exculpation from liability for violations of fiduciary duties existing in favor of our current or former directors and officers as provided in our articles of incorporation or bylaws for acts and omission occurring prior to the effective time of the merger will survive the merger for a period of six (6) years following the effective time of the merger.

SCI or the surviving corporation is required to purchase a prepaid tail policy on the existing policy of directors and officers insurance for the Company for a period of six years from the effective date of the merger. In no event will SCI or the Company (after the merger) be required to pay aggregate premiums for insurance in excess of 200% of the amount of the aggregate premiums paid by the Company for 2011 for such purpose.

Resignation of Officers and Directors

We have agreed to use reasonable efforts to obtain and deliver to SCI at or prior to the effective time of the merger the resignation of each of our and our subsidiaries officers and directors.

Table of Contents

Section 16 Matters

Prior to the effective time of the merger, we will take such reasonable steps as are required to dispose of or cause to be disposed of our common stock, stock options and other derivative securities by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act.

Related Party Notes

Prior to the effective time of the merger, we will repay in full the principal amount due to certain related parties under certain promissory notes and pay all accrued and unpaid interest thereon. As of July 27, 2011, the outstanding principal amount of such promissory notes was $500,000.

Conditions to the Merger

The obligations of SCI and Merger Sub to complete the merger are subject to the satisfaction or waiver of the following conditions:

- certain representations and warranties with respect to the issuance of our common stock, options, warrants and other securities, and the status of our outstanding stock as duly authorized, validly issued, fully paid and nonassessable, must have been true and correct in all material respects of the date of the merger agreement and must be true and correct in all material respects as of the closing date as if made on the closing date;

- certain representations with respect to our capitalization, the authorization by the Company of the merger agreement and its enforceability, the inapplicability of certain anti-takeover statutes, the required shareholder vote to approve the merger, and certain matters related to Ladenburg s fairness opinion and broker s fees must have been true and correct in all respects as of the date of the merger agreement, and must be true and correct in all respects as of the closing date as if made on the closing date (or on an earlier specified date);

- each of the other representations and warranties of the Company contained in the merger agreement must be true and correct in all respects as of the date of the merger agreement and on the closing date (or on an earlier specified date, and disregarding any updates or modifications to our disclosure schedules), subject to a qualification for any inaccuracies that individually or in aggregate do not have or could not reasonably be expected to have a material adverse effect (which we refer to, together with the preceding two bullet points, as the Company representations and warranties closing condition);

- we must comply with or perform in all material respects all of our covenants and obligations in the merger agreement (which we refer to as the Company covenant closing condition);

- we must obtain approval of the merger agreement by the required shareholder vote, and holders of less than 5% of in the aggregate of the shares of Company common stock entitled to vote thereon will have delivered to the Company, before the vote is taken, a notice of dissent pursuant to Section 14-2-1321 of the GBCC;

- all consents required to be obtained in connection with the merger and other transactions contemplated by the merger agreement will be obtained, except if failure to obtain such consent has not caused and could not reasonably be expected to cause a material adverse effect;

- certain closing documents will be executed and delivered;

there will not have occurred any material adverse effect since the date of the merger agreement, and no event will have occurred or circumstances be existing that, in combination with other events or circumstances, could reasonably be expected to have a material adverse effect;

any government authorization or other consent required to be obtained under any applicable antitrust or competition law will be obtained;

there will be no legal prohibitions or restraints against the merger making the consummation of the merger illegal, seeking material damages or relief, seeking to materially prohibit SCI s ability to take certain actions with respect to the Company common stock, or that could materially and adversely affect SCI s or the Company s ability to own the assets of the Company or operate the Company s business after the merger;

there will not be certain pending or threatened proceedings by a governmental authority relating to the merger;

SCI will receive assurances that the Company has repaid all outstanding principal and interest due to lenders under certain promissory notes with related parties;

the Company will deliver to SCI final Phase I environmental site assessment reports with respect to its owned real properties, certifying the absence of certain adverse environmental conditions;

the Company will deliver to SCI title reports for its owned real properties evidencing title owned free and clear of most encumbrances; and

the Company s deferred compensation plans and severance plan will be terminated and evidence of such terminations will be delivered to SCI.

Our obligation to complete the merger is subject to the satisfaction or waiver of the following conditions:

subject to certain exceptions, the representations and warranties of SCI and Merger Sub in the merger agreement must be true and correct in all material respects as of the date of the merger agreement and as of the closing date (or as of an earlier specified date) (which we refer to as the SCI representations and warranties closing condition), subject to a qualification for inaccuracies that would not reasonably be expected to have a material adverse effect on SCI s ability to consummate the merger;

SCI must comply with or perform in all material respects all of the obligations and covenants required to be performed by or complied with by it under the merger agreement at or prior to the closing date (which we refer to as the SCI covenant closing condition);

we must obtain approval of the merger agreement by the required shareholder vote;

we must receive a certificate executed by an officer of SCI confirming the satisfaction of certain conditions;

any government authorization or other consent required to be obtained under any applicable antitrust or competition law will be obtained; and

there will be no legal prohibitions or restraints against the merger making the consummation of the merger illegal (provided that the Company seeking to assert this condition must first, if applicable, take all actions required under the merger agreement to have the restraint lifted).

Termination

The merger agreement may be terminated prior to the effective time of the merger (whether before or after the approval of the merger agreement by the required shareholder vote):

by mutual written consent of us and SCI;

by SCI or us if the merger has not been consummated by December 31, 2011; provided, however, that a party will not be permitted to terminate the merger agreement for this reason if the failure to consummate the merger by December 31, 2011 is attributable to a failure on the part of such party to perform any covenant or obligation in the merger agreement required to be performed by such party at or prior to the effective time of the merger;

by SCI or us if a court of competent jurisdiction or other governmental body has issued a final and nonappealable order, decree or ruling or has taken any other action having the effect of permanently restraining, enjoining or otherwise prohibiting the merger; provided, however, a party will not be permitted to terminate the merger agreement for this reason if the issuance of such final and nonappealable order, decree or ruling is attributable to a failure on the part of such party to perform any covenant or obligation in the merger agreement required to be performed by such party at or prior to the effective time of the merger;

by SCI or us if the special meeting of the shareholders (including any adjournments and postponements thereof) has been held and completed and our shareholders have taken a final vote on a proposal to approve the merger agreement and the merger agreement has not been approved at such special meeting (and has not been approved at any adjournment or postponement thereof) by the required shareholder vote; provided, however, a party will not be permitted to so terminate the merger agreement for this reason if the failure to have the merger agreement approved by the required shareholder vote is attributable to a failure on the part of such party to perform any covenant or obligation in the merger agreement required to be performed by such party at or prior to the effective time of the merger (which we refer to as a No Vote Termination);

by SCI (at any time prior to the approval of the merger agreement by the required shareholder vote) if a triggering event has occurred (which we refer to as a Triggering Event Termination);

by SCI if (i) any of our representations or warranties contained in the merger agreement are inaccurate as of the date of the merger agreement, or become inaccurate as of a date subsequent to the date of the merger agreement (as if made on such subsequent date) such that, in each case, the Company representations and warranties closing condition (see Conditions to the Merger) would not be satisfied (disregarding any materiality qualifiers to such representations and warranties or any updates or purported updates to the Company s disclosure schedules), (ii) any of our covenants or obligations contained in the merger agreement have been breached such that the Company covenant closing condition (see Conditions to the Merger) would not be satisfied, or (iii) a material adverse effect has occurred following the date of the merger agreement. For purposes of clauses (i) and (ii) above, if an inaccuracy in any of our representations or warranties as of a date subsequent to the date of the merger agreement or a breach of a covenant or obligation by us is curable by us within fifteen (15) days after the date of the occurrence of such inaccuracy or breach and we are continuing to exercise commercially reasonable efforts to cure such inaccuracy or breach, then SCI may not terminate the merger agreement on account of such inaccuracy or breach (A) for a period of fifteen (15) days commencing on the date that SCI gives us notice of such inaccuracy or breach, or (B) if such inaccuracy or breach has been fully cured during such fifteen (15) day period in a manner that does not result in a breach of any covenant or obligation of the Company; or

by us if: (i) any of SCI s representations or warranties contained in the merger agreement are inaccurate as of the date of the merger agreement or become inaccurate as of a date subsequent to the date of the merger agreement (as if made on such subsequent date) such that the SCI representations and warranties closing condition would not be satisfied (disregarding any materiality qualifiers to such representations and warranties) (see Conditions to the Merger), or (ii) any of SCI s covenants or obligations contained in the merger agreement have been breached such that the SCI covenant closing condition (see Conditions to the Merger) would not be satisfied. If an inaccuracy in any of SCI s representations or warranties as of the date of the merger agreement or a breach of a covenant or obligation by SCI is curable by SCI within fifteen (15) days after the date of the occurrence of such inaccuracy or breach and SCI is continuing to exercise commercially reasonable efforts to cure such inaccuracy or breach, then we may not terminate the merger agreement on account of such inaccuracy or breach (A) for a period of fifteen (15) days commencing on the date that we give SCI notice of such inaccuracy or breach, or (B) if such inaccuracy or breach has been fully cured during such fifteen (15) day period in a manner that does not result in a breach of any covenant or obligation of SCI.

For the purposes of the merger agreement, a triggering event will be deemed to have occurred if: (i) our board of directors has withdrawn, modified or otherwise failed to give its Board Recommendation, (ii) we have failed to include the Board Recommendation in this proxy statement, (iii) our board of directors has failed to reaffirm publicly the Board Recommendation within five business days after SCI requests that the

Board Recommendation be reaffirmed publicly, (iv) if our board of directors has approved, endorsed or recommended any acquisition proposal, (v) if the Company has executed any letter of intent, memorandum of understanding or similar document or any contract relating to any acquisition proposal, (vi) a tender or exchange offer relating to shares of Company common stock has been commenced and we have not sent to our securityholders, within ten (10) business days after the commencement of such tender or exchange offer, a statement disclosing that we recommend rejection of such tender or exchange offer, (vii) an acquisition proposal has been publicly announced, and we have failed to issue a press release announcing our opposition to such acquisition proposal within five (5) business days after such acquisition proposal is publicly announced, or (viii) we (or any subsidiary) or any of our (or our subsidiaries) representatives have breached or taken any action inconsistent with any of the provisions described under Limitation on Soliciting, Discussing or Negotiating Other Acquisition Proposals.

Notwithstanding the forgoing, we may not terminate the merger agreement unless any fee required to be paid and any expense payment required to be made by us and described in Expenses; Termination Fees at or prior to the time of such termination have been paid and made in full.

Effect of Termination

If the merger agreement is terminated by either us or SCI in accordance with its terms, the merger agreement will be of no further force or effect. However, the provisions relating to termination and termination fees and other miscellaneous provisions of the merger agreement will remain in full force and effect, and certain provisions of the confidentiality agreement between us and SCI will survive the termination of the merger agreement and will remain in full force and effect in accordance with their terms. The termination of the merger agreement will not relieve any party from any liability for any breach of any covenant or obligation contained in the merger agreement or any intentional breach of any representation or warranty contained in the merger agreement.

Expenses; Termination Fees

All fees and expenses incurred in connection with the merger agreement and the transactions contemplated by the merger agreement will be paid by the party incurring such fees and expenses, whether or not the merger is consummated, provided, however, if the merger agreement is terminated:

- by SCI or us pursuant to a No Vote Termination (as described under Termination), then we will make a cash payment to SCI (which we refer to as the Expense Payment), equal to the lesser of $450,000 or the aggregate amount of all fees, costs and other expenses that SCI has incurred in connection with or in anticipation of the contemplated transactions;

- by SCI pursuant to a Triggering Event Termination (as described under Termination), then we will pay to SCI a non-refundable fee in the amount of $460,000 in cash, within two (2) business days of such termination; or

- by SCI or us pursuant a No Vote Termination (as described under Termination), and on or prior to twelve (12) months after the date of such termination, either an acquisition transaction is consummated or a definitive agreement relating to an acquisition transaction is entered into, then we will pay to SCI a non-refundable fee in the amount of $460,000 in cash, on or prior to the earlier of the date of consummation of such acquisition transaction or the date of execution of such definitive agreement, in addition to the Expense Payment. For purposes of this provision, all references to 15% in the definition of acquisition transaction in the merger agreement will be deemed to refer instead to 50%.

If we fail to pay when due any expense or termination fee payable under the merger agreement, then (i) we will reimburse SCI for all costs and expenses incurred in connection with the collection of such overdue amount and enforcement of payment thereof, and (ii) we will pay SCI interest on such overdue amount at an amount equal to three (3) percentage points above the prime rate.

Table of Contents

Remedies

We have agreed that in the event of any breach or threatened breach by us of any covenant or obligation contained in the merger agreement, SCI will be entitled to seek, without proof of actual damages (and in addition to any other remedy to which SCI may be entitled at law or in equity) (i) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation, and (ii) an injunction restraining such breach or threatened breach. This includes, without limiting the generality of the preceding sentence, that (i) SCI will be entitled to specific performance of each of our covenants and obligations in the merger agreement, including our obligation to consummate the merger, our obligation not to solicit alternative acquisition proposals, and our covenants with respect to the special meeting, and (ii) if, as a result of a breach by us of any covenant or obligation contained in the merger agreement or a breach of any support agreement, our shareholders do not adopt or approve the merger agreement and approve the merger and the other transactions contemplated by the merger agreement, SCI may require us to resubmit the merger agreement and the merger to our shareholders.

Amendment

The merger agreement may be amended with the approval of the special committee and our board of directors and the board of directors of SCI. However, after the approval of the merger agreement by our shareholders, any amendment will require the approval of our shareholders if such approval is required by law.

Table of Contents

The Support Agreements

The following description sets forth the material provisions of the support agreements but does not purport to describe all of the terms of the support agreements. The full text of the support agreements is attached to this proxy statement as Annexes B and C. You are urged to read the support agreements in their entirety.

As a condition of, and an inducement to, SCI entering into the merger agreement, concurrent with the execution of the merger agreement, certain of our shareholders, which as of July 20, 2011 held approximately 56% of the outstanding shares of Company common stock, including our Chairman and Chief Executive Officer and our Executive Vice President and certain of their family members and affiliated entities, entered into support agreements with SCI.

Each shareholder party to a support agreement has agreed, during the term of the agreement, at any meeting of the shareholders of the Company, however called, and in any action by written consent of shareholders of the Company, unless otherwise directed in writing by SCI, to cause all equity securities of the Company owned beneficially or of record by such shareholder including any such securities acquired after the date of the voting and support agreement (which securities we refer to as the subject securities) to be voted:

- in favor of (i) the merger, the execution and delivery by the Company of the merger agreement and the approval of the merger agreement and the terms thereof, (ii) each of the other transactions contemplated by the merger agreement, and (iii) any action in furtherance of the foregoing;

- against any action or agreement that would result in a breach of any representation, warranty, covenant or obligation of the Company in the merger agreement; and

- against the following actions (other than the merger and the transactions contemplated by the merger agreement): (i) any extraordinary corporate transaction, such as a merger, consolidation or other business combination involving the Company (or any subsidiary), (ii) any sale, lease, sublease, license, sublicense or transfer of a material portion of the rights or other assets of the Company (or any subsidiary), (iii) any reorganization, recapitalization, dissolution or liquidation of the Company (or any subsidiary), (iv) any change in a majority of the board of directors of the Company, (v) any amendment to the Company s certificate of incorporation or bylaws, (vi) any material change in the capitalization of the Company or the Company s corporate structure, and (vii) any other action which is intended, or could reasonably be expected, to impede, interfere with, delay, postpone, discourage or adversely affect the merger, any of the transactions contemplated by the merger agreement or any of the actions contemplated by the support agreement.

Under the terms of the support agreements, certain of our shareholders, which as of July 20, 2011 held approximately 28% of the outstanding shares of Company common stock, including our Chairman and Chief Executive Officer and our Executive Vice President and certain of their family members and affiliated entities, irrevocably appointed SCI and certain of SCI s representatives as its proxy to vote in the manner described above all shares of our outstanding common stock held by that shareholder as of the record date.

Under the terms of support agreements, certain other of our other shareholders, which as of July 20, 2011 held approximately 27% of the outstanding shares of Company common stock, appointed SCI and certain of SCI s representatives as its proxy to vote in the manner described above all shares of our outstanding common stock held by that shareholder as of the record date; provided, however, these support agreements, and the related proxies, terminate upon the withdrawal or modification of the recommendation of our board of directors to the shareholders to approve the merger agreement, which would then allow the holders of these shares to vote in their discretion.

During the term of the support agreement, each shareholder also agrees not to:

- subject to certain limitations, transfer any of the subject securities; or deposit any of the subject securities into a voting trust, tender or enter into any tender, voting or other such agreement, or grant a proxy or power of attorney, with respect to any of the subject securities that is inconsistent with the voting and support agreement.

Each shareholder has also agreed that, during the term of the support agreement, such shareholder will not directly or indirectly, and will ensure that each of such shareholder s representatives and affiliates does not directly or indirectly:

solicit, initiate or knowingly encourage, assist, induce or facilitate the making, submission or announcement of any alternative acquisition proposal or acquisition inquiry or take any action that could reasonably be expected to lead to an alternative acquisition proposal or acquisition inquiry;

furnish or otherwise provide access to any information regarding the Company (or any subsidiary) to any person in connection with or in response to an alternative acquisition proposal or acquisition inquiry;

engage in discussions or negotiations with any person with respect to any alternative acquisition proposal or acquisition inquiry;

subject to certain exceptions, make any disclosure or communication to any person of or with respect to the merger or any alternative acquisition proposal or acquisition inquiry;

support, endorse, approve, adopt or accept any alternative acquisition proposal, or enter into any letter of intent, memorandum of understanding, agreement in principle or contract constituting or relating directly or indirectly to any alternative acquisition proposal or acquisition transaction;

take any action that could result in the revocation or invalidation of the proxy or that is reasonably determined by SCI to suggest that the shareholder no longer supports the merger; or

agree or publicly propose to take any such actions.

Under the terms of the support agreements, each shareholder agrees not to exercise any dissenters or other similar rights that such shareholder may have in connection with the merger.

The obligations of certain of the shareholders under the support agreements, which as of July 20, 2011 held approximately 28% of the outstanding shares of Company common stock, including our Chairman and Chief Executive Officer and our Executive Vice President and their affiliates, continue until the earlier of (i) the date upon which the merger agreement is validly terminated, or (ii) the date upon which the merger becomes effective.

