

LIME ENERGY CO.  
Form DEF 14C  
August 17, 2015  
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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**SCHEDULE 14C INFORMATION**

**Information Statement Pursuant to Section 14(c)  
of the Securities Exchange Act of 1934**

Check the appropriate box:

- Preliminary Information Statement
- Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))
- Definitive Information Statement

**LIME ENERGY CO.**

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required
  - Fee computed on table below per Exchange Act Rules 14c-5(g) 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:
- Fee paid previously with preliminary materials.
  - 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:
-



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**NOTICE OF STOCKHOLDER ACTION BY WRITTEN CONSENT  
AND INFORMATION STATEMENT**

**WE ARE NOT ASKING YOU FOR A PROXY AND YOU ARE  
REQUESTED NOT TO SEND US A PROXY.**

To our fellow Stockholders:

Notice is hereby given that holders of a majority of the voting power represented by the issued and outstanding shares of common stock and Series C Convertible Preferred Stock of Lime Energy Co., a Delaware corporation (which we refer to in this notice as the Company, we, us, or our ), have ratified and approved by written consent (the Written Consent ) the Company s potential issuance of common stock upon conversion of a convertible note (the Note ) issued to Bison Capital Partners IV, L.P., a Delaware limited partnership ( Bison ), under that certain Note Purchase Agreement (the Note Purchase Agreement ), dated March 24, 2015, between the Company and Bison, in order to finance, in part, the consideration for the Company s acquisition of EnerPath International Holding Company, a Delaware corporation (the EnerPath Acquisition ).

The Company s entry into the Note Purchase Agreement and the EnerPath Acquisition, both of which are discussed in the accompanying information statement, did not require approval of our stockholders. However, under the Note, the number of shares issuable upon conversion of the Note is subject to a 19.99% cap that must remain in place until our stockholders approve its removal. The cap and the conditions to its removal were included in the Note in order to conform to applicable rules of the NASDAQ Stock Market LLC. The Written Consent was executed on March 24, 2015, but the removal of the cap will not become effective until a date that is at least 20 calendar days after the mailing of the accompanying information statement.

The Written Consent has already been delivered and we are not soliciting your vote or consent. This notice and the accompanying information statement constitute notice to you from the Company of the approval by written consent, as contemplated by Section 228(e) of the Delaware General Corporation Law, of certain corporate actions by less than the unanimous written consent of our stockholders.

The information statement is first being mailed to our stockholders on or about August 17, 2015.

**THIS IS NOT A NOTICE OF A MEETING OF STOCKHOLDERS AND  
NO STOCKHOLDER MEETING WILL BE HELD TO CONSIDER THIS MATTER.**

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By Order of the Board of Directors,

/s/ Mary Colleen Brennan  
Mary Colleen Brennan  
Secretary

Woodbridge, New Jersey  
August 17, 2015

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**LIME ENERGY CO.**

*3 Convery Blvd., Suite 600*

*Woodbridge, New Jersey 07095*

**INFORMATION STATEMENT**

Pursuant to Section 14(c) of the Securities Exchange Act of 1934

THIS INFORMATION STATEMENT IS BEING SENT TO YOU FOR INFORMATIONAL PURPOSES ONLY AND NO VOTE OR OTHER ACTION OF THE COMPANY'S STOCKHOLDERS IS REQUIRED IN CONNECTION WITH THIS INFORMATION STATEMENT.

**We Are Not Asking You for a Proxy and You are Requested Not to Send Us a Proxy.**

**INTRODUCTION**

On March 24, 2015, Lime Energy Co., a Delaware corporation, which we refer to as the Company, Lime, we, us or our, and Bison Capital Partners IV, L.P., a Delaware limited partnership ( Bison ), entered into a Note Purchase Agreement (the Note Purchase Agreement ), pursuant to which the Company issued a subordinated convertible note due March 24, 2020 (the Note ) in the principal amount of \$11.75 million (the Note Issuance ). The proceeds from the Note Issuance were used to finance the Company's acquisition of EnerPath International Holding Company, a Delaware corporation ( EnerPath ), which we refer to as the EnerPath Acquisition.

On the earlier of March 24, 2018 or a change of control of the Company, up to the original principal amount of the Note may, at the election of the Note holder, be converted into shares of our common stock, par value \$0.0001 per share (the Common Stock ). However, the Note provides that no portion of the amount due under the Note may be converted into more than 19.99% of the outstanding Common Stock (the Conversion Cap ) without the approval of our stockholders, as required by the rules of the NASDAQ Stock Market LLC ( Nasdaq ) on which our Common Stock is traded.