The obligations of certain of our other shareholders, which as of July 20, 2011 held approximately 27% of the outstanding shares of Company common stock, continue until the earlier of (i) the date upon which the merger agreement is validly terminated, (ii) the date upon which the merger becomes effective, or (iii) the date upon which the board of directors withdrawals or modifies its recommendation to the shareholders to approve the merger agreement (see The Merger Agreement Board Recommendation). As a result, if the board of directors withdraws or modifies its recommendation to approve the merger agreement in the manner permitted under the merger agreement, then these shareholders will be released from their voting agreements and may vote in their discretion.

Each such shareholder made to SCI and SCI made to each shareholder, certain customary representations and warranties.

Proposal 2 Advisory Vote on Compensation

The Advisory Vote on Compensation

Recently adopted Section 14A of the Exchange Act requires that the Company provide its shareholders with the opportunity to vote to approve, on an advisory (non-binding) basis, the merger-related compensation arrangements for the Company s named executive officers, as disclosed in the section entitled The Merger Interests of Company Directors and Executive Officers in the Merger Merger-Related Compensation, beginning on page 41.

Our board of directors encourages you to review carefully the named executive officer merger-related compensation information disclosed in this proxy statement, and to cast a vote either to approve or disapprove, on an advisory basis, the compensation that may be paid or become payable to the Company s named executive officers in connection with the merger, through the following resolution:

RESOLVED, that the shareholders of the Company approve, on an advisory (non-binding) basis, the compensation to be paid by the Company to its named executive officers, that is based on, or otherwise relates to, its proposed acquisition by Scientific Conservation, Inc., as disclosed pursuant to Item 402(t) of Regulation S-K in the table set forth in the section of the proxy statement for the merger entitled The Merger Interests of Company Directors and Executive Officers in the Merger Merger-Related Compensation, and in the related notes and narrative disclosure.

The advisory vote on the merger-related compensation for the Company s named executive officers is a vote separate and apart from the vote to approve the merger agreement. Accordingly, you may vote for adoption of the resolution to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers and vote not to approve the merger agreement or vice versa. Approval of this proposal is not a condition to completion of the merger, and the vote with respect to this proposal is advisory only. Because the vote is advisory only, it will not be binding on either the Company or SCI.

Vote Required and Board Recommendation

The affirmative vote of the holders of a majority of the shares present in person or by proxy at the special meeting and entitled to vote thereon, provided there is a quorum, is required for approval of this proposal on an advisory (non-binding) basis.

Abstentions and broker non-votes will be counted as present for the purpose of determining the presence of a quorum and abstentions will have the same effect as a vote against the proposal. Broker non-votes will have no effect in determining whether or not the proposal is approved.

The large majority of the payments being made to executive officers that will no longer be employed by the Company as a result of the merger consist of payments that are provided for under the preexisting terms of the Company s 1993 Salaried Employees Severance Plan. Other merger related payments such as the distribution of retirement plan accounts and the repayment of insider loans are being made pursuant to preexisting contractual obligations of the Company. In addition, many of the benefits have not been specially developed for executive officers, but are applicable generally to Company employees including severance pursuant to the terms of the Company s 1993 Salaried Employees Severance Plan, the acceleration and cash out of in-the-money stock appreciation rights, and the distribution of retirement plan accounts and deferred compensation accounts.

The Board of Directors believes that the remaining merger-related payments, including the miscellaneous separation expenses being reimbursed to the executive officers that would be departing service with the Company as a result of the merger, are both customary and modest in amount, particularly given the long tenure of the departing executives with the Company, both of whom have served the Company for nearly 27 years. **Accordingly, the board of directors recommends that shareholders vote FOR adoption of the resolution to approve, on an advisory (non-binding) basis, the merger-related compensation for the Company s named executive officers.**

71

Proposal 3 Authority to Adjourn the Special Meeting

The Adjournment Proposal

If at the special meeting of shareholders, the number of shares of Company common stock represented and voting in favor of approval of the merger agreement is insufficient to adopt that proposal under the GBCC, we may move to adjourn the special meeting in order to enable our board of directors to solicit additional proxies in respect of such proposal. In that event, we will ask our shareholders to vote only upon the adjournment proposal, and not the proposal regarding the approval of the merger agreement or the proposal to approve, on an advisory basis, the merger-related compensation for the Company s named executive officers.

In this proposal, we are asking you to authorize the holder of any proxy solicited by our board of directors to vote in favor of granting discretionary authority to the proxy or attorney-in-fact to adjourn the special meeting to another time and place for the purpose of soliciting additional proxies. If the shareholders approve the adjournment proposal, we could adjourn the special meeting and any adjourned session of the special meeting and use the additional time to solicit additional proxies, including the solicitation of proxies from shareholders that have previously voted. Among other things, approval of the adjournment proposal could mean that, even if we had received proxies representing a sufficient number of votes against the approval of the merger agreement to defeat that proposal, we could adjourn the special meeting without a vote on the merger agreement and seek to convince the holders of those shares to change their votes to votes in favor of approval of the merger agreement.

Failure for this proposal to pass will not affect the ability of the holder of any proxy solicited by us to adjourn the special meeting in the event insufficient shares of Company common stock are represented to establish a quorum, or for any other lawful purpose.

Vote Required and Board Recommendation

Approval of the proposal to adjourn the special meeting for the purpose of soliciting proxies, if necessary or appropriate, requires the affirmative vote of the holders of a majority of the shares present in person or by proxy at the special meeting and entitled to vote thereon, whether or not a quorum is present.

Abstentions and broker non-votes will be counted as present for the purpose of determining the presence of a quorum and abstentions will have the same effect as a vote against the proposal. Broker non-votes will have no effect in determining whether or not the proposal is approved.

For the reasons set forth in this proxy statement, the board of directors recommends that the Company s shareholders vote FOR the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Security Ownership of Management and Certain Beneficial Owners

The following table sets forth the beneficial ownership (adjusted for stock dividends), as of July 20, 2011, of the Company common stock by: (1) persons (as that term is defined by the SEC) who beneficially own more than five percent (5%) of the outstanding shares of such stock; (2) directors; (3) the named executive officers of the Company; and (4) all named executive officers and directors of the Company as a group. The following percentages of outstanding shares total more than one hundred percent (100%), because they are based on SEC beneficial ownership rules, the application of which can result in the same shares being owned beneficially by more than one (1) person. Unless otherwise stated below, the address of each listed holder is 1945 The Exchange, Suite 300, Atlanta, Georgia 30339-2029.

	Shares Beneficially Owned	
Name	**Number**	**Percentage**
David L. Abrams	865,850(1)(2)	23.56%
Alan R. Abrams	783,500(3)(4)(5)(6)	20.60%
Kandu Partners L.P. Post Office Box 53407 Atlanta, Georgia 30355	707,561(2)	19.25%
J. Andrew Abrams	684,563(3)(4)(7)	18.51%
Abrams Partners, L.P. 7525 Princeton Trace Atlanta, Georgia 30328	577,500(3)(4)	15.71%
Ann U. Abrams 2828 Peachtree Road, Apt. 2901 Atlanta, Georgia 30305	305,567(4)	8.31%
Tamalpais Master Fund, Ltd. Clifton House, 75 Fort Street P.O. Box 190 GT, Georgetown Grand Cayman, Cayman Islands	198,549(8)	5.40%
M. Todd Jarvis	73,929(9)	1.98%
Samuel E. Allen	23,121(10)(11)	*
Gilbert L. Danielson	22,705(10)	*
Herschel Kahn	3,300(12)	*
Robert T. McWhinney, Jr.	16,149(10)(13)	*
All Executive Officers and Directors as a group (8 persons)	1,060,204	26.88%

* Indicates less than 1%.

(1) Includes 707,561 shares (19.25% of outstanding shares) owned by Kandu Partners, L.P., which David L. Abrams beneficially owns due to his management of the general partner of the partnership.

(2) This shareholder has entered into a support agreement with SCI to vote in favor of the merger, subject to termination if the Company s board changes its recommendation to the shareholders to approve the merger. See The Support Agreements beginning on page 69.

(3) Includes 577,500 shares (15.71% of the outstanding shares) owned by Abrams Partners, L.P., which Alan R. Abrams and J. Andrew Abrams each beneficially own due to their joint control of the general partner of such partnership.

(4) This shareholder has entered into a support agreement with SCI to vote in favor of the merger. See The Support Agreements beginning on page 69.

(5) Includes 115 shares owned by Mr. Alan R. Abrams wife.

(6) Includes currently exercisable options to purchase 127,958 shares of Company common stock.

(7) Includes currently exercisable options to purchase 22,958 shares of Company common stock.

(8) Based on Schedule 13D (adjusted for stock dividends) filed on May 19, 2008, by Tamalpais Master Fund, Ltd. and its investment manager, Tamalpais Management Group LP, whose principal executive office is located at 600 California Street, Suite 540, San Francisco, California 94108.

(9) Includes currently exercisable options to purchase 54,285 shares of Company common stock.

(10) Includes currently exercisable options to purchase 11,550 shares of Company common stock.

(11) Includes 1,719 shares owned by Mr. Allen s children for the benefit of his grandchildren.

(12) Includes 2,250 shares owned jointly with Mr. Kahn s daughter.

(13) Includes 1,155 shares owned jointly with Mr. McWhinney s wife.

Shareholder Proposals for 2011 Annual Meeting

We will hold an annual meeting of shareholders in 2011 only in the event that the merger is not completed. Proposals of Company shareholders intended to be presented at the Company s 2011 annual meeting in accordance with the provisions of Rule 14a-8(e) of the Exchange Act, and shareholder nominations proposed for inclusion in the Company s proxy statement and form of proxy for that meeting, must have been received by the Company at its executive offices on or before March 29, 2011, in order to be eligible for inclusion in the proxy statement and form of proxy. In accordance with the Company s bylaws, shareholder proposals submitted outside of the provisions of Rule 14a-8(e), and shareholder nominations not intended for inclusion in the Company s proxy statement and form of proxy for a meeting of shareholders, generally must be presented to the Corporate Secretary not less than sixty (60) days nor more than ninety (90) days prior to such meeting. The bylaws of the Company further require that, in connection with such proposals, the shareholders provide certain information to the Corporate Secretary. Proxies solicited by the board of directors will confer discretionary voting authority with respect to those proposals, subject to SEC rules governing the exercise of this authority.

Other Matters

As of the date of this proxy statement, the board of directors knows of no matters that will be presented for consideration at the special meeting other than as described in this proxy statement.

Where You Can Find More Information

We file annual, quarterly, and special reports, proxy statements, and other information with the SEC. You may read and copy any reports, statements, or other information that we file with the SEC at SEC s public reference room at the following location:

Public Reference Room
100 F Street, N.E.
Washington, D.C. 20549

Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. These SEC filings are also available to the public from commercial document retrieval services and at the Internet World Wide Web site maintained by the SEC at *http://www.sec.gov.*

You may also obtain any of the documents we file with the SEC, without charge, by requesting them in writing or by telephone from us at the following address:

Servidyne, Inc.
Attn: Corporate Secretary
1945 The Exchange
Suite 300
Atlanta, Georgia 30339-2029
(770) 953-0304

Table of Contents

If you have any questions about this proxy statement, the special meeting or the merger or need assistance with voting procedures, you should contact us at the address or telephone number set forth above.

If you request any documents from us, we will mail them to you by first class mail, or another equally prompt method, within one (1) business day after we receive your request.

The Company has supplied all information in this proxy statement relating to the Company, and SCI has supplied all information contained in this proxy statement relating to SCI and Merger Sub.

You should not send in your Company stock certificates until you receive the transmittal materials from the paying agent.

You should rely only on the information contained in this proxy statement and the annexes hereto. We have not authorized anyone to provide you with information that is different from what is contained in this proxy statement. This proxy statement is dated July 29, 2011. You should not assume that the information contained in this proxy statement is accurate as of any date other than that date (or as of an earlier date if so indicated in this proxy statement). Neither the mailing of this proxy statement to shareholders nor the issuance of cash in the merger creates any implication to the contrary. This proxy statement does not constitute a solicitation of a proxy in any jurisdiction where, or to or from any person to whom, it is unlawful to make a proxy solicitation.

Table of Contents

Annex A

AGREEMENT AND PLAN OF MERGER
among:
Scientific Conservation, Inc.,
a Delaware corporation;
Scrabble Acquisition, Inc.,
a Georgia corporation; and
Servidyne, Inc.,
a Georgia corporation

Dated as of June 26, 2011

Table of Contents

Table of Contents

		Page
Section 1. Description of Transaction		A-1
1.1	Merger of Merger Sub into the Company	A-1
1.2	Effects of the Merger	A-1
1.3	Closing; Effective Time	A-1
1.4	Articles of Incorporation and Bylaws; Directors and Officers	A-2
1.5	Conversion of Shares	A-2
1.6	Closing of the Company s Transfer Books	A-2
1.7	Surrender of Certificates	A-2
1.8	Further Action	A-4
1.9	Dissenters Rights	A-4
Section 2. Representations and Warranties of the Company		A-4
2.1	Subsidiaries; Due Organization; Etc.	A-4
2.2	Articles of Incorporation; Bylaws; Charters and Codes of Conduct	A-5
2.3	Capitalization, Etc.	A-5
2.4	SEC Filings; Financial Statements	A-6
2.5	Absence of Changes	A-8
2.6	Title to Assets	A-10
2.7	Receivables; Customers; Inventories	A-10
2.8	Equipment; Real Property; Leasehold	A-11
2.9	Intellectual Property; Privacy	A-12
2.10	Contracts	A-17
2.11	Sale of Products; Performance of Services	A-19
2.12	Liabilities	A-19
2.13	Compliance with Legal Requirements	A-19
2.14	Certain Business Practices	A-19
2.15	Governmental Authorizations	A-20
2.16	Tax Matters	A-20
2.17	Employee and Labor Matters; Benefit Plans	A-21
2.18	Environmental Matters	A-25
2.19	Insurance	A-26
2.20	Transactions with Affiliates	A-27
2.21	Legal Proceedings; Orders	A-27
2.22	Authority; Binding Nature of Agreement	A-27
2.23	Inapplicability of Anti-takeover Statutes	A-28
2.24	Proxy Statement	A-28
2.25	No Discussions	A-28
2.26	Vote Required	A-28
2.27	Non-Contravention; Consents	A-28
2.28	Fairness Opinion	A-29
2.29	Financial Advisor	A-29

		Page
Section 3. Representations and Warranties of Parent and Merger Sub		A-29
3.1	Due Organization	A-29
3.2	Corporate Power; Enforceability	A-29
3.3	Non-Contravention	A-30
3.4	Governmental Approvals	A-30
3.5	Disclosure	A-30
3.6	Absence of Litigation	A-30
3.7	Ability to Pay Purchase Price	A-30
3.8	Parent Brokerage Fees	A-30
Section 4. Certain Covenants of the Company		A-30
4.1	Access and Investigation	A-30
4.2	Operation of the Company s Business	A-31
4.3	No Solicitation	A-34
Section 5. Additional Covenants of the Parties		A-36
5.1	Proxy Statement	A-36
5.2	Company Shareholders Meeting	A-36
5.3	Regulatory Approvals	A-38
5.4	Stock Options; SARS and Warrants	A-38
5.5	Employee Benefits	A-39
5.6	Indemnification of Officers and Directors	A-40
5.7	Additional Agreements	A-40
5.8	Disclosure	A-41
5.9	Resignation of Officers and Directors	A-41
5.10	Shareholder Litigation	A-41
5.11	Section 16 Matters	A-41
5.12	Related Party Notes	A-41
Section 6. Conditions Precedent to Obligations of Parent and Merger Sub		A-42
6.1	Accuracy of Representations	A-42
6.2	Performance of Covenants	A-42
6.3	Shareholder Approval	A-42
6.4	Consents	A-42
6.5	Agreements and Other Documents	A-42
6.6	No Company Material Adverse Effect	A-42
6.7	Regulatory Matters	A-43
6.8	No Restraints	A-43
6.9	No Governmental Proceedings Relating to Contemplated Transactions or Right to Operate Business	A-43
6.10	Related Party Notes	A-43
6.11	No Other Legal Proceedings	A-43
6.12	Phase I Property Environmental Condition Reports	A-43
6.13	Title Reports	A-44
6.14	Termination of Deferred Compensation Plans	A-44
6.15	Termination of Severance Plan	A-44

		Page
Section 7. Conditions Precedent to Obligation of the Company		A-44
7.1	Accuracy of Representations	A-44
7.2	Performance of Covenants	A-44
7.3	Shareholder Approval	A-44
7.4	Closing Certificate	A-44
7.5	Regulatory Matters	A-44
7.6	No Restraints	A-44
Section 8. Termination		A-45
8.1	Termination	A-45
8.2	Effect of Termination	A-46
8.3	Expenses; Termination Fees	A-46
Section 9. Miscellaneous Provisions		A-47
9.1	Amendment	A-47
9.2	Waiver	A-47
9.3	No Survival of Representations and Warranties	A-47
9.4	Entire Agreement; Counterparts; Exchanges by Facsimile/Electronic Delivery	A-47
9.5	Applicable Law; Jurisdiction	A-48
9.6	Disclosure Schedule	A-48
9.7	Attorneys Fees	A-48
9.8	Assignability	A-48
9.9	Notices	A-48
9.10	Cooperation	A-49
9.11	Severability	A-49
9.12	Remedies	A-50
9.13	Construction	A-50

Table of Contents

AGREEMENT AND PLAN OF MERGER

This Agreement and Plan of Merger is made and entered into as of June 26, 2011, by and among: **Scientific Conservation, Inc.**, a Delaware corporation (***Parent***); **Scrabble Acquisition, Inc.**, a Georgia corporation and a wholly-owned subsidiary of Parent (***Merger Sub***); and **Servidyne, Inc.**, a Georgia corporation (the ***Company***). Certain capitalized terms used in this Agreement are defined in Exhibit A.

Recitals

A. Parent, Merger Sub and the Company intend to effect a merger of Merger Sub into the Company (the ***Merger***) in accordance with this Agreement and the GBCC. Upon consummation of the Merger, Merger Sub will cease to exist, and the Company will become a wholly-owned subsidiary of Parent.

B. The respective boards of directors of Parent and Merger Sub, and the special committee of the board of directors (the ***Special Committee***) and the board of directors of the Company have approved this Agreement and the Merger.