Pursuant to the requirements of Section 14(c) of the Securities Exchange Act of 1934 and Section 228(d) of the Delaware General Corporation Law (the DGCL ), this Information Statement is being furnished to the stockholders of record as of March 24, 2015, in connection with the approval of the potential issuance of our Common Stock in excess of the Conversion Cap, which approval will not become effective until 20 calendar days after the date this Information Statement is first mailed to our stockholders (the Cap Removal Effective Date ).

Except as to the removal of the Conversion Cap discussed above, no separate vote of our stockholders was required with respect to the Note Issuance or the EnerPath Acquisition, which was effected by way of a merger of EnerPath with a wholly-owned subsidiary of the Company as

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further discussed in this Information Statement. On March 24, 2015, three of our stockholders (the Majority Stockholders ) owning, together, 6,055,452 shares of Common Stock and 10,000 shares of our Series C Convertible Preferred Stock (the Series C Preferred Stock ), or approximately 75% of our then outstanding voting securities, executed a written consent (the Written Consent ) approving and adopting the potential issuance of our Common Stock in excess of the Conversion Cap, but only after the Cap Removal Effective Date. There are no rights of appraisal or similar rights of dissenters with respect to the Note Issuance or the EnerPath Acquisition.

This Information Statement is first being sent to stockholders on or about August 17, 2015. We will request brokerage houses, nominees, custodians, fiduciaries and other like parties to forward this Information Statement to the beneficial owners of the Common Stock held of record by them on March 24, 2015.

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**SUMMARY TERM SHEET OF THE MERGER**

On March 24, 2015, Lime Energy Co., a Delaware corporation, which we refer to as the *Company*, *Lime*, *we*, *us* or *our*, EIHC MergerSub, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company, which we refer to as *Merger Sub*, EnerPath International Holding Company, a Delaware corporation, which we refer to as *EnerPath*, and all of the stockholders of EnerPath, including Janina Guthrie as the Stockholder Representative, entered into an Agreement and Plan of Merger, a copy of which is attached hereto as Annex A and which we refer to as the *Merger Agreement*, pursuant to which, among other things, EnerPath merged with and into Merger Sub, a transaction which we refer to as the *Merger*, with EnerPath surviving as a direct, wholly-owned subsidiary of the Company.

The following summary highlights selected information from this Information Statement and may not contain all of the information that is important to you. Accordingly, you should read carefully this entire Information Statement, including the annexes and documents incorporated by reference herein, as well as the other documents referred to in this Information Statement. Each item in this summary includes a page reference directing you to a more complete description of that item in this Information Statement. For information on how to obtain without charge the documents that are incorporated by reference into this Information Statement, please follow the instructions under *Where You Can Find More Information*.

**The Parties to the Merger (page 4)**

*Lime Energy Co.*

Lime is a provider of energy efficiency programs that enable utility clients to reach underserved markets and achieve energy reduction goals. The Company's principal executive offices are presently located at 3 Convery Blvd., Suite 600, Woodbridge, New Jersey 07095. Investors may contact the Company at (732) 791-5380.

*EnerPath International Holding Company*

EnerPath and its subsidiaries provide utility companies with comprehensive energy efficiency programs, which enable the utility companies to reduce the energy consumption of their utility customers and achieve overall energy reduction goals. Working on behalf of the utilities, EnerPath designs and implements turnkey demand-side-management programs ( DSM Programs ) for the utility companies' small- and mid-sized businesses and residential customers. EnerPath's principal place of business is at 1758 Orange Tree Lane, Redlands, California 92374, and its telephone number is (909) 335-1699.

*Merger Sub*



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EIHC MergerSub, Inc. was formed as a wholly-owned subsidiary of Lime under the laws of the State of Delaware solely for the purpose of entering into the Merger Agreement and completing the Merger.

### **The Merger (page 5)**

On March 24, 2015 (the Closing Date ), the Company entered into the Merger Agreement with EnerPath, Merger Sub and the other parties thereto. Upon the terms and subject to the conditions of the Merger Agreement, at the effective time of the Merger:

- Merger Sub merged with and into EnerPath, with EnerPath continuing as the surviving entity.
- EnerPath became a wholly-owned subsidiary of the Company.

### **The Merger Consideration (page 5)**

- The Company paid \$11 million in cash (the Purchase Price ) for all of the outstanding stock of EnerPath.
- The Merger Agreement provided for an adjustment to the Purchase Price if EnerPath's tangible net worth ( TNW ) as of the closing was less than \$4,400,000 or more than \$4,900,000 (the TNW Range ).