C. In order to induce Parent to enter into this Agreement and to cause the Merger to be consummated, certain shareholders of the Company, being aware that the Special Committee and the board of directors of the Company have recommended that the shareholders approve this Agreement and having reviewed the final form of this Agreement, are executing voting agreements in favor of Parent concurrently with the execution and delivery of this Agreement whereby such shareholders have agreed to vote their shares of Company Common Stock in favor of the Merger and to otherwise support the Contemplated Transactions (the ***Voting Agreements***). Each Voting Agreement also grants an irrevocable proxy in favor of Parent with respect to such shareholder s obligations under the Voting Agreement.

Agreement

The parties to this Agreement, intending to be legally bound, agree as follows:

Section 1. *Description of Transaction*

1.1 *Merger of Merger Sub into the Company.* Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, and the separate existence of Merger Sub shall cease. The Company will continue as the surviving corporation in the Merger (the ***Surviving Corporation***).

1.2 *Effects of the Merger.* The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the GBCC. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the properties, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.3 *Closing; Effective Time.* The consummation of the Contemplated Transactions (the ***Closing***) shall take place at the offices of Cooley LLP, 4401 Eastgate Mall, San Diego, CA 92121, at 9:00 a.m. Eastern time, on a date to be agreed by the parties, which shall be no later than the fifth Business Day after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Sections 6 and 7 (other than the conditions set that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of each of such conditions at such time), unless another time, date or place is agreed to in writing by the parties hereto. The date on which the Closing actually takes place is referred to as the ***Closing Date.*** Subject to the provisions of this Agreement, concurrently with or as soon as practicable following the Closing, the Surviving Corporation shall (i) duly execute and file with the Secretary of State of the State of Georgia a certificate of merger satisfying the applicable requirements of the GBCC (the ***Certificate of Merger***); and (ii) comply with the publication requirements of the GBCC. The Merger shall become effective at the time of the filing of the Certificate of Merger with the Secretary of State of the State of Georgia or at such later time as may be specified in the Certificate of Merger in accordance with the GBCC with the consent of Parent (the time as of which the Merger becomes effective being referred to as the ***Effective Time***).

1.4 *Articles of Incorporation and Bylaws; Directors and Officers.*

(a) The articles of incorporation of the Surviving Corporation shall be amended and restated at the Effective Time to conform to the articles of incorporation of Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Corporation shall be Servidyne, Inc.

(b) the bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to the bylaws of Merger Sub as in effect immediately prior to the Effective Time; and

(c) the directors and officers of the Surviving Corporation immediately after the Effective Time shall be the respective individuals who are directors and officers of Merger Sub immediately prior to the Effective Time.

1.5 *Conversion of Shares.*

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Merger Sub, the Company or any shareholder of the Company:

(i) any shares of Company Common Stock held by the Company or any wholly-owned Subsidiary of the Company (or held in the Company s treasury) immediately prior to the Effective Time shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(ii) any shares of Company Common Stock held by Parent, Merger Sub or any other wholly-owned Subsidiary of Parent immediately prior to the Effective Time shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(iii) except as provided in clauses (i) and (ii) above and subject to Sections 1.5(b) and 1.9, each share of Company Common Stock outstanding immediately prior to the Effective Time shall be converted into the right to receive the Per Share Consideration in cash; and

(iv) each share of the common stock, $1.00 par value per share, of Merger Sub outstanding immediately prior to the Effective Time shall be converted into one share of common stock of the Surviving Corporation.

(b) If, during the period commencing on the date of this Agreement and ending at the Effective Time, the outstanding shares of Company Common Stock are changed into a different number or class of shares by reason of any stock split, division or subdivision of shares, stock dividend, reverse stock split, consolidation of shares, reclassification, recapitalization or other similar transaction, then the Per Share Consideration shall be appropriately adjusted.

1.6 *Closing of the Company s Transfer Books.* At the Effective Time: (a) all shares of Company Common Stock outstanding immediately prior to the Effective Time shall automatically be canceled and retired and shall cease to exist, and all holders of certificates representing shares of Company Common Stock that were outstanding immediately prior to the Effective Time shall cease to have any rights as shareholders of the Company; and (b) the stock transfer books of the Company shall be closed with respect to all shares of Company Common Stock outstanding immediately prior to the Effective Time. No further transfer of any such shares of Company Common Stock shall be made on such stock transfer books after the Effective Time. If, after the Effective Time, a valid certificate previously representing any shares of Company Common Stock outstanding immediately prior to the Effective Time (a ***Company Stock Certificate***) is presented to the Paying Agent or to the Surviving Corporation or

Parent, such Company Stock Certificate shall be canceled and shall be exchanged as provided in Section 1.7.

1.7 *Surrender of Certificates.*

(a) On or prior to the Closing Date, Parent shall select a reputable bank or trust company reasonably acceptable to the Company to act as paying agent in the Merger (the ***Paying Agent***). Promptly after the Effective Time, Parent shall cause to be deposited with the Paying Agent cash sufficient to make payments of the cash consideration payable pursuant to Section 1.5 (the ***Payment Fund***). The Payment Fund shall be invested by the Paying Agent as directed by Parent.

(b) Promptly after the Effective Time, the Paying Agent will mail to the Persons who were record holders of Company Stock Certificates immediately prior to the Effective Time: (i) a letter of transmittal in customary form and containing such provisions as Parent may reasonably specify (including provisions confirming that delivery of Company Stock Certificates shall be effected, and risk of loss and title to Company Stock Certificates shall pass, only upon delivery of such Company Stock Certificates to the Paying Agent); and (ii) instructions for use in effecting the surrender of Company Stock Certificates in exchange for the merger consideration set forth in Section 1.5. Upon surrender of a Company Stock Certificate to the Paying Agent for exchange, together with a duly executed letter of transmittal and such other documents as may be reasonably required by the Paying Agent or Parent: (A) the holder of such Company Stock Certificate shall be entitled to receive in exchange therefor the cash consideration that such holder has the right to receive pursuant to the provisions of Section 1.5, in full satisfaction of all rights pertaining to the shares of Company Common Stock formerly represented by such Company Stock Certificate; and (B) the Company Stock Certificate so surrendered shall be canceled. In the event of a transfer of ownership of any shares of Company Common Stock which are not registered in the transfer records of the Company, payment of merger consideration hereunder may be made to a Person other than the holder in whose name the Company Stock Certificate formerly representing such shares is registered if (1) any such Company Stock Certificate shall be properly endorsed or otherwise be in proper form for transfer and (2) such holder shall have paid any fiduciary or surety bonds and any transfer or other similar Taxes required by reason of the payment of such merger consideration hereunder to a Person other than such holder (or shall have established to the reasonable satisfaction of Parent and Paying Agent that such bonds and Taxes have been paid or are not applicable). Until surrendered as contemplated by this Section 1.7(b), each Company Stock Certificate shall be deemed, from and after the Effective Time, to represent only the right to receive merger consideration pursuant to the provisions of Section 1.5. If any Company Stock Certificate shall have been lost, stolen or destroyed, Parent may, in its discretion and as a condition precedent to the delivery of any merger consideration with respect to the shares of Company Common Stock previously represented by such Company Stock Certificate, require the owner of such lost, stolen or destroyed Company Stock Certificate to provide an appropriate affidavit and to deliver a bond (in a sum not to exceed the number of shares represented by such lost, stolen or destroyed Company Stock Certificate multiplied by the Per Share Consideration) as indemnity against any claim that may be made against the Paying Agent, Parent, Merger Sub or the Surviving Corporation with respect to such Company Stock Certificate. No interest shall be paid or will accrue on any cash payable to holders of Company Stock Certificates pursuant to the provisions of this Section 1.7. The letter of transmittal, instructions and other documents sent in connection with the exchange of Company Stock Certificates shall be in a form and contain such provisions as are reasonably acceptable to the Company.

(c) Any portion of the Payment Fund that remains undistributed to holders of Company Stock Certificates as of the date that is 360 days after the date on which the Merger becomes effective shall be delivered to Parent upon demand, and any holders of Company Stock Certificates who have not theretofore surrendered their Company Stock Certificates in accordance with this Section 1.7 shall thereafter look only to Parent for satisfaction of their claims for merger consideration.

(d) Each of the Paying Agent, Parent, Merger Sub and the Surviving Corporation shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Company Common Stock such amounts as may be required to be deducted or withheld from such consideration under the Code or any provision of state, local or foreign tax Legal Requirement or under any other applicable Legal Requirement. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(e) If any Company Stock Certificate has not been surrendered by the earlier of: (i) the fifth anniversary of the date on which the Merger becomes effective; or (ii) the date immediately prior to the date on which the cash amount that such Company Stock Certificate represents the right to receive would otherwise escheat to or become the property of any Governmental Body, then such cash amount shall, to the extent permitted by applicable Legal Requirements, become the property of the Surviving Corporation, free and clear of any claim or interest of any Person previously entitled thereto.

(f) None of Parent, Merger Sub, the Surviving Corporation and the Paying Agent shall be liable to any holder or former holder of Company Common Stock or to any other Person with respect to any merger consideration delivered to any public official pursuant to any applicable abandoned property Legal Requirement, escheat Legal Requirement or similar Legal Requirement.

1.8 *Further Action.* If, at any time after the Effective Time, any further action is determined by Parent or the Surviving Corporation to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession of and to all rights and property of Merger Sub and the Company, then the officers and directors of the Surviving Corporation and Parent shall be fully authorized (in the name of Merger Sub, in the name of the Company and otherwise) to take such action.

1.9 *Dissenters Rights.* Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time and which are held by record shareholders (as defined in the GBCC) who exercise their rights to dissent from and obtain payment of the fair value of such shareholders shares when and in the manner required by Sections 14-2-1320 through 14-2-1327 of the GBCC (the ***Dissenting Shareholders***), shall not be converted into or be exchangeable for the right to receive the merger consideration set forth in Section 1.5 (the ***Dissenting Shares***), but instead such holder shall be entitled to payment of the fair value of such shares in accordance with the provisions of Article 13 of the GBCC (and at the Effective Time, such Dissenting Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and such holder shall cease to have any rights with respect thereto, except the right to receive the fair value of such Dissenting Shares in accordance with the provisions of Article 13 of the GBCC), unless and until such holder shall have failed to perfect or shall have effectively withdrawn or lost such holder s rights to dissent under the GBCC. If any Dissenting Shareholder shall have failed to perfect or shall have effectively withdrawn or lost such rights, such holder s shares of Company Common Stock shall thereupon be treated as if they had been converted into and become exchangeable for the right to receive, as of the Effective Time, the Per Share Consideration for each such share of Company Common Stock, in accordance with Section 1.5(a)(iii), without any interest thereon. Prior to the Effective Time, the Company shall give Parent (a) prompt notice of any written notice of a shareholder s intent to demand payment for such shareholder s shares if the Merger is effectuated, attempted withdrawals of such notices and any other related written communications received by the Company, and (b) the opportunity to participate in all negotiations and proceedings with respect to such notices and demands for payment. The Company shall not, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle, or offer or agree to settle, any such demand for payment not required by the GBCC.

Section 2. *Representations and Warranties of the Company*

Except as specifically set forth in the Disclosure Schedule, the Company hereby represents and warrants to Parent and Merger Sub as follows:

2.1 *Subsidiaries; Due Organization; Etc.*

(a) The Company has no Subsidiaries, except for the Entities identified in Part 2.1(a)(i) of the Disclosure Schedule; and neither the Company nor any of the other Entities identified in Part 2.1(a)(i) of the Disclosure Schedule owns any capital stock of, or any equity interest of any nature in, any other Entity, other than the Entities identified in Part 2.1(a)(ii) of the Disclosure Schedule. None of the Acquired Corporations has agreed or is obligated to make, or is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity. None of the Acquired Corporations has, at any time, been a general partner of, or has otherwise been liable for any of the debts or other obligations of, any general partnership, limited partnership or other Entity.

(b) Each of the Acquired Corporations is a corporation or a limited liability company (as summarized in Part 2.1(a)(i) of the Disclosure Schedule) duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization (as summarized in Part 2.1(a)(i) of the Disclosure

Schedule) and has all necessary power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its obligations under all Contracts by which it is bound.

(c) Each of the Acquired Corporations is qualified to do business as a foreign corporation, and is in good standing, under the laws of all jurisdictions where the nature of its business requires such qualification (as summarized in Part 2.1(a)(i) of the Disclosure Schedule), other than where the failure to be so qualified or in good standing, individually or in the aggregate, is not reasonably likely to have a Company Material Adverse Effect.

2.2 *Articles of Incorporation; Bylaws; Charters and Codes of Conduct.* The Company has delivered to Parent accurate and complete copies of the articles of incorporation, bylaws, operating agreements and other charter and organizational documents of the respective Acquired Corporations, including all amendments thereto. Part 2.2 of the Disclosure Schedule lists, and the Company has delivered to Parent, accurate and complete copies of: (a) the charters of all committees of the Company s board of directors; and (b) any code of conduct or similar policy adopted by any of the Acquired Corporations or by the board of directors, or any committee of the board of directors, of any of the Acquired Corporations.

2.3 *Capitalization, Etc.*

(a) The authorized capital stock of the Company consists of 10,000,000 shares of Company Common Stock, of which 3,675,782 shares have been issued and are outstanding as of the date of this Agreement. Except as set forth in Part 2.3(a)(i) of the Disclosure Schedule, the Company does not hold any shares of its capital stock in its treasury. All of the outstanding shares of Company Common Stock have been duly authorized and validly issued, and are fully paid and nonassessable. There are no shares of Company Common Stock held by any of the other Acquired Corporations. Except as set forth in Part 2.3(a)(ii) of the Disclosure Schedule: (i) none of the outstanding shares of Company Common Stock is entitled or subject to any preemptive right, right of participation, right of maintenance or any similar right; (ii) none of the outstanding shares of Company Common Stock is subject to any right of first refusal in favor of the Company; and (iii) there is no Company Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to, other than the Company Equity Awards summarized on Part 2.3(b) of the Disclosure Schedule), any shares of Company Common Stock. None of the Acquired Corporations is under any obligation, or is bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding shares of Company Common Stock or other securities. Part 2.3(a)(iii) of the Disclosure Schedule accurately and completely describes all repurchase rights held by the Company with respect to shares of Company Common Stock (including shares issued pursuant to the exercise of stock options), and specifies which of those repurchase rights are currently exercisable.

(b) As of the date of this Agreement: (i) 947,015 shares of Company Common Stock are issued or subject to issuance pursuant to stock options or stock appreciation rights granted and outstanding under the Company Equity Plan; (ii) 272,500 shares of Company Common Stock are subject to issuance pursuant to stock appreciation rights outside of the Company Equity Plan; (iii) 0 shares of Company Common Stock have been granted as restricted stock outside of the Company Equity Plan; (iv) no shares of Company Common Stock are reserved for future issuance pursuant to stock options or other equity awards not yet granted under the Company Equity Plan; and (v) 57,750 shares of Company Common Stock are reserved for future issuance pursuant to the Company Warrants. Part 2.3(b) of the Disclosure Schedule sets forth the following information with respect to each Company Equity Award outstanding as of the date of this Agreement: (A) the particular Contract (if any) pursuant to which such Company Equity Award was granted; (B) the name of the optionee or holder, as applicable; (C) the number of shares of Company Common Stock subject to such Company Equity Award; (D) the exercise price of such Company Equity Award, if applicable; (E) the date on which such Company Equity Award was granted; (F) the extent to which such Company Equity Award is vested and exercisable as of the date of this Agreement; and (G) the date on which such Company Equity Award expires. The Company has delivered to Parent accurate and complete copies of all plans pursuant to which any of the

Acquired Corporations has ever granted Company Equity Awards, and the forms of all award agreements evidencing such Company Equity Awards.

(c) Except as set forth in Part 2.3(b) of the Disclosure Schedule, there is no: (i) outstanding subscription, option, call, warrant, membership interest or right (whether or not currently exercisable) to acquire any shares of the capital stock or other securities of any of the Acquired Corporations; (ii) outstanding security, instrument or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of any of the Acquired Corporations; (iii) shareholder rights plan (or similar plan commonly referred to as a poison pill) or Contract under which any of the Acquired Corporations is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities; or (iv) condition or circumstance that may give rise to or provide a basis for the assertion of a claim by any Person to the effect that such Person is entitled to acquire or receive any shares of capital stock or other securities of any of the Acquired Corporations.

(d) All outstanding shares of Company Common Stock, options, warrants and other securities of the Acquired Corporations have been issued and granted in compliance with (i) all applicable securities laws and other applicable Legal Requirements, and (ii) all requirements set forth in applicable Contracts.

(e) All of the outstanding shares of capital stock of each of the Company s Subsidiaries have been duly authorized and validly issued, are fully paid and nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof, and are owned beneficially and of record by the Company, free and clear of any Encumbrances.

2.4 *SEC Filings; Financial Statements.*

(a) Since April 30, 2008, the Company has filed all forms, reports, statements, schedules and other documents with the SEC that were required to be filed by it under applicable Legal Requirements prior to the date hereof, and the Company will file prior to the Effective Time all forms, reports statements, schedules and other documents with the SEC that are required to be filed by it under applicable Legal Requirements prior to such time (all such forms, reports and documents, including amendments thereto, together with any documents filed during such period by the Company with the SEC on a voluntary basis on Current Reports on Form 8-K and, in all cases, all exhibits and schedules thereto, the ***Company SEC Reports***). As of its effective date (in the case of Company SEC Reports that are registration statements filed pursuant to the Securities Act) and as of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing), (i) each Company SEC Report complied, or will comply, as the case may be, as to form in all material respects with all applicable Legal Requirements, including the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, each as in effect on the date such Company SEC Report was, or will be, filed or effective, and (ii) each Company SEC Report did not, and will not, as the case may be, contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading. True and correct copies of all Company SEC Reports filed prior to the date hereof have been furnished to Parent or are publicly available in the Electronic Data Gathering, Analysis and Retrieval *(* ***EDGAR*** *)* database of the SEC. None of the Company s Subsidiaries is required to file any forms, reports or other documents with the SEC. No executive officer of the Company has failed to make the certifications required of him or her under (A) Rule 13a-14 or 15d-15 of the Exchange Act or (B) Section 302 or 906 of the Sarbanes-Oxley Act, with respect to any Company SEC Report, except as disclosed in certifications filed with the Company SEC Reports. Neither the Company nor any of its executive officers has received notice from any Governmental Body challenging or questioning the accuracy, completeness, form or manner of filing of such certifications. Except as set forth in Part 2.4(a) of the Disclosure Schedule, since the earlier of the enactment of applicable Legal Requirements and the earliest Company SEC Report, the Company and each of its officers and directors are and have been in compliance in all material respects with the applicable provisions of the Sarbanes-Oxley Act and the rules and regulations promulgated thereunder. No financial statements of any Person other than the Acquired Corporations are required by GAAP to be included in the consolidated financial statements of the Company.