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- The parties to the Merger Agreement established escrow accounts equal to (i) \$250,000 to cover various claims relating to any post-closing adjustments in the event the final TNW was outside of the TNW Range, (ii) 10% of the Purchase Price to cover any post-closing indemnity obligations and (iii) \$75,000 to pay post-closing expenses of the stockholders' representative.
- Post-closing, the parties determined that the closing TNW (the Closing TNW) fell within the TNW Range, and the \$250,000 escrow was released to the stockholders' representative on June 25, 2015.

**Approval of the Merger (page 7)**

- The Board of Directors of the Company (the Board of Directors) unanimously approved the Merger on March 23, 2015. Under the DGCL, no stockholder approval was required for the Merger.
- EnerPath's board of directors and stockholders unanimously approved the Merger on March 23, 2015.

**Reasons for the Merger (page 7)**

The Board of Directors considered the following factors in determining that the Merger was in the best interests of the Company and its stockholders:

- the acquisition of EnerPath, a leading provider of software and technology solutions for utilities, would provide the Company with a West Coast presence;
- the EnerPath Acquisition would bring together the software and technology platform of EnerPath and the sales and project implementation strengths of the Company; and
- the EnerPath Acquisition would bring utilities a new platform for engaging commercial customers while delivering substantial, cost-effective energy efficiency solutions.

**Certain U.S. Federal Income Tax Consequences of the Merger (page 8)**

The payment of the Merger consideration in exchange for the stock of EnerPath was a fully taxable transaction, in which each former holder of EnerPath stock recognized taxable income equal to the difference between the tax basis of his or her surrendered stock and the Merger consideration received. For general informational purposes only, and not as a substitute for individual tax advice, certain general federal income tax consequences of the Merger to the former stockholders of EnerPath are described in Certain U.S. Federal Income Tax Consequences of the Merger below. Each former stockholder of EnerPath should consult his or her own tax advisor with respect to the tax consequences of the Merger applicable to his or her own particular circumstances.

**Funding of the Merger (page 8)**

The Merger was an all-cash transaction. On March 24, 2015, the Company entered into a Note Purchase Agreement with Bison and received \$11,750,000 in cash proceeds to finance the Merger consideration and to pay fees and expenses incurred in connection therewith (including certain fees and expenses incurred by Bison in connection with the Note Purchase Agreement).

**Employment Matters (page 12)**

In connection with the closing of the EnerPath Acquisition, two executives of EnerPath, Stephen Guthrie and Steven Meyers, entered into employment and non-competition agreements with Lime.

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**THE MERGER**

This discussion of the Merger is qualified in its entirety by reference to the Merger Agreement, which is attached to this Information Statement as Annex A. You should read the entire Merger Agreement carefully.

**The Parties to the Merger**

*Lime Energy Co.*

Lime is a provider of energy efficiency programs that enable utility clients to reach underserved markets and achieve energy reduction goals. We focus on deploying energy solutions for small- and mid-sized commercial businesses that improve energy efficiency, reduce energy-related expenditures, and lessen the impact of energy use on the environment. Our small business energy solutions (SBES) programs provide a cost-effective avenue for our utility clients to offer products and services to a hard-to-reach customer base, while satisfying aggressive state-mandated energy reduction goals.

For additional information regarding the Company and its business, please see our filings with the Securities Exchange Commission (the SEC) that are incorporated by reference into this Information Statement. See Where You Can Find More Information on page 46.

*EnerPath International Holding Company*

EnerPath, which has been in the energy efficiency business for over 20 years, delivers large-scale energy efficiency programs to utilities, cities and corporations in the United States and Canada.

EnerPath provides utilities with comprehensive energy efficiency programs that enable the utilities to reduce the energy consumption of their customers and achieve overall energy reduction goals. EnerPath delivers these energy efficiency programs on a performance basis where it is only paid for realized energy efficiency savings. Working on behalf of the utilities, EnerPath designs and implements DSM Programs for the utilities' customers (mainly small- and mid-sized businesses and residential customers) in order to deliver energy solutions that achieve improvements in energy efficiency and customer satisfaction. In designing a DSM Program, EnerPath works with the utility to understand its needs and constraints and configure the program to best achieve the utility's goals. Implementing a DSM Program involves contacting, on behalf of the utility, potential customers using customer lists and other marketing tools; performing energy audits; structuring and selling projects pursuant to program parameters; procuring equipment; installing energy efficiency measures through subcontractors; arranging financing as needed; and conducting completed project quality inspections and customer surveys.

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EnerPath executes its programs through its proprietary EnerWorks software, which is a scalable, real-time delivery platform that greatly simplifies and streamlines the procedures involved in implementing a high-volume DSM Program. The multi-platform, multi-language system provides tools for field representatives, program managers, and utility customers that maximize the effectiveness of DSM Programs through improved customer participation and program management. The software enables real-time energy audits and engineering calculations, instant document production, and real-time web-based reporting and program management; all while creating a full audit trail for environmental and regulatory purposes. The EnerWorks platform also provides EnerPath and the utilities with rich data resources to apply to the design of future projects and programs.

EnerPath currently delivers energy efficiency solutions to four of the 25 largest electric utilities in the United States. These solutions, which include energy-efficient lighting upgrades, mechanical (HVAC) upgrades, water conservation measures, building controls, refrigeration, pool pumps, building shell improvements, and appliance recycling, are designed to reduce energy costs and lessen the impact of energy consumption on the environment.

### *Merger Sub*

EIHC MergerSub, Inc. was formed as a wholly-owned subsidiary of Lime under the laws of the State of Delaware solely for the purpose of entering into the Merger Agreement and completing the Merger.

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**The Merger**

On March 24, 2015, the Company entered into the Merger Agreement, pursuant to which Merger Sub merged with and into EnerPath, with EnerPath continuing as the surviving entity and becoming a wholly-owned subsidiary of the Company.

**The Merger Consideration**

*General*

The total consideration paid by the Company to EnerPath's stockholders in connection with the Merger consisted of \$11 million in cash, of which, pursuant to an Escrow Agreement executed by the parties at the closing of the EnerPath Acquisition (the Closing), (i) \$629,387.38 (10% of the Purchase Price) was placed in escrow to cover various claims related to any post-closing indemnity obligations, (ii) \$250,000 was placed in escrow to cover any post-closing adjustments to the Purchase Price (the Purchase Price Escrow Amount), as described below, and (iii) \$75,000 was placed in escrow to pay post-closing expenses of the stockholders' representative (the Stockholder Representative Expense Amount). As discussed below, the Purchase Price was subject to adjustment based upon the TNW target, and was allocated among EnerPath's stockholders, certain holders of EnerPath's outstanding indebtedness, and certain other obligations.

*Working Capital Adjustment*

The Purchase Price was subject to an adjustment at the Closing if EnerPath's estimated TNW as of the Closing fell outside the TNW Range. The preliminary calculation of the estimated TNW at Closing was determined to be within the TNW Range. The calculation of the final TNW was to occur within 90 days following the Closing. On June 25, 2015, the parties agreed to a final calculation of the TNW and concurred that the Closing TNW was within the TNW Range; accordingly, the Purchase Price Escrow Amount was released to the stockholders' representative.

In addition, on June 25, 2015, the Stockholder Representative Expense Amount was released to the stockholders' representative.

**Background to the Merger**

In the Fall of 2013, EnerPath engaged the services of an investment banking firm, FMI Capital Advisors (FMI), for purposes of soliciting potential buyers who might be interested in acquiring EnerPath. Prior to that time, neither the Company, EnerPath, nor any of their respective affiliates or subsidiaries had engaged in any prior communications or transactions. In February 2014, the Company reached out to EnerPath outside the FMI process and expressed interest in acquiring EnerPath because it believed the EnerPath Acquisition would enhance the Company's energy efficiency programs business. In particular, the Company anticipated that EnerPath's enterprise software would facilitate cost-effective delivery of energy services to a broader range of commercial and residential utility customers than those serviced by the Company.

at that time. EnerPath also had a geographic presence complementary to that of Lime.

On July 2, 2014, the Company and EnerPath entered into a Confidentiality Agreement, and FMI delivered to the Company a Confidential Information Memorandum describing EnerPath's organizational structure, business, operations, and financial information. Immediately following the execution of the Confidentiality Agreement, and continuing for several months thereafter, the Company conducted its operational and financial due diligence on EnerPath, which included conversations with EnerPath principals Stephen Guthrie, Janina Guthrie, and Steven Meyers.

Concurrently with the ongoing due diligence investigation of EnerPath, in the Fall of 2014, the Company initiated discussions with Bison about Bison making a possible capital investment in the Company. Bison is an investment firm that makes growth capital investments in middle-market companies for expansion, acquisitions and balance sheet recapitalizations.

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On November 14, 2014, the Company submitted an indication of interest (the "IOI") to EnerPath offering to acquire EnerPath for a total purchase price of \$16 million, consisting of (i) a cash payment of \$8 million (net of EnerPath's outstanding indebtedness and transaction fees, which were estimated to be \$3 million), and (ii) the issuance of 2,666,667 shares of the Company's Common Stock (valued at \$3.00 per share). The IOI anticipated the retention of Stephen Guthrie, Steven Meyers and certain other members of EnerPath's management, and the entering into of mutually satisfactory employment agreements with Messrs. Guthrie and Meyers. The IOI also required EnerPath to agree to a six-month exclusivity period during which EnerPath would not engage in any discussions or negotiations with any other party regarding a possible acquisition of EnerPath.