Table of Contents

(b) The Acquired Corporations maintain disclosure controls and procedures (as such terms are defined in Rule 13a-15 under the Exchange Act) that satisfy the requirements of Rule 13a-15 under the Exchange Act. Such disclosure controls and procedures are effective to provide reasonable assurance that all material information concerning the Acquired Corporations is made known on a timely basis to the Company s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Section 302 and 906 of the Sarbanes-Oxley Act. Part 2.4(b) of the Disclosure Schedule lists, and the Company has delivered to Parent accurate and complete copies of, all written descriptions of, and all policies, manuals and other documents promulgating, such disclosure controls and procedures.

(c) The consolidated financial statements of the Acquired Corporations filed with the Company SEC Reports have been prepared in accordance with GAAP consistently applied during the periods and at the dates involved (except as may be indicated in the notes thereto or as otherwise permitted by Form 10-Q with respect to any unaudited quarterly financial statements filed on Form 10-Q), and fairly present in all material respects the consolidated financial position of the Acquired Corporations as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended.

(d) The Company maintains a system of internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that: (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and/or directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company s assets that could have a material effect on the financial statements. Part 2.4(d) of the Disclosure Schedule lists, and the Company has delivered to Parent accurate and complete copies of, all written descriptions of, and all policies, manuals and other documents promulgating, such internal control over financial reporting. The Company s management has completed an assessment of the effectiveness of the Company s system of internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended April 30, 2010, and, except as set forth in Part 2.4(d) of the Disclosure Schedule, such assessment concluded that such controls were effective.

(e) Since April 30, 2008, the Company s principal executive officer and its principal financial officer (each as defined in the Sarbanes-Oxley Act) have disclosed to the Company s auditors and the audit committee of the Company s board of directors (i) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect the Company s ability to record, process, summarize and report financial information of the Acquired Corporations on a consolidated basis and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Acquired Corporations internal controls. Since the enactment of the Sarbanes-Oxley Act, no Acquired Corporation has made or permitted to remain outstanding any extensions of credit (within the meaning of Section 402 of the Sarbanes-Oxley Act) or prohibited loans to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Acquired Corporations.

(f) Except as set forth in Part 2.4(f) of the Disclosure Schedule, since April 30, 2008, (i) neither any Acquired Corporation, nor any director or executive officer of any Acquired Corporation has, and to the knowledge of the Company, no other officer, employee or accountant of any Acquired Corporation has, received any material complaint, allegation, assertion or claim, in writing (or to the knowledge of the Company, orally) regarding the accounting or auditing practices, procedures, methodologies or methods of the Acquired Corporations or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that any

Acquired Corporation has engaged in questionable accounting or auditing practices, and (ii) no attorney representing any Acquired Corporation, whether or not employed by an Acquired Corporation, has reported evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents to the board of directors of any Acquired Corporation or any committee thereof or to any director or officer of any Acquired Corporation.

(g) No Acquired Corporation is a party to, or has any commitment to become a party to, any joint venture, partnership agreement or any similar Contract (including any Contract relating to any transaction, arrangement or relationship between or among an Acquired Corporation, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand (such as any arrangement described in Item 303(a)(4) of Regulation S-K under the Securities Act) where the purpose or effect of such arrangement is to avoid disclosure of any material transaction involving any Acquired Corporation in the Company s consolidated financial statements. Part 2.4(g) of the Disclosure Schedule lists, and the Company has made available to Parent complete and accurate copies of the documentation creating or governing (since April 30, 2008) all such off-balance sheet arrangements effected by any Acquired Corporation.

(h) Deloitte & Touche LLP, which has expressed its opinion with respect to the financial statements (including any related notes) contained in the Company SEC Reports, is and has been throughout the periods covered by the applicable financial statements: (i) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act); (ii) independent with respect to the Company within the meaning of Regulation S-X under the Exchange Act; and (iii) in compliance with subsections (g) through (l) of Section 10A of the Exchange Act and the rules and regulations promulgated by the SEC thereunder. Part 2.4(h) of Disclosure Schedule lists all non-audit services performed by Deloitte & Touche LLP for any Acquired Corporation since April 30, 2008.

(i) As of the date of this Agreement, there are no unresolved comments issued by the staff of the SEC with respect to any of the Company SEC Reports.

(j) Except as set forth in Part 2.4(j) of the Disclosure Schedule, the Company is in compliance in all material respects with the applicable rules and regulations and listing requirements of NASDAQ Global Market and has not, since April 30, 2008, received any notice asserting any non-compliance with such rules and regulations or listing requirements.

2.5 *Absence of Changes.* Except as set forth in Part 2.5 of the Disclosure Schedule, since the date of the Unaudited Interim Balance Sheet through the date of this Agreement:

(a) there has not been any Company Material Adverse Effect, and no event has occurred or circumstance has arisen that, in combination with any other events or circumstances, could reasonably be expected to have or result in a Company Material Adverse Effect;

(b) there has not been any material loss, damage or destruction to, or any material interruption in the use of, any of the assets of any of the Acquired Corporations (whether or not covered by insurance);

(c) none of the Acquired Corporations has: (i) declared, accrued, set aside or paid any dividend or made any other distribution in respect of any shares of capital stock, other than a cash dividend in the amount of $0.01 per share of Company Common Stock paid on April 15, 2011 to shareholders of record on March 25, 2011; or (ii) repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities;

(d) none of the Acquired Corporations has sold, issued or granted, or authorized the issuance of: (i) any capital stock or other security (except for Company Common Stock issued upon the valid exercise of outstanding Company Equity Awards); (ii) any option, warrant or right to acquire any capital stock or any other security (except for Company Equity Awards identified in Part 2.3(b) of the Disclosure Schedule); or (iii) any instrument convertible into or exchangeable for any capital stock or other security;

(e) the Company has not amended or waived any of its rights under, or permitted the acceleration of vesting under any provision of: (i) the Company s Equity Plan; or (ii) any Company Equity Award or any Contract evidencing or relating to any Company Equity Award;

(f) there has been no amendment to the articles of incorporation, bylaws or other charter or other organizational documents of any of the Acquired Corporations, and none of the Acquired Corporations has effected or been a party to any merger, consolidation, share exchange, business combination, recapitalization, reclassification of shares, stock split, reverse stock split or similar transaction;

(g) none of the Acquired Corporations has received any Acquisition Proposal or Acquisition Inquiry;

(h) none of the Acquired Corporations has formed any Subsidiary or acquired any equity interest or other interest in any other Entity;

(i) none of the Acquired Corporations has made any capital expenditure that, when added to all other capital expenditures made on behalf of the Acquired Corporations since date of the Unaudited Interim Balance Sheet, exceeds $125,000 in the aggregate, or any individual capital expenditures that exceed $25,000;

(j) none of the Acquired Corporations has made any individual expenditure or series of related expenditures in excess of $125,000, otherwise than in the ordinary course of business and consistent with past practices;

(k) none of the Acquired Corporations has: (i) entered into or permitted any of the assets owned or used by it to become bound by any Material Contract that is not set forth in Part 2.10 of the Disclosure Schedule; or (ii) amended or terminated, or waived any material right or remedy under, any Material Contract (except pursuant to change orders);

(l) none of the Acquired Corporations has: (i) acquired, leased or licensed any material right or other material asset from any other Person; (ii) sold or otherwise disposed of, or leased or licensed, any material right or other material asset to any other Person; or (iii) waived or relinquished any right, except for rights or other assets acquired, leased, licensed or disposed of in the ordinary course of business and consistent with past practices;

(m) none of the Acquired Corporations has written off as uncollectible any account receivable, except for accounts receivable less than $5,000 individually and $100,000 in the aggregate in the ordinary course of business consistent with past practices, or established any extraordinary reserve with respect to any account receivable or other indebtedness;

(n) none of the Acquired Corporations has made any pledge of any of its assets or otherwise permitted any of its assets to become subject to any Encumbrance, except for pledges of or Encumbrances with respect to immaterial assets made in the ordinary course of business and consistent with past practices;

(o) none of the Acquired Corporations has: (i) lent money to any Person, other than routine travel advances made to employees in the ordinary course of business and ordinary course advances not exceeding $2,500 at any time outstanding per employee; or (ii) incurred or guaranteed any indebtedness for borrowed money;

(p) none of the Acquired Corporations has: (i) adopted, established or entered into any Company Benefit Plan or Company Benefit Agreement; (ii) caused or permitted any Company Benefit Plan to be amended in any material respect; or (iii) paid any bonus or made any profit-sharing or similar payment to, or materially increased the amount of the wages, salary, commissions, fringe benefits or other compensation or remuneration payable to, any of its directors, officers or other employees;

(q) none of the Acquired Corporations has changed any of its methods of accounting or accounting practices in any material respect;

(r) none of the Acquired Corporations has made any material Tax election;

(s) none of the Acquired Corporations has commenced or settled any Legal Proceeding;

(t) none of the Acquired Corporations has entered into any material transaction or taken any other material action outside the ordinary course of business or inconsistent with past practices; and

(u) none of the Acquired Corporations has agreed or committed to take any of the actions referred to in clauses (c) through (t) above.

2.6 *Title to Assets.* The Acquired Corporations own, and have good and valid title to, all assets purported to be owned by them, including: (a) all assets reflected on the Unaudited Interim Balance Sheet (except for inventory sold or otherwise disposed of, or an immaterial amount of other assets sold or otherwise disposed of, in the ordinary course of business since the date of the Unaudited Interim Balance Sheet); and (b) all other assets reflected in the books and records of the Acquired Corporations as being owned by the Acquired Corporations. All of said assets are owned by the Acquired Corporations free and clear of any Encumbrances, except for: (i) liens described in Part 2.6 of the Disclosure Schedule; and (ii) Permitted Encumbrances. The Acquired Corporations are the lessees of, and hold valid leasehold interests in, all assets purported to have been leased by them, including: (A) all assets reflected as leased on the Unaudited Interim Balance Sheet; and (B) all other assets reflected in the books and records of the Acquired Corporations as being leased by the Acquired Corporations, and enjoy undisturbed possession of all material leased assets, other than with respect to Permitted Encumbrances.

2.7 *Receivables; Customers; Inventories.*

(a) All existing accounts receivable of the Acquired Corporations (including those accounts receivable reflected on the Unaudited Interim Balance Sheet that have not yet been collected and those accounts receivable that have arisen since the date of the Unaudited Interim Balance Sheet and have not yet been collected): (i) represent valid obligations of customers of the Acquired Corporations arising from bona fide transactions entered into in the ordinary course of business; and (ii) are current and, to the knowledge of the Company, will be collected in full when due, without any counterclaim or set off (net of an allowance for doubtful accounts not to exceed $150,000 for the period from the Unaudited Balance Sheet Date through the date of this Agreement and $325,000 in the aggregate).

(b) Part 2.7(b) of the Disclosure Schedule contains an accurate and complete list of each outstanding loan or advance made by any of the Acquired Corporations to any Company Associate, other than routine travel advances made to employees in the ordinary course of business and ordinary course advances not exceeding $2,500 at any time outstanding per employee.

(c) Part 2.7(c) of the Disclosure Schedule accurately identifies, and provides an accurate breakdown of the revenues received from, each customer or prime contractor under service Contracts of the Acquired Corporations from which the Acquired Corporations received $50,000 or more in revenue in either of the fiscal years ended April 30, 2010 or April 30, 2011. None of the Acquired Corporations has received any notice or other communication or information (in writing or otherwise) indicating, and the Company has no knowledge that any customer identified in Part 2.7(c) of the Disclosure Schedule may, terminate any existing contract they have with the Acquired Corporations prior to the completion of such contracts or prior to receipt by the Acquired Corporations of full payment thereunder.

(d) The inventory of the Acquired Corporations reflected on the Unaudited Interim Balance Sheet was as of the date of the Unaudited Interim Balance Sheet, and the current inventory of the Acquired Corporations (the ***Current Inventory***) is, in usable and saleable condition in the ordinary course of business, subject to normal wear and tear and an immaterial allowance for damaged, lost or unsaleable inventory consistent with the Company s past accounting practices. The Current Inventory is not excessive and is adequate in relation to the current trading requirements of the businesses of the Acquired Corporations, and, subject to normal wear and tear and an immaterial allowance for damaged, lost or unsaleable inventory consistent with the Company s past accounting practices, none of the Current Inventory is obsolete, slow moving, unmarketable or of limited value in relation to the current businesses of the Acquired Corporations. The finished goods, work in progress, raw materials and other materials and supplies included in the Current Inventory are generally of a standard that is at least as high as the generally accepted standard prevailing in the industries in which the Acquired Corporations operate.

Table of Contents

2.8 *Equipment; Real Property; Leasehold.*

(a) All material items of equipment and other tangible assets owned by or leased to the Acquired Corporations are adequate for the uses to which they are currently being put, are in good and safe condition and repair (ordinary wear and tear excepted) in all material respects and are adequate for the conduct of the businesses of the Acquired Corporations in the manner in which such businesses are currently being conducted.

(b) Part 2.8(b)(i) of the Disclosure Schedule contains a complete and accurate list of all real property that is owned by the Acquired Corporations (including (i) those certain unimproved parcels of real property identified as the ***Land Parcels*** and (ii) that certain office building and the land identified as the ***Gold Property*** , each as identified on Part 2.8(b)(i) of the Disclosure Schedule) (collectively, the ***Owned Real Estate***). Except as set forth in Part 2.8(b) of the Disclosure Schedule, the Acquired Corporations hold good, indefeasible, insurable and marketable title to the Owned Real Estate, free and clear of all Encumbrances, other than Permitted Encumbrances and the liens set forth in Part 2.6 of the Disclosure Schedule. Part 2.8(b)(i) also sets forth sets forth a complete and accurate description of all real property leased by the Acquired Corporations (the ***Leased Real Estate***) and the address, approximate square footage, annual base rent, the security or other deposit collected and/or applied and the expiration date thereof. A true and complete copy of the lease for such Leased Real Estate (including all amendments, subordination and non-disturbance agreements, estoppel certificates and related documents) (together, the ***Lease***) has been delivered or made available to Parent. The Acquired Corporations hold good, insurable and marketable (subject to the terms of the leases) leasehold interest in all of the Leased Real Estate, free and clear of all Encumbrances, other than Permitted Encumbrances. Except as set forth in Part 2.8(b)(ii) of the Disclosure Schedule, the Company has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Estate or Leased Real Estate or any portion thereof. Part 2.8(b)(ii) of the Disclosure Schedule sets forth all leaseholds that any Acquired Corporation is a party to, or bound by, covering any real property.

(c) There exist no improvements on the Land Parcels other than underground utilities, storm and sewage lines and systems and other similar systems, retainage walls, previously graded sloped surfaces, driveways, curbs and other paved surfaces. The improvements on the Gold Property and the Leased Real Estate are in good operating condition and repair (awnings and ordinary wear and tear excepted). Except for routine preventative maintenance or repair or as set forth in Part 2.8(c) of the Disclosure Schedule, no material capital expenditures by the Acquired Corporation are currently required for the maintenance and/or repair of the Gold Property or the Leased Real Estate. No lienable work has been performed on any of the Owned Real Estate or Leased Real Estate for which payment has not been made in full, except as may be set forth in Part 2.8(c) of the Disclosure Schedule. No improvements constituting a part of the Gold Property encroach on real property not owned by or leased to the Acquired Corporations or on set-back other restricted areas pursuant to zoning codes or other applicable agreements, other than as set forth in Part 2.8(c) of the Disclosure Schedule. The Owned Real Estate and all of the Acquired Corporation s improvements located and operations conducted thereon have received all approvals of applicable Governmental Bodies (including permits, all of which have been fully paid for and are in full force and effect) required in connection with the ownership or operation of commercial real estate. None of the improvements comprising the Owned Real Estate or the business conducted by the Acquired Corporations thereon are in violation of any use or occupancy restriction, limitation, condition or covenant of record or any applicable zoning or building Legal Requirements or public utility or other easement, and there are no violations of any applicable zoning or building Legal Requirements relating to the Owned Real Estate that remains unresolved. No parcel of Owned Real Estate is located in a flood plain, except as set forth in Part 2.8(c) of the Disclosure Schedule. The Land Parcels constitute valid subdivided parcels in accordance with all Legal Requirements. The Acquired Corporations have all easements, servitudes and rights of way necessary for access to the Owned Real Estate, and there exists reasonably unrestricted access to a public street from each parcel of Owned Real Estate, except as set forth in Part 2.8(c) of the Disclosure Schedule. All utilities serving the Gold Property are adequate to operate the improvements in the manner they are currently operated. Except as set forth in Part 2.8(c) of the Disclosure Schedule, all utilities (including without limitation water, gas, plumbing, electrical, steam, compressed air, telecommunication, sanitary, storm and sewage lines and systems and other similar systems) serving the Land Parcels are sufficient to enable the Land Parcels to be used and operated as office/retail sites in compliance in all material respects with all Legal Requirements. Except as set forth in Part 2.8(c) or Part 2.10 of the Disclosure Schedule, there are no (i) material Contracts for services currently affecting the Owned Real Estate or the Leased Real Estate, (ii) challenges or appeals pending, or, to the knowledge of the Company, threatened regarding any amount of Taxes on, or a portion of the assessed valuation of, the Owned Real Estate or the Leased Real Estate, and the Company has not entered into any special arrangements or agreements with any Governmental Body with respect thereto, (iii) condemnation proceedings pending or, to the knowledge of the Company threatened with respect to the Owned Real Estate, (iv) conditions that would adversely affect in any respect the ownership, possession, use or occupancy of the Owned Real Estate relating to the physical condition of the Owned Real Estate or any portion thereof, or (v) outstanding options, rights of first offer, rights of first refusal or contracts to purchase any Owned Real Estate or Leased Real Estate or any portion thereof or ownership interest therein.