In response to the IOI, EnerPath asked for, and the Company provided, clarification on a number of points related to the IOI, including (i) the Company's capital structure; (ii) the Company's sources of acquisition financing and working capital; (iii) any transfer restrictions that would be imposed upon, and any registration rights that would be made available to, former EnerPath stockholders following the EnerPath Acquisition; (iv) any contractual rights Bison would have in connection with any possible investment by Bison in the Company; and (v) any necessary approvals that would have to be obtained by the Company in order to consummate a transaction.

On November 23, 2014, EnerPath, through FMI, proposed the following terms (the "EnerPath Response"): (i) a cash payment of \$9 million (net of EnerPath's outstanding indebtedness and transaction fees); (ii) the issuance of 2,900,000 shares of the Company's Common Stock (valued at \$3.00 per share); (iii) an adjustment, upward or downward, in the cash payable at Closing, based upon the TNW of EnerPath at Closing equaling \$5 million; (iv) no escrow or holdback to cover indemnity claims; and (v) an exclusivity period of 60 days.

On November 26, 2014, the Company sent a counterproposal to EnerPath, as follows: (i) a cash payment of \$8.75 million (versus \$9 million); (ii) the issuance of 2,666,667 shares (versus 2,900,000 shares) of the Company's Common Stock; and (iii) an escrow in an amount equal to 10% of the Purchase Price as a reserve to cover indemnity claims for a period of one year following the Closing.

Thereafter, between December 1 and December 3, 2014, the Company and FMI continued to negotiate certain provisions of the IOI, including (i) a potential cap on indemnity claims, and (ii) the TNW target.

As the Company continued its due diligence review of EnerPath, it also finalized negotiations with Bison regarding an equity infusion by Bison into the Company. On December 23, 2014, the Company issued to Bison 10,000 shares of Series C Preferred Stock for \$10 million (the "Series C Preferred Stock Purchase"), which amount was to be used to fund the Company's working capital needs. Following the Series C Preferred Stock Purchase, the Company pursued various alternatives to finance the cash portion of the proposed purchase price for EnerPath, including a potential issuance of convertible debt to Bison.

On January 28, 2015, the Company received a draft term sheet from Bison containing a proposal for Bison to purchase \$12.25 million in notes convertible into shares of the Company's Common Stock. Following a series of discussions on the terms of the financing transaction, the Company and Bison signed a letter of intent on February 24, 2015, and the parties proceeded toward negotiation of definitive documentation relating to the Note Issuance. For additional information, see the discussion of "The Issuance of Securities" beginning on page 13. In the meantime, the Company sent EnerPath a revised offer as follows: the Company would acquire EnerPath for a total purchase price of \$12 million, which would include (i) a cash payment of \$9 million (net of EnerPath's outstanding indebtedness and transaction fees, which were estimated to be \$3 million); (ii) a potential earn-out of up to \$3 million payable in 50% increments on January 1, 2016 and 2017 based upon the achievement of certain revenue targets; and (iii) a TNW target of \$5.65 million with no adjustment to the Purchase Price, either up or down, so long as any variance in the final TNW target was \$250,000 or less. Following further negotiations, EnerPath agreed to accept a total purchase price of \$11 million in cash. Thereafter, the Company and EnerPath, through their respective counsel, continued to negotiate and exchange drafts of the



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Merger Agreement and employment agreements for each of Mr. Guthrie and Mr. Meyers.

Prior to the Closing of the Merger, Stephen Guthrie and Janina Guthrie, majority stockholders and principal executive officers of EnerPath, executed and delivered to the Company a voting agreement in which they agreed to vote all of their shares of EnerPath common stock in favor of the Merger Agreement.

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**Approval by the Board of Directors of the Company; Reasons for the Merger**

On March 23, 2015, the Board of Directors approved (i) unanimously, the terms and execution of the Merger Agreement and the transactions and documents contemplated by the Merger Agreement, and (ii) by a majority, the terms and conditions of the Note Purchase Agreement and the Note Issuance (Andreas Hildebrand and Peter Macdonald, two directors affiliated with Bison, recused themselves from the Board of Directors consideration of the Note Issuance).

In approving the Merger, the Board of Directors considered a variety of factors weighing in favor of or relevant to the Merger including, without limitation, those described below:

- the acquisition of EnerPath, a leading provider of software and technology solutions for utilities, would provide the Company with a West Coast presence;
- EnerPath's enterprise software, EnerWorks, would enable the Company to expand cost-effective delivery of energy services to a broader range of commercial and residential utility customers;
- the EnerPath Acquisition would bring together the software and technology platform of EnerPath and the sales and project implementation strengths of the Company, which would significantly enhance the Company's energy efficiency programs; and
- the EnerPath Acquisition would bring utilities a new platform for engaging commercial customers while delivering substantial, cost-effective energy efficiency solutions.

*EnerPath's Reasons for the Merger*

EnerPath's board of directors and management considered a variety of possible alternatives to the Merger, including other acquisition or combination possibilities for EnerPath and the continuation of EnerPath as an independent entity. EnerPath's board of directors and management considered the range of possible benefits to EnerPath's stockholders, and the perceived risks, of each such alternative as well as the anticipated cost, timing and likelihood of success of each such alternative. Based on the foregoing considerations and other matters deemed relevant by EnerPath's board of directors and management, EnerPath's board of directors determined that entering into the Merger Agreement and consummating the Merger were in the best interests of EnerPath and its stockholders for a variety of business reasons including, but not limited to, the following:

- The EnerPath Acquisition would enable the EnerPath team to join forces with Lime to create an energy services company platform that is well positioned to respond to the needs of utility commercial customers and channel partners.
- Lime's interest in diversification with products, services and business lines aligned well with EnerPath.
- EnerPath felt a larger organization could invest in better infrastructure such as software, data analysis, and shared services to create a more sophisticated service offering to utility clients.
- Lime's existing utility clients complemented EnerPath's very well and provided strong geographic continuity across which to leverage supply chain and sales resources.
- EnerPath felt Lime's culture fit well with EnerPath's.

**Approval by the Stockholders**

Under Section 228 of the DGCL, unless prohibited in a corporation's certificate of incorporation, any action required or permitted by the DGCL to be taken at an annual or special meeting of stockholders of a Delaware corporation may be taken without a meeting, without prior notice, and without a vote if a consent in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. The Company's By-Laws allow for, and the Certificate of Incorporation does not prohibit, action by stockholders by written consent, without a meeting and without prior notice.

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Under the DGCL, approval of the Merger did not require a vote by Company stockholders, because the Merger was between a wholly-owned subsidiary of the Company and EnerPath. However, the Note Purchase Agreement required stockholder approval in order to remove the Conversion Cap in accordance with certain Nasdaq rules. For additional information, see the discussion under The Issuance of Securities beginning on page 13.

The stockholders of EnerPath unanimously approved the EnerPath Acquisition by written consent on March 23, 2015.

**Regulatory Approvals**

No regulatory approvals were required to consummate the Merger.

**Funding of the Merger**

On March 24, 2015, the Company and Bison entered into the Note Purchase Agreement. Pursuant to the Note Purchase Agreement, the Company issued a Note due March 24, 2020 in the principal amount of \$11,750,000. The proceeds from the Note Issuance were used to finance the EnerPath Acquisition and to pay fees and expenses incurred in connection therewith (including certain fees and expenses incurred by Bison in connection with the Note Purchase Agreement). For more information on the Note Issuance see The Issuance of Securities.

**Accounting Treatment of the Merger**

The EnerPath Acquisition will be accounted for as a purchase. Therefore, beginning on the Closing Date, the results of operations of EnerPath will be included in our consolidated results of operations. For purposes of preparing consolidated financial statements, the Purchase Price, including the costs associated with the EnerPath Acquisition at the date of completion, will be allocated to the assets and liabilities of EnerPath based on their fair market values, with the excess allocated to goodwill, which is required to be tested for impairment at least annually.

**Certain U.S. Federal Income Tax Consequences of the Merger**

The following is a summary of certain material U.S. federal income tax consequences of the Merger to the former stockholders of EnerPath. This summary is based on the Internal Revenue Code of 1986, as amended (the Code), final, proposed, and temporary regulations issued thereunder, administrative rulings and pronouncements issued by the Internal Revenue Service (IRS) and court decisions, all as now in effect. All of these authorities are subject to change, possibly with retroactive effect so as to result in tax consequences different from those described below. We have not sought (and do not intend to seek) any ruling from the IRS with respect to statements made and conclusions reached in this discussion, and the statements and conclusions in this Information Statement are not binding on the IRS or any court. This summary is provided for general information purposes only and is not intended as a substitute for individual tax advice. We can provide no assurances that the tax

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consequences described below will not be challenged by the IRS or will be sustained by a court if so challenged. The discussion applies only to the former stockholders of EnerPath who held their stock as capital assets, and does not address the tax consequences that may be relevant to particular former holders subject to special treatment under certain federal income tax laws, such as persons subject to the alternative minimum tax, non-U.S. persons or U.S. expatriates. In addition, this summary does not discuss the state, local, foreign or non-income tax consequences of the Merger to the former stockholders of EnerPath. Former stockholders of EnerPath should consult their own tax advisors regarding the tax consequences of the Merger to them.