(d) Each lease and sublease with respect to the Owned Real Estate and the Leased Real Estate is set forth in Part 2.8(b)(ii) of the Disclosure Schedule. Except as set forth in Part 2.8(d) of the Disclosure Schedule, with respect to each lease or sublease agreement for Owned Real Estate and the Leased Real Estate: (i) such lease or sublease is legal, valid, binding, enforceable and in full force and effect, assuming the due authorization, execution and delivery of such lease or subleases by the counterparties, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors, and rules or Legal Requirement governing specific performance, injunctive relief and other equitable remedies; (ii) except as set forth in Part 2.27 of the Disclosure Schedule, the Contemplated Transactions do not require the consent of any other party to such lease or sublease, will not result in a breach of or default under such lease or sublease, and will not otherwise cause such lease or sublease to cease to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing; (iii) there are no pending disputes with respect to such lease or sublease and neither the Company nor, to the knowledge of the Company, any other Person party to such lease or sublease, is in breach of or default under such lease or sublease, and, to the knowledge of the Company, no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, would constitute such a breach or default, or permit the termination, modification or acceleration of rent under such lease or sublease; (iv) the tenant s possession and quiet enjoyment of the Owned Real Estate and the Leased Real Estate under such lease or sublease has not been disturbed; (v) no security deposit or portion thereof deposited with respect to such lease or sublease has been applied in respect of a breach of or default under such lease or sublease that has not been redeposited in full if required; (vi) except as may be set forth in Part 2.8(d) of the Disclosure Schedule, the Company does not owe, or will not owe in the future, any brokerage commissions or finder s fees with respect to such lease or sublease; (vii) except as set forth in Part 2.8(d) of the Disclosure Schedule, the other Person party to such lease or sublease is not an Affiliate of, and, to the knowledge of the Company, otherwise does not have any economic interest in, the Company; (viii) the Company has not collaterally assigned or granted any Encumbrance in such lease or sublease or any interest therein other than as set forth in Part 2.8(d) of the Disclosure Schedule; and (ix) there are no material understandings, oral or written, nor any course of dealings established between the parties of any sublease or lease which vary in any material respect with the rights or obligations of the parties thereto.

2.9 *Intellectual Property; Privacy.*

(a) *Products and Services.* Part 2.9(a) of the Disclosure Schedule accurately identifies each Company Product currently being offered by any of the Acquired Corporations.

(b) *Registered IP.* Part 2.9(b) of the Disclosure Schedule accurately identifies: (a) each item of Registered IP in which any of the Acquired Corporations has or purports to have an ownership interest of any nature (whether exclusively, jointly with another Person, or otherwise); (b) the jurisdiction in which such item of Registered IP has been registered or filed and the applicable registration or serial number; (c) any other Person that has an ownership interest in such item of Registered IP and the nature of such ownership interest; and (d) each Company Product identified in Part 2.9(a) of the Disclosure Schedule that embodies or utilizes such item of Registered IP.

(c) *Inbound Licenses.* Part 2.9(c) of the Disclosure Schedule accurately identifies as of the date of this Agreement: (a) each Contract pursuant to which any Intellectual Property Right or Intellectual Property is or has been licensed, sold, assigned, or otherwise conveyed or provided to the Company (other than (i) agreements between any of the Acquired Corporations and their respective employees in the Acquired Corporations standard forms thereof and (ii) Commercial Off The Shelf Software); and (b) whether the licenses or rights granted to the Acquired Corporations in each such Contract are exclusive or non-exclusive.

(d) *Outbound Licenses.* Part 2.9(d) of the Disclosure Schedule accurately identifies each Contract under which any of the Acquired Corporations has licensed, or granted any interest in, any Company IP as of the date of this Agreement (other than software licenses entered into in the ordinary course of business and consistent with past practices that do not deviate in any material respect from the standard form agreement provided to Parent as of the date of this Agreement). None of the Acquired Corporations are bound by, and no Company IP is subject to, any Contract containing any covenant or other provision that in any way materially limits or restricts the ability of any of the Acquired Corporations to use, exploit, assert, or enforce any Company IP anywhere in the world.

(e) *Royalty Obligations.* Part 2.9(e) of the Disclosure Schedule contains a complete and accurate list and summary of all royalties, fees, commissions, and other amounts payable by any of the Acquired Corporations to any other Person (other than (i) sales commissions paid to employees according to the Acquired Corporations standard commissions plan or (ii) routine governmental fees incurred in connection the prosecution of any Registered IP) upon or for the manufacture, sale, or distribution of any Company Product or the use of any Company IP.

(f) *Standard Form IP Agreements.* The Company has provided to Parent a complete and accurate copy of each standard form of Company IP Contract used by any of the Acquired Corporations since April 30, 2006, including each standard form of (i) employee agreement containing any assignment or license of Intellectual Property Rights; (ii) consulting or independent contractor agreement containing any intellectual property assignment or license of Intellectual Property Rights; and (iii) confidentiality or nondisclosure agreement. Part 2.9(f) of the Disclosure Schedule accurately identifies each Company IP Contract that deviates in any material respect from the corresponding standard form agreement provided to Parent as of the date of this Agreement, including any agreement with an employee, consultant, or independent contractor in which the employee, consultant, or independent contractor expressly reserved or retained rights in any Intellectual Property or Intellectual Property Rights related to the manufacture, marketing or sale of any Company Product.

(g) *Ownership Free and Clear.* The Acquired Corporations exclusively own all right, title, and interest to and in the Company IP (other than Intellectual Property Rights licensed to the Acquired Corporations, as identified in Part 2.9(c) of the Disclosure Schedule) free and clear of any Encumbrances (other than licenses and rights granted pursuant to the Contracts identified in Part 2.9(d) of the Disclosure Schedule). Without limiting the generality of the foregoing:

(i) *Perfection of Rights.* Since April 30, 2006, all documents and instruments necessary to establish, perfect, and maintain the rights of the Acquired Corporations in the Registered IP in the jurisdictions required to be indicated in Part 2.9(b) of the Disclosure Schedule have been validly executed, delivered, and filed in a timely manner with the appropriate Governmental Body (other than any Registered IP that the Acquired Corporations have intentionally allowed to lapse).

(ii) *Employees and Contractors.* Each Person who is or was an employee or contractor of any of the Acquired Corporations and who is or was involved in the creation or development of any Company Product or Company IP has signed a valid, enforceable agreement containing an assignment of Intellectual Property Rights pertaining to such Company Product or Company IP to such Acquired Corporation, or such rights have been assigned by operation of law, including under the work made for hire provisions of the U.S. Copyright Act, 17 U.S.C. § 101. No current or former officer, director, employee, or to the knowledge of the Company, shareholder of the Company has any claim, right (whether or not currently exercisable), or interest to or in any Company IP. To the knowledge of Company, no employee of any of the Acquired Corporations is (a) bound by or otherwise subject to any

Contract restricting him from performing his duties for any of the Acquired Corporations or (b) in breach of any Contract with any former employer or other Person concerning Intellectual Property Rights or confidentiality due to his activities as an employee of any of the Acquired Corporations.

(iii) *Government Rights.* No funding, facilities, or personnel of any Governmental Body or any public or private university, college, or other educational or research institution were used, directly or indirectly, to develop or create, in whole or in part, any Company IP.

(iv) *Protection of Proprietary Information.* Each of the Acquired Corporations has taken all reasonable steps to maintain the confidentiality of and otherwise protect and enforce their rights in all proprietary information pertaining to the Acquired Corporations or any Company Product. Without limiting the generality of the foregoing, no portion of the source code for any software currently used by any of the Acquired Corporations as a material part of any Company Product has been disclosed to any Person.

(v) *Standards Bodies.* None of the Acquired Corporations is or has ever been a member or promoter of, or a contributor to, any industry standards body or similar organization that could require or obligate any of the Acquired Corporations to grant or offer to any other Person any license or right to any Company IP that is used for and material to, any Company Product.

(vi) *Sufficiency.* Each of the Acquired Corporations owns or otherwise has, and after the Closing Parent will own or otherwise have, all Intellectual Property Rights necessary to conduct the Acquired Corporations business as currently conducted in all material respects.

(h) *Valid and Enforceable.* All Company IP is valid, subsisting, and enforceable. Without limiting the generality of the foregoing:

(i) *Misuse and Inequitable Conduct.* None of the Acquired Corporations has engaged in patent or copyright misuse or any fraud or inequitable conduct in connection with any Company IP that is Registered IP.

(ii) *Trademarks.* No trademark or trade name owned, used, or applied for by any of the Acquired Corporations infringes any trademark or trade name owned or used by any other Person. To the knowledge of the Company, no event or circumstance (including a failure to exercise adequate quality controls and an assignment in gross without the accompanying goodwill) has occurred or exists that has resulted in, or could reasonably be expected to result in, the unintentional abandonment of any trademark (whether registered or unregistered) owned or used by any of the Acquired Corporations.

(iii) *Legal Requirements and Deadlines.* Each item of Company IP that is Registered IP is in compliance with all Legal Requirements and all filings, payments, and other actions required to be made or taken to maintain such item of Company IP in full force and effect. Part 2.9(h)(iii) of the Disclosure Schedule accurately identifies and describes each action, filing, and payment that must be taken or made on or before the date that is 120 days after the date of this Agreement in order to maintain such item of Registered IP in full force and effect.

(iv) *Interference Proceedings and Similar Claims.* No interference, opposition, reissue, reexamination, or other Legal Proceeding is or since April 30, 2006 has been pending or, to the knowledge of the Company, threatened, in which the scope, validity, or enforceability of any Company IP is being, has been, or could reasonably be expected to be contested or challenged. To the knowledge of the Company, there is no basis for a claim that any Company IP is invalid or unenforceable.

(i) *Third-Party Infringement of Company IP.* To the knowledge of the Company, no Person has infringed, misappropriated, or otherwise violated, and no Person is currently infringing, misappropriating, or otherwise violating, any Company IP. Part 2.9(i) of the Disclosure Schedule accurately identifies (and the Company has provided to Parent a complete and accurate copy of) each letter or other written or electronic communication or correspondence that has been sent or otherwise delivered since April 30, 2006 by or to any of the Acquired Corporations or any representative of the Company regarding any actual, alleged, or suspected infringement or misappropriation of any Company IP, and provides a brief description of the current status of the matter referred to in such letter, communication, or correspondence.

(j) *Effects of This Transaction.* Neither the execution, delivery, or performance of this Agreement (or any of the ancillary agreements) nor the consummation of any of the transactions contemplated by this Agreement (or any of the ancillary agreements) will, with or without notice or lapse of time, result in, or give any other Person the right or option to cause or declare, (i) a loss of, or Encumbrance on, any Company IP; (ii) a breach of or default under any Company IP Contract; (iii) the release, disclosure, or delivery of any Company IP by or to any escrow agent or other Person; or (iv) the grant, assignment, or transfer to any other Person of any license or other right or interest under, to, or in any of the Company IP.

(k) *No Infringement of Third Party IP Rights.* None of the Acquired Corporations has ever infringed (directly, contributorily, by inducement, or otherwise), misappropriated, or otherwise violated or made unlawful use of any Intellectual Property Right of any other Person or engaged in unfair competition. No Company Product, and no method or process used in the manufacturing of any Company Product, infringes, violates, or makes unlawful use of any Intellectual Property Right of, or contains any Intellectual Property misappropriated from, any other Person. To the knowledge of the Company, there is no legitimate basis for a claim that any of the Acquired Corporations or any Company Product has infringed or misappropriated any Intellectual Property Right of another Person or engaged in unfair competition or that any Company Product, or any method or process used in the manufacturing of any Company Product, infringes, violates, or makes unlawful use of any Intellectual Property Right of, or contains any Intellectual Property misappropriated from, any other Person. Without limiting the generality of the foregoing:

(i) *Infringement Claims.* No infringement, misappropriation, or similar claim or Legal Proceeding is pending or, to the knowledge of the Company, threatened against any of the Acquired Corporations or against any other Person who is or may be entitled to be indemnified, defended, held harmless, or reimbursed by any of the Acquired Corporations with respect to such claim or Legal Proceeding. Since April 30, 2006, none of the Acquired Corporations has received any notice or other communication (in writing or, to the knowledge of the Company, otherwise) relating to any actual, alleged, or suspected infringement, misappropriation, or violation by any of the Acquired Corporations, any of their employees or agents, or any Company Product of any Intellectual Property Rights of another Person, including any letter or other communication suggesting or offering that the Company obtain a license to any Intellectual Property Right of another Person.

(ii) *Other Infringement Liability.* None of the Acquired Corporations is bound by any Contract to indemnify, defend, hold harmless, or reimburse any other Person with respect to, or otherwise assumed or agreed to discharge or otherwise take responsibility for, any existing or potential intellectual property infringement, misappropriation, or similar claim (other than indemnification provisions in the Acquired Corporations forms of Company IP Contracts provided to Parent, the Contracts set forth in Part 2.9(f) of the Disclosure Schedule or Energy Contracts).

(iii) *Infringement Claims Affecting In-Licensed IP.* To the knowledge of the Company, no claim or Legal Proceeding involving any Intellectual Property or Intellectual Property Right licensed to any of the Acquired Corporations is pending or has been threatened, except for any such claim or Legal Proceeding that, if adversely determined, would not adversely affect (A) the use or exploitation of such Intellectual Property or Intellectual Property Right by any of the Acquired Corporations, or (B) the design, development, manufacturing, marketing, distribution, provision, licensing or sale of any Company Product.

(l) *Bugs.* Except as set forth in Part 2.8(l) of the Disclosure Schedule, none of the software (including firmware and other software embedded in hardware devices) owned, developed, used, marketed, distributed, licensed, or sold by any of the Acquired Corporations (including any software that is part of, is distributed with, or is used in the design, development, manufacturing, production, distribution, testing, maintenance, or support of any Company Product, but excluding any Commercial Off The Shelf Software) (collectively, ***Company Software***) (i) contains any bug, defect, or error (including any bug, defect, or error relating to or resulting from the display, manipulation, processing, storage, transmission, or use of date data) that materially

Table of Contents

and adversely affects the use, functionality, or performance of such Company Software or any Company Product containing or used in conjunction with such Company Software; or (ii) fails to comply in any material respect with any applicable warranty or other contractual commitment relating to the use, functionality, or performance of such Company Software.

(m) *Harmful Code.* No Company Software contains any back door, drop dead device, time bomb, Trojan horse, v or worm (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (i) materially disrupting, disabling, harming, or otherwise materially impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (b) materially damaging or destroying any data or file without the user s consent.

(n) *Source Code.*

(i) The source code for the Company Software as it concerns the Company Products has been documented in a professional manner that is consistent with customary code annotation conventions in the software industry and sufficient to independently enable a programmer of reasonable skill and competence to understand, analyze, and interpret program logic, correct errors and improve, enhance, modify and support the Company Software. Except as set forth in Part 2.9(n) of the Disclosure Schedule, no source code for any Company Software as it concerns the Company Products has been delivered, licensed, or made available to any escrow agent or other Person who is not, as of the date of this Agreement, an employee of any of the Acquired Corporations. The Company has no duty or obligation (whether present, contingent, or otherwise) to deliver, license, or make available the source code for any Company Software to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the delivery, license, or disclosure of the source code for any Company Software to any other Person.

(ii) Part 2.9(n)(ii) of the Disclosure Schedule accurately identifies and describes (A) each item of Open Source Code that is contained or used in, and distributed with, or used in the development of the current Company Products, (B) the applicable license terms for each such item of Open Source Code, or a reference to a website containing the applicable license terms, and (C) the current Company Product to which each such item of Open Source Code relates.

(iii) No Company Product contains and is distributed with Open Source Code that is licensed under any terms that impose a requirement or condition that any Company Product or part thereof (A) be disclosed or distributed in source code form, (B) be licensed for the purpose of making modifications or derivative works, (C) be redistributable at no charge or (D) otherwise imposes any other material limitation, restriction, or condition on the right or ability of any of the Acquired Corporations to use or distribute any Company Product.

(o) Part 2.9(o) of the Disclosure Schedule contains each Company Privacy Policy in effect at any time since April 30, 2006.

(p) Part 2.9(p) of the Disclosure Schedule identifies and describes each distinct electronic or other database containing Personal Data maintained by or for any of the Acquired Corporations at any time since April 30, 2006 (the ***Company Databases***), the types of Personal Data in each such database, the means by which the Personal Data was collected, and the security policies that have been adopted and maintained with respect to each such database. No material breach or violation of any such security policy has occurred or, to the knowledge of the Company, is threatened. There has been no unauthorized or illegal use of or access to any of the Personal Data in any of the Company Databases.

(q) Each of the Acquired Corporations has complied at all times and in all material respects with all of the Company Privacy Policies and with all applicable Legal Requirements pertaining to privacy, User Data, or Personal Data.

(r) Neither the execution, delivery, or performance of this Agreement (or any of the ancillary agreements) nor the consummation of any of the transactions contemplated by this Agreement (or any of the ancillary agreements), nor Parent s possession or use of the User Data or any data or information in the Company Databases, will result in any violation of any Company Privacy Policy or any Legal Requirement pertaining to privacy, User Data, or Personal Data.