The payment of the Merger consideration in exchange for the stock of EnerPath was a fully taxable transaction, in which each former holder of EnerPath stock recognized taxable income equal to the difference between the tax basis of his or her surrendered stock and the Merger consideration received. In general, such income is long-term capital gain if such holder's holding period for his or her EnerPath stock is greater than one year as of the date of the closing. Under current law, holders are taxed on long-term capital gains at a maximum 20% U.S. federal rate. Short-term capital gains are taxed at ordinary income rates. Under current law, the highest marginal ordinary income tax rate for individuals is 39.6%. In addition, a 3.8% Medicare contribution tax will generally apply to all or a portion of the net investment income of a holder that is an individual, that is not a nonresident alien for

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federal income tax purposes, and that has adjusted gross income (subject to certain adjustments) that exceeds a threshold amount (\$250,000 if married filing jointly or if considered a surviving spouse for federal income tax purposes, \$125,000 if married filing separately, and \$200,000 in other cases).

At the Closing, the Company placed a certain portion of the Merger consideration into an escrow account to fund post-closing indemnification obligations, cover certain post-closing adjustments and to pay post-closing expenses of the stockholders' representative. Because some of the amounts held in escrow will, if distributed, be distributed to the former stockholders of EnerPath after the taxable year in which the Closing occurs, a former holder of EnerPath stock may apply the installment method of reporting to the gain recognized with respect to the former holder's disposition of his or her stock. Under the installment method, former holders should report gain in 2015 based upon such former holder's portion of the Merger consideration received at the Closing, any additional amounts received with respect to post-closing adjustments, and such former holder's share of the stockholders' representative expenses that are used to pay Closing costs in 2015. In determining the basis of the former holder's EnerPath stock that is taken into account in determining gain in 2015 and later, the holder's adjusted basis (including selling expenses) is allocated pro rata between payments received in 2015 and payments from the escrow account that will potentially be received in later taxable years. The remaining amount of gain would be included in gross income in the years in which payments on distributions from the escrow account, if any, are received.

It is possible that a former stockholder of EnerPath may be liable for interest on the amount of tax that is deferred under the installment method until after 2015. No interest, however, will be due if the total amount of installment obligations of such former holder (and related persons) is \$5 million or less (taking into account the former holder's share of the escrow account and other unrelated installment obligations) at the end of the applicable year.

Former holders may choose to elect out of the installment method treatment and to recognize the entire gain immediately. Such an election is made by reporting the gain in full on a timely-filed (including extensions) 2015 return. If an election not to apply the installment method is made, the former holder must include in the amount realized for the sale such former holder's portion of the escrow.

Because the payments to the holders, if any, from disbursements from the escrow do not provide for stated interest, each such payment in distribution from the escrow will be treated as a partial payment of interest and a partial payment of principal for tax purposes. This treatment will apply regardless of whether the former holder elects to not use the installment method. The amount of interest is determined on the federal short-term rate for the month that includes the closing (or the federal short-term rates for either of the previous two months if lower).

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**THE MERGER AGREEMENT**

This section describes the material terms of the Merger Agreement and certain other agreements contemplated by the Merger Agreement. The description of the Merger Agreement, in this section and elsewhere in this Information Statement, is qualified in its entirety by reference to the complete text of the Merger Agreement, a copy of which is attached as Annex A and is incorporated by reference into this Information Statement. We encourage you to read the Merger Agreement carefully and in its entirety.

**Conditions to the Merger**

Completion of the Merger was subject to a number of conditions, including:

- the absence of legal restraints to completion of the Merger;
- the receipt of all necessary third-party consents, authorizations and approvals;
- the absence of any material adverse changes in the business of EnerPath;
- the delivery of all closing deliverables and ancillary agreements contemplated by the Merger Agreement, including an executed escrow agreement and executed non-competition agreements and employment agreements with Stephen Guthrie and Steven Meyers; and
- the receipt of all necessary corporate approvals, including approvals of the Board of Directors of the Company, the Board of Directors of EnerPath, and the unanimous consent of EnerPath's stockholders.

On the Closing Date, all of the closing conditions for the Merger were met and the EnerPath Acquisition was consummated.