2.10 *Contracts.*

(a) Part 2.10 of the Disclosure Schedule (which shall be separated by the subsections listed below) identifies each current Company Contract that constitutes a Material Contract as of the date of this Agreement (other than end user license agreements for Company Software entered into by an Acquired Corporation, or an authorized distributor of an Acquired Corporation, in the ordinary course of business). For purposes of this Agreement, each of the following shall be deemed to constitute a ***Material Contract*** :

(i) any Company Benefit Agreement and any other Contract: (A) relating to the employment of, or the performance of services by, any employee or consultant; (B) pursuant to which any of the Acquired Corporations is or may become obligated to make any severance, termination or similar payment to any current or former employee or director; or (C) pursuant to which any of the Acquired Corporations is or may become obligated to make any bonus or similar payment (other than payments constituting base salary) in excess of $20,000 to any current or former employee or director;

(ii) any Company IP Contract, other than end user license agreements for Company Software entered into by an Acquired Corporation, or an authorized distributor of an Acquired Corporation, in the ordinary course of business and consistent with past practices that do not deviate in any material respect from the standard form agreement provided to Parent as of the date of this Agreement;

(iii) any Contract relating to the acquisition, sale, spin-off, outsourcing or disposition of any business operation, unit, material asset or any product line of any Acquired Corporation;

(iv) any Contract in which another Person is or was appointed as a distributor, reseller or sales representative with respect to, or otherwise is or was authorized to market, promote, distribute, resell, sublicense, support or solicit orders for, any Company Product or Company Software;

(v) any Contract that provides for indemnification of any Company Associate or any current or former agent of any of the Acquired Corporations, other than customary indemnification provisions in Energy Contracts entered into in the ordinary course of business consistent with past practices;

(vi) any Contract imposing any restriction on the right or ability of any Acquired Corporation: (A) to compete with any other Person; (B) to acquire any product or other asset or any services from any other Person; (C) to solicit, hire or retain any Person as an employee, consultant or independent contractor; (D) to develop, sell, supply, distribute, offer, support or service any product or any technology or other asset to or for any other Person; (E) to perform services for any other Person; or (F) to transact business or deal in any other manner with any other Person, other than (x) Energy Contracts relating to governmental projects which impose limitations on the Company s ability to directly approach the customer with respect to the project for which the contractor is responsible pursuant to such Energy Contract which are entered into in the ordinary course of business and (y) Contracts set forth in Part 2.10(a)(x) of the Disclosure Schedule;

(vii) any Contract (other than Contracts evidencing Company Equity Awards in the form provided to Parent and set forth on Part 2.3(b) of the Disclosure Schedule): (A) relating to the acquisition, issuance, voting, registration, sale or transfer of any securities; (B) providing any Person with any preemptive right, right of participation, right of maintenance or similar right with respect to any securities; or (C) providing any of the Acquired Corporations with any right of first refusal with respect to, or right to repurchase or redeem, any securities;

(viii) any Contract incorporating or relating to any guaranty, any warranty related to any Company Product, any sharing of liabilities or any indemnity or similar obligation, except for Customer Contracts entered into by any Acquired Corporation in the ordinary course of business consistent with past practices;

(ix) any Contract relating to any currency hedging;

(x) any Contract: (A) imposing any confidentiality obligation on any of the Acquired Corporations or on any other Person (other than routine confidentiality or nondisclosure agreements entered into in connection with the Acquired Corporation s Customer Contracts or confidentiality provisions set forth in Customer Contracts entered into by any Acquired Corporation in the ordinary course of business that do not otherwise constitute Material Contracts under this Section 2.10(a)); or (B) containing standstill or similar provisions;

(xi) any Contract: (A) to which any Governmental Body is a party or under which any Governmental Body has any rights or obligations; or (B) directly or indirectly benefiting any Governmental Body (including any subcontract or other Contract between any Acquired Corporation and any contractor or subcontractor to any Governmental Body);

(xii) any Contract requiring that any of the Acquired Corporations give any notice or provide any information to any Person prior to considering or accepting any Acquisition Proposal or similar proposal, or prior to entering into any discussions, agreement, arrangement or understanding relating to any Acquisition Transaction or similar transaction;

(xiii) any Contract that contemplates or involves the payment or delivery of cash or other consideration in an amount or having a value in excess of $50,000 in the aggregate, or contemplates or involves the performance of services having a value in excess of $50,000 in the aggregate;

(xiv) any Contract relating to any Encumbrance with respect to any material asset owned or used by any Acquired Corporation;

(xv) any Contract that involves or relates to indebtedness for borrowed money (whether incurred, assumed, guaranteed or secured by any asset);

(xvi) each lease and sublease with respect to the Owned Real Estate and the Leased Real Estate and each Lease; and

(xvii) any other Contract, if a breach of such Contract could reasonably be expected to have or result in a Company Material Adverse Effect.

The Company has delivered to Parent an accurate and complete copy of each Company Contract that constitutes a Material Contract.

(b) Each Company Contract that constitutes a Material Contract is valid and in full force and effect, and is enforceable in accordance with its terms, assuming the due authorization, execution and delivery of such Material Contract by the counterparties thereto, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of Legal Requirement governing specific performance, injunctive relief and other equitable remedies.

(c) Except as set forth in the applicable subsections of Part 2.10(c) of the Disclosure Schedule: (i) none of the Acquired Corporations has violated or breached, or committed any default under, any Material Contract; and, to the knowledge of the Company, no other Person has violated or breached, or committed any default under, any Material Contract; (ii) except for express warranty and indemnification remedies set forth in the standard forms of Company IP Contracts described in Section 2.9(b) and in Part 2.9(b) of the Disclosure Schedule, no end-user, distributor, or other licensee of the Company Software has any conditional or unconditional return, refund, or credit rights exercisable against the Acquired Corporations with respect to such Company Software; (iii) to the knowledge of the Company, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) could reasonably be expected to: (A) result in a violation or breach of any of the provisions of any Material Contract; (B) give any Person the right to declare a default or exercise any remedy under any Material Contract; (C) give any Person the right to receive or require a rebate, chargeback, penalty or change in delivery schedule under any Material Contract; (D) give any Person the right to accelerate the maturity or performance of any Material Contract; (E) result in the disclosure, release or delivery of any Company Source Code; or (F) give any Person the right to cancel, terminate or modify any Material Contract; and (iv) since April 30, 2008, none of the Acquired Corporations has received any notice or other communication regarding any actual or possible violation or breach of, or default under, any Material Contract.

2.11 *Sale of Products; Performance of Services*

(a) Part 2.11(a) of the Disclosure Schedule accurately identifies and describes each Company Software product that is being developed, marketed, distributed, licensed or sold by any Acquired Corporation as of the date of this Agreement.

(b) All installation services, programming services, integration services, repair services, maintenance services, support services, training services, upgrade services and other services that have been performed by the Acquired Corporations were performed properly and in conformity in all material respects with the terms and requirements of all applicable warranties and other Contracts and with all applicable Legal Requirements.

(c) Except as set forth in Part 2.11(c) of the Disclosure Schedule, since April 30, 2008, no customer or other Person has asserted or, to the knowledge of the Company, threatened to assert any claim against any of the Acquired Corporations (other than immaterial warranties claims): (i) under or based upon any warranty provided by or on behalf of any of the Acquired Corporations under any Contract; or (ii) based upon any services performed by any of the Acquired Corporations under any Contract.

(d) Except as set forth in Part 2.11(d) of the Disclosure Schedule, since April 30, 2008, no end-user customer, distributor, reseller, or sales representative has terminated or, to the knowledge of the Company, threatened or expressed an intention or desire to terminate or not to renew, its relationship or any Material Contract with any of the Acquired Corporations due to an expressed dissatisfaction with the performance, operation or functionality of the Company Software (other than reporting bugs in the ordinary course of business).

2.12 *Liabilities.* None of the Acquired Corporations has, and none of the Acquired Corporations is or may become responsible for performing or discharging, any accrued, contingent or other liabilities of any nature, either matured or unmatured, except for: (a) liabilities identified as such in the Unaudited Interim Balance Sheet; (b) normal current liabilities that have been incurred by the Acquired Corporations since the date of the Unaudited Interim Balance Sheet in the ordinary course of business and consistent with past practices; (c) liabilities for performance of obligations of the Acquired Corporation under Company Contracts, to the extent such liabilities are reasonably ascertainable (in nature, scope and amount) from the underlying Company Contract; and (d) liabilities described in Part 2.12 of the Disclosure Schedule.

2.13 *Compliance with Legal Requirements.* Since April 30, 2005, each Acquired Corporation is and has at all times been in compliance in all material respects with all Legal Requirements applicable to such Acquired Corporation. No Acquired Corporation is under investigation, nor, to the knowledge of the Company, is any investigation against any Acquired Corporation threatened, with respect to any material violation of any applicable Legal Requirement,. No Acquired Corporation has received any notice or other communication from any Governmental Body regarding a possible material violation of or failure to comply with any Legal Requirement. To the knowledge of the Company, since April 30, 2008, no Legal Requirements have been proposed or enacted that would reasonably be expected to require a material modification in the manner in which the business of any Acquired Corporation is conducted, either before or after the Closing Date.

2.14 *Certain Business Practices.* No Acquired Corporation has: (a) used any funds for unlawful contributions, loans, donations, gifts, entertainment or other unlawful expenses relating to political activity; (b) made or agreed to make any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns; (c) taken any action that would constitute a violation of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations hereunder, or any comparable foreign Legal Requirement or statute; or (d) made or agreed to make any other unlawful payment.

2.15 *Governmental Authorizations.*

(a) The Acquired Corporations hold all Governmental Authorizations necessary to enable the Acquired Corporations to conduct their respective businesses in the manner in which such businesses are currently being conducted. Part 2.15(a) of the Disclosure Schedule accurately and completely lists all Governmental Authorizations currently required to be held by the Acquired Corporations. All such Governmental Authorizations are valid and in full force and effect. Each Acquired Corporation is, and at all times since April 30, 2008 has been, in compliance in all material respects with the terms and requirements of such Governmental Authorizations. Since April 30, 2008, none of the Acquired Corporations has received any notice or other communication from any Governmental Body regarding: (i) any actual or possible violation of or failure to comply with any term or requirement of any material Governmental Authorization; or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any material Governmental Authorization. No Governmental Body has at any time challenged in writing the right of any of the Acquired Corporations to design, manufacture, offer or sell any product or service.

(b) Part 2.15(b) of the Disclosure Schedule accurately and completely describes the terms of each grant, incentive or subsidy provided or made available to or for the benefit of any of the Acquired Corporations by any U.S. or foreign Governmental Body or otherwise. Each of the Acquired Corporations is in compliance in all material respects with all of the terms and requirements of each grant, incentive and subsidy identified or required to be identified in Part 2.15(b) of the Disclosure Schedule. Neither the execution, delivery or performance of this Agreement, nor the consummation of the Merger or any of the other Contemplated Transactions, will (with or without notice or lapse of time) give any Person the right to revoke, withdraw, suspend, cancel, terminate or modify any Governmental Authorization, grant, incentive or subsidy identified or required to be identified in Parts 2.15(a) or (b) of the Disclosure Schedule.

2.16 *Tax Matters.*

(a) Each of the Acquired Corporations has filed all Tax Returns that it was required to file under applicable Legal Requirements since April 30, 2005. All such Tax Returns were correct and complete in all material respects and have been prepared in substantial compliance with all applicable Legal Requirements. All Taxes due and owing by each of the Acquired Corporations (whether or not shown on any Tax Return) have been paid. None of the Acquired Corporations is currently the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where the Acquired Corporations do not file Tax Returns that any of them is or may be subject to taxation by that jurisdiction. There are no liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of any of the Acquired Corporations.

(b) Each of the Acquired Corporations has withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, or other third party.

(c) No director or officer (or employee responsible for Tax matters) of any of the Acquired Corporations expects any authority to assess any additional Taxes for any period for which Tax Returns have been filed. No Legal Proceedings regarding Taxes are pending or being conducted with respect to any of the Acquired Corporations. Since April 30, 2005, none of the Acquired Corporations has received from any Governmental Body any (i) notice indicating an intent to open an audit or other review, (ii) request for information related to Tax matters, or (iii) notice of deficiency or proposed adjustment of or any material amount of Tax proposed, asserted, or assessed by any Governmental Body against any of the Acquired Corporations, which notice, audit, review, request for information, deficiency or proposed adjustment has not been resolved.

(d) Part 2.16(d) of the Disclosure Schedule lists all Tax Returns filed with respect to each of the Acquired Corporations for taxable periods ended on or after April 30, 2008, indicates those Tax Returns that have been audited, and indicates those Tax Returns that currently are the subject of an audit. The Company has delivered to Parent correct and complete copies of all federal income Tax Returns, examination reports, and statements of material deficiencies assessed against or agreed to by any of the Acquired Corporations filed or received since April 30, 2008.

(e) None of the Acquired Corporations has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(f) None of the Acquired Corporations has filed a consent under Section 341(f) of the Code concerning collapsible corporations. None of the Acquired Corporations is a party to any Contract that has resulted or would reasonably be expected to result, separately or in the aggregate, in the payment of (i) any excess parachute payment within the meaning of section 280G of the Code (or any corresponding provisions of state, local or foreign Tax Legal Requirement) and (ii) any amount that will not be fully deductible as a result of section 162(m) of the Code (or any corresponding provisions of state, local or foreign Tax Legal Requirement). The Company has not been a United States real property holding corporation within the meaning of section 897(c)(2) of the Code during the applicable period specified in section 897(c)(1)(A)(ii) of the Code. Each of the Acquired Corporations has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of section 6662 of the Code. None of the Acquired Corporations is a party to or bound by any Tax allocation or sharing agreement. Each of the Acquired Corporations has (A) not been a member of an Affiliated Group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (B) no Liability for the Taxes of any Person (other than such Acquired Corporation) under regulation 1.1502-6 of the Code (or any similar provision of state, local, or foreign Legal Requirement), as a transferee or successor, by contract, or otherwise.

(g) The unpaid Taxes of the Acquired Corporations (i) did not, as of the date of the Unaudited Interim Balance Sheet, exceed the reserve for Tax liabilities (rather than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the Unaudited Interim Balance Sheet, and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Acquired Corporations in filing their Tax Returns. Since the date of the Unaudited Interim Balance Sheet, none of the Acquired Corporations has incurred any liability for Taxes arising from extraordinary gains or losses, determined in accordance with GAAP, outside the ordinary course of business.

(h) None of the Acquired Corporations will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion there) ending after the Closing Date as a result of any: (i) change in method of accounting for taxable period ending on or prior to the Closing Date; (ii) closing agreement as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Legal Requirement) executed on or prior to the Closing Date; (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provisions of state, local or foreign income Tax Legal Requirement); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; or (v) prepaid amount received on or prior to the Closing Date.

(i) None of the Acquired Corporations has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

(j) No Person is entitled to receive any additional payment (including any tax gross-up or other payment) from any Acquired Corporation as a result of the imposition of the excise taxes required by Section 4999 of the Code or any taxes required by Section 409A of the Code.

2.17 *Employee and Labor Matters; Benefit Plans.*

(a) Part 2.17(a) of the Disclosure Schedule accurately sets forth, with respect to each employee of each of the Acquired Corporations as of the date of this Agreement (including any employee of any of the Acquired Corporations who is on a leave of absence or on layoff status):

(i) the name of such employee, the Acquired Corporation by which such employee is employed and the date as of which such employee was originally hired by such Acquired Corporation;

(ii) such employee s title;

(iii) the aggregate dollar amount of the compensation (including wages, salary, commissions, director s fees, taxable fringe benefits, bonuses and profit-sharing payments) received by such employee from the applicable Acquired Corporation with respect to services performed in the year ended December 31, 2010;

(iv) such employee s annualized compensation as of the date of this Agreement;

(b) (v) any Governmental Authorization that is held by such employee and that relates to or is useful in connection with the businesses of the Acquired Corporations.

(c) Part 2.17(b) of the Disclosure Schedule accurately identifies each employee of any of the Acquired Corporations who is not fully available to perform work because of disability or other leave on the date of this Agreement and sets forth the basis of such disability or leave and the anticipated date of return to full service.

(d) Part 2.17(c) of the Disclosure Schedule accurately identifies each former employee of any of the Acquired Corporations who is receiving or is scheduled to receive (or whose spouse or other dependent is receiving or is scheduled to receive) any benefits (whether from any of the Acquired Corporations or otherwise) relating to such former employee s employment with any of the Acquired Corporations; and Part 2.17(c) lists the agreement or agreements governing the receipt of such benefits by such individuals.

(e) Except as set forth in Part 2.17(d) of the Disclosure Schedule, the employment of each of the Acquired Corporations employees is terminable by the applicable Acquired Corporation at will. The Company has delivered to Parent accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of the Company Associates.

(f) To the knowledge of the Company, as of the date of this Agreement:

(i) no employee of any of the Acquired Corporations intends to terminate his employment with the Company, nor has any such employee threatened or expressed any intention to do so;

(ii) no employee of any of the Acquired Corporations has received an offer to join a business that may be competitive with the businesses of the Acquired Corporations; and

(iii) no employee of any of the Acquired Corporations is a party to or is bound by any confidentiality agreement, noncompetition agreement or other Contract (with any Person) that may have an adverse effect on: (A) the performance by such employee of any of his duties or responsibilities as an employee of such Acquired Corporation; or (B) the business or operations of the Acquired Corporations.

(g) Part 2.17(f) of the Disclosure Schedule accurately sets forth, with respect to each Person who is at the date of this Agreement, or was, at any time since April 30, 2008, an independent contractor of any of the Acquired Corporations (other than independent contractors with whom the Company has entered into Energy Contracts) and who has received or may be entitled to receive in excess of $50,000 from any of the Acquired Corporations:

(i) the name of such independent contractor, the Acquired Corporation with which such independent contractor is or was under contract;

(ii) the terms of compensation of such independent contractor, unless the Contract for such independent contractor is set forth in Part 2.10 of the Disclosure Schedule; and

(iii) the aggregate dollar amount of the compensation (including all payments or benefits of any type) received by such independent contractor from the applicable Acquired Corporation with respect to services performed in the fiscal year ended April 30, 2011.

(h) Except as set forth in Part 2.17(g) of the Disclosure Schedule, none of the Acquired Corporations is a party to, bound by, or has a duty to bargain for, any collective bargaining agreement or other Contract with a labor organization representing any of its employees, and there are no labor organizations representing, purporting to represent or, to the knowledge of the Company, seeking to represent any employees of any of the Acquired Corporations.

(i) There has never been, nor to the knowledge of the Company has there been any threat of, any strike, slowdown, work stoppage, lockout, job action, union organizing activity, question concerning representation or any similar activity or dispute, affecting any of the Acquired Corporations or any of their employees. To the knowledge of the Company, no event has occurred, and no condition or circumstance exists, that might directly or indirectly give rise to or provide a basis for the commencement of any such strike, slowdown, work stoppage, lockout, job action, union organizing activity, question concerning representation or any similar activity or dispute.

(j) None of the Acquired Corporations is or has ever been engaged, in any unfair labor practice within the meaning of the National Labor Relations Act. There is no Legal Proceeding, claim, labor dispute or grievance pending or, to the knowledge of the Company, threatened or reasonably anticipated relating to any employment contract, privacy right, labor dispute, wages and hours, leave of absence, plant closing notification, workers compensation policy, long-term disability policy, harassment, retaliation, immigration, employment statute or regulation, safety or discrimination matter involving any Company Associate, including charges of unfair labor practices or discrimination complaints.

(k) No current or former independent contractor of any of the Acquired Corporations could be deemed to be a misclassified employee. Except as set forth in Part 2.17(j) of the Disclosure Schedule, no independent contractor is eligible to participate in any Company Benefit Plan. No Acquired Corporation has ever had any temporary or leased employees that were not treated and accounted for in all respects as employees of such Acquired Corporation.

(l) Part 2.17(k) of the Disclosure Schedule contains an accurate and complete list as of the date hereof of each Company Benefit Plan and each Company Benefit Agreement (other than individual award agreements under the Company Equity Plan). None of the Acquired Corporations has any plan or commitment to create any additional Company Benefit Plan, or to modify or change any existing Company Benefit Plan (other than to comply with applicable Legal Requirements as previously disclosed to Parent in writing) in a manner that would affect any Company Associate, other than as contemplated by this Agreement.

(m) With respect to each Company Benefit Plan, the Company has delivered to Parent: (i) an accurate and complete copy of all documents setting forth the terms of such Company Benefit Plan, including all amendments thereto and all related trust documents; (ii) a complete and accurate copy of the most recent annual report (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code, with respect to such Company Benefit Plan; (iii) if such Company Benefit Plan is subject to the minimum funding standards of Section 302 of ERISA, the most recent annual and periodic accounting of such Company Benefit Plan s assets; (iv) the most recent summary plan description together with the summaries of material modifications thereto, if any, required under ERISA with respect to such Company Benefit Plan; (v) if such Company Benefit Plan is funded through a trust or any third party funding vehicle, an accurate and complete copy of the trust or other funding agreement (including all amendments thereto) and accurate and complete copies of the most recent financial statements thereof; (vi) accurate and complete copies of all Contracts relating to such Company Benefit Plan, including service provider agreements, insurance contracts, minimum premium contracts, stop-loss agreements, investment management agreements, subscription and participation agreements and recordkeeping agreements; (vii) all material written materials provided to any Company Associate relating to such Company Benefit Plan and any proposed Company Benefit Plans, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events that would result in any liability to any of the Acquired Corporations or any Company Affiliate; (viii) all material correspondence, if any, to or from any Governmental Body relating to such Company Benefit Plan since April 30, 2006; (ix) all forms and related forms of notices required under COBRA with respect to such Company Benefit Plan; (x) all insurance policies, if any, in the possession of any of the Acquired Corporations or any Company Affiliate pertaining to fiduciary liability insurance covering the fiduciaries for such Company Benefit Plan; (xi) if such Company Benefit Plan is intended to be qualified under Section 401(a) of the Code, the most recent discrimination tests, if any, required under the Code for such Company Benefit Plan; (xii) if such Company Benefit Plan is intended to be qualified under Section 401(a) of the

Code, the most recent IRS determination letter (or opinion letter, if applicable) received with respect to such Company Benefit Plan; and (xiii) if such

Company Benefit Plan is a Foreign Plan, all Governmental Authorizations received from any foreign Governmental Body with respect to such Company Benefit Plan.

(n) Each of the Company Benefit Plans has been operated and administered in all material respects in accordance with its terms and with applicable Legal Requirements, including ERISA, the Code, applicable U.S. and non-U.S. securities laws and regulations and applicable foreign Legal Requirements. Each of the Acquired Corporations and Company Affiliates have performed all obligations required to be performed by them under each Company Benefit Plan in all material respects and none of the Acquired Corporations is in material default or violation of the terms of any Company Benefit Plan. To the knowledge of the Company, there has been no material default or violation by any other party with respect to any term of any Company Benefit Plan. Any Company Benefit Plan intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code, and to the knowledge of the Company, there is not and there has never been any event, condition or circumstance that could reasonably be expected to result in disqualification under the Code (or, in the case of a Foreign Plan, the equivalent of disqualification under any applicable foreign Legal Requirement). No prohibited transaction, within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA (other than a transaction exempt under Section 408 of ERISA), has occurred with respect to any Company Benefit Plan. There are no claims or Legal Proceedings pending, or, to the knowledge of the Company, threatened or reasonably anticipated (other than routine claims for benefits), against any Company Benefit Plan or against the assets of any Company Benefit Plan. To the knowledge of the Company, no breach of fiduciary duty has occurred with respect to which any Acquired Corporation or any of its fiduciaries could reasonably be expected to incur a material liability. Each Company Benefit Plan (other than any Company Benefit Plan to be terminated prior to the Closing in accordance with this Agreement) can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Parent, the Acquired Corporations or any Company Affiliate (other than ordinary administration expenses and benefits payable to participants). No Acquired Corporation has received notice that any Company Benefit Plan is, and, to the knowledge of the Company, no Company Benefit Plan is, under audit or investigation or is subject to any other Legal Proceeding commenced by the IRS, the DOL or any other Governmental Body, nor is any such audit, investigation or other Legal Proceeding pending or, to the knowledge of the Company, threatened. None of the Acquired Corporations nor any Company Affiliate has ever incurred any penalty or tax with respect to any Company Benefit Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. No mortgage, lien, pledge, charge, security interest or other Encumbrance of any kind has been imposed under the Code, ERISA or any foreign Legal Requirement with respect to any Company Benefit Plan or any of the assets of any Company Benefit Plan. All contributions, premiums and expenses to or in respect of each Company Benefit Plan have been paid in full or, to the extent not yet due as of the date of the Unaudited Interim Balance Sheet, have been adequately accrued in accordance with GAAP on the Unaudited Interim Balance Sheet.

(o) None of the Acquired Corporations nor any Company Affiliate has ever maintained, established, sponsored, participated in, or contributed to any: (i) Company Benefit Plan subject to Section 302 or Title IV of ERISA or Section 412 of the Code; (ii) multiemployer plan within the meaning of Section 3(37) of ERISA; (iii) multiple employer plan (within the meaning of Section 413(c) of the Code); or (iv) Company Benefit Plan in which stock of any of the Acquired Corporations or any Company Affiliate is or was held as a plan asset within the meaning of DOL Regulations Section 2510.3-101. The Company has no Foreign Plans.

(p) No Company Benefit Plan provides (except at no cost to the Acquired Corporations or any Company Affiliate), or reflects or represents any liability of any of the Acquired Corporations or any Company Affiliate to provide, retiree life insurance, retiree health benefits or other retiree employee welfare benefits to any Person for any reason, except as may be required by COBRA or other applicable Legal Requirements. Other than commitments made that involve no future costs to any of the Acquired Corporations or any Company Affiliate, no Acquired Corporations nor any Company Affiliate has ever represented, promised or contracted (whether in oral or written form) to any Company

Associate (either individually or as a part of a group of Company Associates) or any other Person that such Company Associate or other person would be provided with retiree life insurance, retiree health benefit or other retiree employee welfare benefits, except to the extent required by applicable Legal Requirements.

(q) Except as set forth in Part 2.17(p) of the Disclosure Schedule, neither the execution of this Agreement nor the consummation of any of the Contemplated Transactions (either alone or in combination with another event, whether contingent or otherwise) will (i) result in any bonus, severance or other payment or obligation to any Company Associate (whether or not under any Company Benefit Plan or Company Benefit Agreement); (ii) materially increase the benefits payable or provided to, or result in a forgiveness of any indebtedness of, any Company Associate; (iii) accelerate the vesting, funding or time of payment of any compensation, equity award or other similar benefit; (iv) result in any parachute payment under Section 280G of the Code (whether or not such payment is considered to be reasonable compensation for services rendered); or (v) cause any compensation to fail to be deductible under Section 162(m) of the Code or any other provision of the Code or any similar foreign Legal Requirement. Without limiting the generality of the foregoing (and except as set forth in Part 2.17(p) of the Disclosure Schedule), the consummation of the Contemplated Transactions will not result in the acceleration of vesting of any unvested Company Equity Awards.

(r) Except as set forth in Part 2.17(q) of the Disclosure Schedule, each of the Acquired Corporations and Company Affiliates: (i) is, and at all times has been, in compliance in all material respects with all applicable Legal Requirements respecting employment, employment practices, terms and conditions of employment and wages and hours, in each case, with respect to Company Associates, including the health care continuation requirements of COBRA, the requirements of FMLA, the requirements of HIPAA and any similar provisions of state Legal Requirement; (ii) has withheld and reported all amounts required by any Legal Requirement or Contract to be withheld and reported with respect to wages, salaries and other payments to any Company Associate; (iii) has no liability for any arrears of wages or any Taxes or any penalty for failure to comply with the Legal Requirements applicable to any of the foregoing; and (iv) has no liability for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Body with respect to unemployment compensation benefits, social security or other benefits or obligations for any Company Associate (other than routine payments to be made in the normal course of business and consistent with past practice). Except as set forth in Part 2.17(q) of the Disclosure Schedule, since April 30, 2006, none of the Acquired Corporations has effectuated a plant closing, partial plant closing, mass layoff, relocation or termination (each as defined in the Worker Adjustment and Retraining Notificatio Act (the ***WARN Act***) or any similar Legal Requirement) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of any of the Acquired Corporations.

(s) To the knowledge of the Company, no Company Associate is obligated under any Contract or subject to any judgment, decree, or order of any court or other Governmental Body that would interfere with such Person s efforts to promote the interests of the Acquired Corporations or that would interfere with the businesses of the Acquired Corporations or any Company Affiliate. Neither the execution nor the delivery of this Agreement, nor the carrying on of the business of the Acquired Corporations or any Company Affiliate as presently conducted nor any activity of such Company Associate in connection with the carrying on of the business of the Acquired Corporations or any Company Affiliate as presently conducted will, to the knowledge of the Company, conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default under, any Contract under which any of such Company Associates is now bound.

(t) Each Company Benefit Plan or Company Benefit Agreement that is subject to Section 409A of the Code has been operated and administered in compliance with Section 409A of the Code.

2.18 *Environmental Matters.*

(a) Each of the Acquired Corporations: (i) is and has been in compliance in all material respects with, and has not been and is not in material violation of or subject to any material liability under, any applicable Environmental Requirements; and (ii) possesses all permits and other Environmental Authorizations, and is in compliance with the terms and conditions thereof in all material respects.

(b) Except as set forth in Part 2.18(b) of the Disclosure Schedules, none of the Acquired Corporations has received any notice or other communication (in writing or otherwise), whether from a Governmental Body, citizens group, Company Associate or otherwise, that alleges that any of the Acquired Corporations is not or might not be in material compliance with any Environmental Requirement or Environmental Authorization, and, to the knowledge of the Company, there are no circumstances that may prevent or interfere with the compliance by any of the Acquired Corporations with any Environmental Requirement or Environmental Authorization in the future.

(c) Except as set forth in Part 2.18(c) of the Disclosure Schedules, all property that is owned by, leased to, controlled by or used by any of the Acquired Corporations or was previously owned by, controlled by or used by any of the Acquired Corporations, and all surface water, groundwater and soil associated with or adjacent to such property, with respect to property currently owned by, leased to, controlled by or used by any of the Acquired Corporations is free of any Materials of Environmental Concern or material environmental contamination of any nature, or with respect to property previously owned by, controlled by or used by any of the Acquired Corporations, was free of any Materials of Environmental Concern or material environmental contamination of any nature during the period such property was owned by, controlled by or used by any of the Acquired Corporations. Except as set forth in Part 2.18(c) of the Disclosure Schedules, none of the property that is currently owned by, leased to, controlled by or used by any of the Acquired Corporations contains any friable asbestos requiring removal or repair, equipment using Polychlorinated Biphenyls (except equipment owned by the local utility provider) or underground injection wells, or with respect to property previously owned by, controlled by or used by any of the Acquired corporations, did contain any underground injection wells during the period such property was owned by, controlled by or used by any of the Acquired Corporations, except as set forth in Part 2.18(c) of the Disclosure Schedules. None of the property that is currently owned by, leased to, controlled by or used by any of the Acquired Corporations contains any septic tanks in which process wastewater or any Materials of Environmental Concern have been Released, or with respect to property previously owned by, controlled by or used by any of the Acquired corporations, did contain septic tanks in which process wastewater or any Materials of Environmental Concern had been Released during the period such property was owned or controlled by or used by any of the Acquired Corporations, except as set forth in Part 2.18(c) of the Disclosure Schedules.

(d) No Acquired Corporation has ever Released any Materials of Environmental Concern except in compliance in all material respects with all applicable Environmental Requirements, except as set forth in Part 2.18(e) of the Disclosure Schedule.

(e) Except as set forth in Part 2.18(e) of the Disclosure Schedule, no Acquired Corporation has ever sent or transported, or arranged to send or transport, any Materials of Environmental Concern to a site that, pursuant to any applicable Environmental Requirement: (i) has been placed on the National Priorities List of hazardous waste sites or any similar state list; (ii) is otherwise designated or identified as a potential site for remediation, cleanup, closure or other environmental remedial activity; or (iii) is subject to a Legal Requirement to take removal or remedial action as detailed in any applicable Environmental Requirement or to make payment for the cost of cleaning up any site.

2.19 *Insurance.*

(a) The Company has delivered to Parent accurate and complete copies of all material insurance policies and all material self insurance programs and arrangements relating to the business, assets, liabilities and operations of the Acquired Corporations. Part 2.19(a)(i) of the Disclosure Schedule lists each of the Company s currently in effect insurance policies. Each of such insurance policies is in full force and effect. Except as set forth in Part 2.19(a)(ii) of the Disclosure Schedule, since April 30, 2008, none of the Acquired Corporations has received any notice or other communication regarding any actual or possible: (i) cancellation or invalidation of any insurance policy; (ii) refusal or denial of any coverage, reservation of rights or rejection of any material claim under any insurance policy; or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy. Except as set forth in Part 2.19(a)(iii) of the Disclosure Schedule, there is no pending workers compensation or other claim under or based upon any insurance policy of any of the Acquired Corporations. All information provided to insurance carriers (in applications and otherwise) on behalf of each of the Acquired Corporations is accurate and complete in all respects. Except as set forth in Part 2.19(a)(iv) of the Disclosure Schedule, the Company has provided timely written notice to the appropriate insurance carrier(s) of each Legal Proceeding pending or threatened against any of the Acquired Corporations, and no such carrier has issued a denial of coverage or a reservation of rights with respect to any such Legal Proceeding, or informed any of the Acquired Corporations of its intent to do so.

(b) Part 2.19(a)(i) of the Disclosure Schedule lists the Company s current policies (primary and excess) for directors and officers liability insurance (the ***Existing D&O Policies***). The Company has delivered to Parent accurate and complete copies of the most recent directors and officers liability insurance policies issued to the Company.

2.20 *Transactions with Affiliates.* Except for indemnification, compensation, and employment arrangements between an Acquired Corporation, on the one hand, and any director or officer thereof, on the other hand, there are (and since April 30, 2008 there have been) no transactions, agreements, arrangements or understandings between any Acquired Corporation, on the one hand, and any Affiliate (including any director or officer) thereof, but not including any wholly-owned Subsidiary of the Company, on the other hand, that would be (or have been) required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Act in the Company s Form 10-K or proxy statement pertaining to an annual meeting of shareholders, except as set forth in Part 2.20 of the Disclosure Schedule. Part 2.20 of the Disclosure Schedule sets forth all such transactions, agreements, arrangements or understandings between any Acquired Corporation, on the one hand, and any Affiliate, including, without limitation, an accurate and complete list as of the date of this Agreement of all loans and advances made by any Acquired Corporation to any Affiliate who is an employee, director, consultant or independent contractor, other than routine advances made to employees in the ordinary course of business.

2.21 *Legal Proceedings; Orders.*

(a) Except as set forth in Part 2.21(a) of the Disclosure Schedule, there is no pending Legal Proceeding, and (to the knowledge of the Company) no Person has threatened to commence any Legal Proceeding: (i) that involves any of the Acquired Corporations, any Company Associate (in his or her capacity as such) or any of the assets owned or used by any of the Acquired Corporations; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Merger or any of the other Contemplated Transactions. To the knowledge of the Company, no event has occurred, and no claim, dispute or other condition or circumstance exists, that could reasonably be expected to give rise to or serve as a basis for the commencement of any such Legal Proceeding. The Legal Proceedings identified in Part 2.21(a) of the Disclosure Schedule have not had and, if decided adversely to any Acquired Corporation, could not reasonably be expected to have or result in a Company Material Adverse Effect.

(b) There is no order, writ, injunction, judgment or decree to which any of the Acquired Corporations, or any of the assets owned or used by any of the Acquired Corporations, is subject. To the knowledge of the Company, no officer or other key employee of any of the Acquired Corporations is subject to any order, writ, injunction, judgment or decree that prohibits such officer or other employee from engaging in or continuing any conduct, activity or practice relating to the business of any of the Acquired Corporations.

2.22 *Authority; Binding Nature of Agreement.* The Company has all necessary corporate power and authority to enter into and to perform its obligations under this Agreement. The board of directors of the Company (at a meeting duly called and held) has: (a) unanimously determined that the Merger is advisable and fair to and in the best interests of the Company and its shareholders; (b) unanimously authorized and approved the execution, delivery and performance of this Agreement by the Company and unanimously approved the Merger; (c) unanimously recommended the adoption and approval of this Agreement by the holders of Company Common Stock and directed that this Agreement and the Merger be submitted for consideration by the Company s shareholders at the Company Shareholders Meeting; and (d) to the extent necessary, unanimously adopted a resolution having the effect of causing the Company not to be subject to any state takeover law or similar Legal Requirement that might otherwise apply to the Merger or any of the other Contemplated Transactions. This Agreement constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, assuming the due authorization, execution and delivery of this Agreement by the Parent and Merger Sub, subject to: (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. Prior to the execution of the Voting Agreements, the Board of Directors of the Company approved the Voting Agreements and the transactions contemplated thereby.

2.23 *Inapplicability of Anti-takeover Statutes.* The board of directors of the Company has not taken and will not take any action to cause the restrictions applicable to business combinations contained in Sections 14-2-1110 *et seq* and Sections 14-2-1131 *et seq* of the GBCC to be applicable to the execution, delivery and performance of this Agreement and the Voting Agreements and to the consummation of the Merger and the other Contemplated Transactions. Neither such Sections of the GBCC nor any other state takeover statute or similar Legal Requirement applies or purports to apply to the Merger, this Agreement, the Voting Agreements or any of the other Contemplated Transactions.

2.24 *Proxy Statement.* The Proxy Statement will, when filed with the SEC, comply as to form in all material respects with the applicable requirements of the Exchange Act and all other applicable Legal Requirements (including Section 14-2-1320 of the GBCC). The Proxy Statement will not contain or incorporate by reference any statement which, at the time the Proxy Statement is filed with the SEC, at the time the Proxy Statement is first sent to the shareholders of the Company or at the time of the Company Shareholders Meeting, and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading; *provided, however*, that no representation or warranty is made by the Company with respect to information supplied by or on behalf of Parent or Merger Sub for inclusion or incorporation by reference in the Proxy Statement.

2.25 *No Discussions.* None of the Acquired Corporations, and no Representative of any of the Acquired Corporations, is engaged, directly or indirectly, in any discussions or negotiations with any other Person relating to any Acquisition Proposal.

2.26 *Vote Required.* The affirmative vote of the holders of a majority of the shares of Company Common Stock outstanding on the record date for the Company Shareholders Meeting and entitled to vote (the ***Required Shareholder Vote***) is the only vote of the holders of any class or series of the Company s capital stock necessary to adopt or approve this Agreement and approve the Merger or the other Contemplated Transactions.

2.27 *Non-Contravention; Consents.* Except as set forth in Part 2.27 of the Disclosure Schedule, neither (x) the execution, delivery or performance of this Agreement, nor (y) the consummation of the Merger or any of the other Contemplated Transactions, will directly or indirectly (with or without notice or lapse of time):

(a) contravene, conflict with or result in a violation of (i) any of the provisions of the articles of incorporation, bylaws or other charter or other organizational documents of any of the Acquired Corporations, or (ii) any resolution adopted by the shareholders, the board of directors or any committee of the board of directors of any of the Acquired Corporations;

(b) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge the Merger or any of the other Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any order, writ, injunction, judgment or decree to which any of the Acquired Corporations, or any of the assets owned or used by any of the Acquired Corporations, is subject;

(c) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by any of the Acquired Corporations or that otherwise relates to the business of any of the Acquired Corporations or to any of the assets owned or used by any of the Acquired Corporations;

(d) (A) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any Material Contract, (B) contravene, conflict with or result in a violation or breach of, or result in a default under, any provision of any other Contract that could reasonably be expected to, individually or in the aggregate, result in a Company Material Adverse Effect, or (C) give any Person the right to: (i) declare a default or exercise any remedy under any Material Contract; (ii) a rebate, chargeback, penalty or change in delivery schedule under any such Material Contract; (iii) accelerate the maturity or performance of any Material Contract; or (iv) cancel, terminate or modify any term of any Material Contract;

(e) result in the imposition or creation of any Encumbrance upon or with respect to any asset owned or used by any of the Acquired Corporations (except for minor liens that will not, in any case or in the aggregate, materially detract from the value of the assets subject thereto or materially impair the operations of any of the Acquired Corporations); or

(f) result in, or increase the likelihood of, the disclosure or delivery to any escrowholder or other Person of any Company Source Code, or the transfer of any material asset of any of the Acquired Corporations to any Person.

Except as may be required by the Exchange Act, the GBCC and the NASDAQ Global Market listing requirements, none of the Acquired Corporations was, is or will be required to make any filing with or give any notice to, or to obtain any Consent from, any Person in connection with (x) the execution, delivery or performance of this Agreement, or (y) the consummation of the Merger or any of the other Contemplated Transactions.

2.28 *Fairness Opinion.* The Special Committee and the board of directors of the Company has received the written opinion of Ladenburg Thalmann & Co., Inc., financial advisor to the Company (the ***Financial Advisor***), dated the date of this Agreement, to the effect that the merger consideration payable hereunder is fair, from a financial point of view, to the shareholders of the Company. The Company has furnished an accurate and complete copy of said written opinion to Parent. All information provided on behalf of the Company to the Financial Advisor and considered by the Financial Advisor in preparing its fairness opinion is accurate and complete in all material respects.

2.29 *Financial Advisor.* Except for the Financial Advisor and Nash Equity Capital, no broker, finder or investment banker is entitled to any brokerage fee, finder s fee, opinion fee, success fee, transaction fee or other fee or commission in connection with the Merger or any of the other Contemplated Transactions based upon arrangements made by or on behalf of any of the Acquired Corporations. The Company has furnished to Parent accurate and complete copies of all agreements under which any such fees, commissions or other amounts have been paid or may become payable and all indemnification and other agreements related to the engagement of the Financial Advisor and Nash Equity Capital.

Section 3. *Representations and Warranties of Parent and Merger Sub*

Parent and Merger Sub represent and warrant to the Company as follows:

3.1 *Due Organization.* Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia.

3.2 *Corporate Power; Enforceability.* Each of Parent and Merger Sub has all requisite corporate power and authority to execute and deliver this Agreement, to perform its covenants and obligations hereunder and to consummate the Contemplated Transactions. The execution and delivery by Parent and Merger Sub of this Agreement, the performance by Parent and Merger Sub of their respective covenants and obligations hereunder and the consummation by Parent and Merger Sub of the Contemplated Transactions have been duly authorized by all necessary corporate or other action on the part of Parent and Merger Sub. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery of this Agreement by the

Company, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each in accordance with its terms, except that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors rights generally.

3.3 *Non-Contravention.* The execution and delivery by Parent and Merger Sub of this Agreement, the performance by Parent and Merger Sub of their respective covenants and obligations hereunder and the consummation by Parent and Merger Sub of the Contemplated Transactions do not and will not violate or conflict with any provision of the certificates of incorporation or bylaws or other constituent documents of Parent or Merger Sub.

3.4 *Governmental Approvals.* No Governmental Authorization is required on the part of Parent or Merger Sub in connection with the execution and delivery by Parent and Merger Sub of this Agreement, the performance by Parent and Merger Sub of their respective covenants and obligations hereunder or the consummation by Parent and Merger Sub of the Contemplated Transactions, except such filings and approvals as may be required by any federal or state securities laws, including compliance with any applicable requirements of the Exchange Act.

3.5 *Disclosure.* The information supplied by or on behalf of Parent or Merger Sub for inclusion in the Proxy Statement will not contain any statement which, at the time the Proxy Statement is filed with the SEC, at the time the Proxy Statement is first sent to the shareholders of the Company or at the time of the Company Shareholders Meeting, and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

3.6 *Absence of Litigation.* No Legal Proceeding is pending or, to the knowledge of Parent, threatened that seeks to prevent the consummation of the transactions contemplated hereby or that would have a material adverse effect on the ability of Parent or Merger Sub to enter into this Agreement and consummate the Merger and other transactions contemplated hereby.

3.7 *Ability to Pay Purchase Price.* Parent has sufficient cash funds on hand and available through existing liquidity facilities to pay the total consideration payable pursuant to Section 1.5 and 5.4, and will continue to have sufficient liquid cash funds to pay such consideration when such funds are paid or deposited with the Paying Agent.

3.8 *Parent Brokerage Fees.* Parent shall pay any brokerage or finder s fee of any Person acting on behalf of Parent or Acquisition Sub in connection with the transactions contemplated by this Agreement.

Section 4. *Certain Covenants of the Company*

4.1 *Access and Investigation.* Subject to the Confidentiality Agreement, during the period commencing on the date of this Agreement and ending at the Effective Time (the ***Pre-Closing Period***), the Company shall, and shall cause the respective Representatives of the Acquired Corporations to: (a) provide Parent and Parent s Representatives with reasonable access to the Acquired Corporations Representatives, personnel and assets and to all existing books, records, Tax Returns, work papers and other documents and information relating to the Acquired Corporations; (b) provide Parent and Parent s Representatives with such copies of the existing books, records, Tax Returns, work papers and other documents and information relating to the Acquired Corporations, and with such additional financial, operating and other data and information regarding the Acquired Corporations, as Parent may reasonably request; (c) permit Parent s officers and other employees to meet, upon reasonable notice and during normal business hours, with the chief financial officer and other officers and managers of the Company responsible for the Company s financial statements and the internal controls of the Acquired Corporations to discuss such matters as Parent may deem necessary or appropriate; and (d) provide Parent and Parent s Representatives with reasonable access to the Gold Property in order to permit Parent to cause, at Parent s expense, an appraiser to conduct a valuation of the Gold

Property. Without

limiting the generality of any of the foregoing, during the Pre-Closing Period, the Company shall promptly provide Parent with copies of:

(i) such unaudited financial monthly financial reports as the Company may customarily prepare, which shall be delivered by the Company to Parent promptly after the Company shall have completed them;

(ii) all material operating and financial reports prepared by the Acquired Corporations for the Company s senior management, including sales forecasts, marketing plans, development plans, discount reports, write-off reports, hiring reports and capital expenditure reports prepared for the Company s senior management;

(iii) any written materials or communications sent by or on behalf of the Company to its shareholders;

(iv) any material notice, document or other communication sent by or on behalf of any of the Acquired Corporations to any party to any Material Contract or sent to any of the Acquired Corporations by any party to any Material Contract (other than any communication that relates solely to routine commercial transactions between an Acquired Corporation and the other party to any such Material Contract and that is of the type sent in the ordinary course of business and consistent with past practices);

(v) any notice, report or other document filed with or otherwise furnished, submitted or sent to any Governmental Body on behalf of any of the Acquired Corporations in connection with the Merger or any of the other Contemplated Transactions;

(vi) any non-privileged notice, document or other communication sent by or on behalf of, or sent to, any of the Acquired Corporations relating to any pending or threatened Legal Proceeding involving or affecting any of the Acquired Corporations; and

(vii) any material notice, report or other document received by any of the Acquired Corporations from any Governmental Body.

4.2 *Operation of the Company s Business.*

(a) During the Pre-Closing Period (except as expressly required by this Agreement or with the prior written consent of Parent, which shall not be unreasonably withheld with respect to the action required by clause (iv)): (i) the Company shall cause each of the Acquired Corporations to conduct its business and operations: (A) in the ordinary course and in accordance with past practices; and (B) in compliance with all applicable Legal Requirements and the requirements of all Company Contracts that constitute Material Contracts; (ii) the Company shall use reasonable efforts to cause each of the Acquired Corporations to preserve intact their current business organization; (iii) the Company shall use reasonable efforts to cause each of the Acquired Corporations to keep available the services of its current officers and other employees and maintain their relations and goodwill with all suppliers, customers, landlords, creditors, licensors, licensees, employees and other Persons having material business relationships with the respective Acquired Corporations; (iv) the Company shall keep in full force all insurance policies referred to in Section 2.19 (other than any such policies that are immediately replaced with substantially similar policies); (v) the Company shall cause to be provided all notices, assurances and support required by any Company Contract relating to any Intellectual Property or Intellectual Property Right in order to ensure that no condition under such Company Contract occurs that could result in, or could increase the likelihood of: (A) any transfer or disclosure by any Acquired Corporation of any Company Source Code; or (B) a release from any escrow of any Company Source Code that has been deposited or is required to be deposited in escrow under the terms of such Company Contract; (vi) the Company shall promptly notify Parent of: (A) any notice or other communication from any Person alleging that the Consent of such Person is or may be required in connection with any of the Contemplated Transactions; and (B) any Legal Proceeding against, relating to, involving or otherwise affecting any of the Acquired Corporations that is commenced, or, to the knowledge of the Company, threatened against, any of the Acquired Corporations; and (vii) the Company shall (to the extent requested by Parent) cause its officers

Table of Contents

and the officers of its Subsidiaries to report regularly to Parent concerning the status of the Company s business.

(b) During the Pre-Closing Period, the Company shall not (without the prior written consent of Parent, which shall not be unreasonably withheld with respect to those actions prohibited by clauses (vi), (vii) , (xi)(B) , (xi)(C) , (xi)(D) , (xiv) , (xv) , (xvi) , (xvii) and (xix)), and shall not (without the prior written consent of Parent, which shall not be unreasonably withheld) permit any of the other Acquired Corporations to (except as expressly contemplated by this Agreement or as set forth in Part 4.2(b) of the Disclosure Schedule):

(i) amend its articles of incorporation or bylaws or comparable organizational documents or create any new Subsidiaries;

(ii) issue, sell, deliver or agree or commit to issue, sell or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any security of any Acquired Corporation, except for the issuance and sale of shares of Company Common Stock pursuant to Company Equity Awards outstanding as of the date of this Agreement upon the exercise or vesting thereof, as applicable;

(iii) directly or indirectly acquire, repurchase or redeem any security of any Acquired Corporation, except in connection with Tax withholdings and exercise price settlements upon the exercise of Company Options or stock appreciation rights;

(iv) (A) split, combine, subdivide or reclassify any shares of capital stock, or (B) declare, set aside or pay any dividend or other distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of capital stock, or make any other actual, constructive or deemed distribution in respect of the shares of capital stock, except for the Company s customary quarterly cash dividend of $0.01 per share and cash dividends made by any direct or indirect wholly-owned Subsidiary of the Company to the Company or one of its wholly-owned Subsidiaries;

(v) propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of any Acquired Corporation, except for the Contemplated Transactions;

(vi) (A) redeem, repurchase, prepay, defease, cancel, incur, create, assume or otherwise acquire or modify in any material respect any long-term or short-term debt for borrowed monies or issue or sell any debt securities or calls, options, warrants or other rights to acquire any debt securities of any Acquired Corporation or enter into any agreement having the economic effect of any of the foregoing; (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, except with respect to obligations of direct or indirect wholly-owned Subsidiaries of the Company; (C) make any loans, advances or capital contributions to or investments in any other Person (other than the Company or any direct or indirect wholly-owned Subsidiaries), except for travel advances in the ordinary course of business consistent with past practice to employees of the Acquired Corporations and ordinary course advances not exceeding $2,500 at any time outstanding per employee; or (D) mortgage or pledge any asset owned or used by any Acquired Corporation, or create or suffer to exist any Encumbrance thereupon, other than Permitted Encumbrances and Encumbrances existing on the date of this Agreement;

(vii) except as may be required by applicable Legal Requirements or the terms of any Company Benefit Plan or Company Benefit Agreement as in effect on the date of this Agreement or as expressly provided for by this Agreement (including, without limitation, Section 5.4 of this Agreement), (A) enter into, adopt, amend (including acceleration of vesting), modify or terminate any bonus, profit sharing, incentive, compensation, severance, retention, termination, option, appreciation right, performance unit, stock equivalent, share purchase agreement, pension, retirement, deferred compensation, employment, severance, change in control, pension, retirement, collective bargaining or other employee benefit agreement, trust, plan, fund or other arrangement for the compensation, benefit or welfare of any director, officer or employee in any manner (other than as expressly permitted below), (B) increase the compensation payable or to become payable of any director, officer or employee, pay or agree to pay any special bonus or special remuneration to any director, officer or employee, or pay or agree to pay any benefit not required by any plan or arrangement as in effect as of the date hereof, except in the ordinary course of business consistent with past practice with respect to any employee who is not a director or executive officer, except in any such case (1) in connection with the hiring of new employees who are not directors or executive officers in the ordinary course of business consistent with past practice, and (2) in connection with the promotion of employees who are not directors or executive officers (and who will not be directors or executive officers after such promotion) in the ordinary course of business consistent with past practice, (C) hire any employee, (D) grant or pay any severance or termination pay to (or amend any such existing arrangement with) any current or former director, officer, employee or independent contractor of any Acquired Corporation, (E) increase benefits payable under any existing severance or termination pay policies or employment agreements, (F) amend, modify or terminate any existing Company Benefit Plan or Company Benefit Agreement in any manner that would increase the Liability of any Acquired Corporation, or (G) accelerate the vesting or payment of, or fund or in any other way secure the payment, compensation or benefits under, any Company Benefit Plan or Company Benefit Agreement to the extent not required by the terms of this Agreement or such Company Benefit Plan or Company Benefit Agreement as in effect on the date of this Agreement;

(viii) commence any Legal Proceeding or settle any pending or threatened Legal Proceeding;

(ix) except as may be required as a result of a change in applicable Legal Requirements or in GAAP, make any material change in any of the accounting methods, principles or practices used by it or change an annual accounting period;

(x) (A) make or change any material Tax election, (B) settle or compromise any material federal, state, local or foreign income Tax liability, (C) consent to any extension or waiver of any limitation period with respect to any claim or assessment for material Taxes, (D) change any annual Tax accounting period or method of Tax accounting, (E) file any materially amended Tax Return, (F) enter into any closing agreement with respect to any Tax or (G) surrender any right to claim a material Tax refund;

(xi) (A) acquire (by merger, consolidation or acquisition of stock or assets or otherwise) any other Entity or any material equity interest therein, (B) sell or otherwise dispose of, lease or license any properties or assets of any Acquired Corporation (other than the licensing of Software in the ordinary course of business and consistent with past practices and in connection with ordinary course product sales), which are material to the Acquired Corporations, taken as a whole, (C) acquire, lease or license any material right or other asset from any Person, other than Commercial Off The Shelf Software, or (D) waive or relinquish any material right;

(xii) make any expenditures (including capital expenditures) that deviate from the spreadsheet set forth in Schedule 4.2(b)(xii) in excess of $10,000 with respect to any particular line item of the spreadsheet; *provided, however*, that in no event shall the aggregate expenditures (including capital expenditures) exceed the aggregate expenditures (including capital expenditures) permissible pursuant to Schedule 4.2(b)(xii) (for the entire Pre-Closing Period) by more than $2,000,000.

(xiii) make any changes or modifications to any investment or risk management policy or other similar policies (including with respect to hedging), any cash management policy or any material changes or modifications to any method of doing business except for changes to product prices;

(xiv) permit any insurance policy naming any Acquired Corporation as a beneficiary or a loss payable payee to lapse, be canceled or expire unless a new policy with substantially identical coverage is in effect as of the date of lapse, cancellation or expiration;

(xv) enter into (or permit any assets owned, leased or licensed by any Acquired Corporation to become bound by), or amend in any material respect, terminate or fail to renew, any (w) Material Contract, or any other Contract that would have been a Material Contract had it not been amended, terminated or not renewed, (x) Energy Contract with projected revenues in excess of $10,000, or (y) any Contract pursuant to which the Company licenses or grants any interest in any Company IP that deviates

Table of Contents

in any material respect from the corresponding standard form agreement provided to Parent as of the date of this Agreement;

(xvi) modify any of its product return policies, product maintenance polices, service policies, product modification or upgrade policies, personnel policies or other business or investment policies, in any material respect;

(xvii) enter into any material transaction with any of its Affiliates (other than an Acquired Corporation) other than pursuant to written arrangements in effect on the date of this Agreement and excluding any employment, compensation or similar arrangements otherwise expressly permitted pursuant to this Section 4.2(b);

(xviii) abandon or permit to lapse any right to any material patent or patent application;

(xix) enter into any material transaction or take any other material action outside the ordinary course of business or inconsistent with past practices;

(xx) take any action that is intended or is reasonably likely to result in (A) any of the representations or warranties of the Company set forth in this Agreement being or becoming untrue in any respect at any time prior to the Effective Time in any manner that would reasonably be likely to cause the conditions set forth in Sec