**Representations and Warranties; Indemnification**

*The Merger Agreement contains representations and warranties made by EnerPath and EnerPath's stockholders to the Company, and representations and warranties made by the Company and Merger Sub to EnerPath. These representations and warranties were made solely for purposes of the Merger Agreement and were qualified by and subject to important limitations and exceptions negotiated by the parties to the Merger Agreement. In your review of the representations and warranties contained in the Merger Agreement and described in this summary, you should bear in mind that the representations and warranties were made solely for the benefit of the parties to the Merger Agreement and were negotiated for the purpose of allocating contractual risk among the parties to the Merger Agreement, rather than to establish matters as facts. The representations and warranties and any descriptions thereof should not be read alone or relied upon as characterizations of the actual state of facts or the condition of the Company, EnerPath, or any of their respective subsidiaries or affiliates. Instead, such provisions or descriptions should be read in conjunction with the other information provided elsewhere in this document or incorporated by reference into this Information Statement.*

In the Merger Agreement, EnerPath, the Company, and Merger Sub made representations and warranties relating to, among other things:

- organization and standing;
- corporate power and authority to enter into and perform obligations under, and enforceability of, the Merger Agreement; and
- absence of conflicts with contracts, applicable laws, required consents, and required filings.



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EnerPath made representations and warranties relating to, among other things:

- EnerPath's organizational documents and capitalization;
- compliance with laws and permit requirements;
- accuracy of financial statements;
- absence of undisclosed liabilities;
- material contracts;
- assets and real property;
- intellectual property;
- customers and suppliers;
- insurance;
- absence of litigation and governmental orders;
- environmental matters;

- employee benefits, labor and employment matters;
- tax matters;
- absence of transactions with related parties; and
- guarantees.

The stockholders of EnerPath made representations and warranties relating to, among other things:

- ownership of EnerPath stock;
- absence of claims against EnerPath;
- absence of conflicts with contracts and applicable laws; and
- authority to enter into and perform obligations under, and the enforceability of, the Merger Agreement.

The Company and Merger Sub made representations and warranties relating to, among other things, the formation of Merger Sub; the sufficiency of funds to complete the Merger; and absence of litigation that could prevent, enjoin, or delay the Merger.

The representations and warranties of the parties to the Merger Agreement will survive for 18 months after the Closing Date, except for (i) certain customary fundamental representations and warranties, which will survive indefinitely, and (ii) representations and warranties concerning environmental matters and employee benefits, which will survive until 60 days following the expiration of the statute of limitations applicable to any claim with respect to such representation or warranty. The covenants and agreements of the parties to the Merger Agreement will survive the Closing.

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Subject to certain exceptions, no indemnity payment from the escrow fund will occur with respect to breaches of representations or warranties until such time as the aggregate losses subject to indemnification equal or exceed \$175,000, at which point the right to indemnification will include the entire amount of losses up to the Purchase Price. These limitations do not apply to breaches of representations and warranties regarding corporate organization, qualification to conduct business, authorization, capitalization, environmental matters, employee benefits matters, obligation to pay any brokers' fees, and ownership of EnerPath's common stock.

The EnerPath stockholders agreed to indemnify the Company and Merger Sub for losses resulting from (i) any inaccuracy in or breach of representations or warranties of EnerPath or the EnerPath stockholders contained in the Merger Agreement, (ii) any breach or non-fulfillment of certain covenants, agreements or obligations to be performed by EnerPath or the EnerPath stockholders, (iii) any claims by any EnerPath stockholder with respect to such stockholder's rights with respect to the Purchase Price, (iv) any claim made by certain indemnified persons under an agreement between a utility client and EnerPath Services, Inc., a wholly-owned subsidiary of EnerPath, relating to the Merger or the transactions contemplated by the Merger Agreement, and (v) any tax claims relating to the classification of EnerPath's independent contractors or consultants.

The stockholders of EnerPath also provided a general release of all claims against EnerPath, its subsidiaries, the Company, and each of their respective officers, directors, managers, employees and affiliates.

*Director and Officer Indemnification and Insurance*

Pursuant to the terms of the Merger Agreement, EnerPath has retained all rights to indemnification, advancement of expenses and exculpation in favor of each person that served as a director or officer of EnerPath or any of its subsidiaries at any time prior to the effective time of the Merger (each a D&O Indemnified Party). EnerPath agreed to maintain such rights as provided in the organizational or charter documents of EnerPath or its subsidiaries, in each case as in effect on the Closing Date, or pursuant to any other agreement in effect on the Closing Date and previously disclosed to the Company.

For six years after the Closing Date, the Company and EnerPath will indemnify and hold harmless all D&O Indemnified Parties against all liabilities arising out of any such actions or omissions of a D&O Indemnified Party occurring at or prior to the Closing Date in such person's capacity as a director or officer of EnerPath or its subsidiaries.

EnerPath agreed that, before the Closing Date, it would obtain tail insurance policies with respect to claims arising out of or relating to events that occurred before or at the Closing Date, with claims periods of (i) at least six years from the Closing Date for directors' and officers' liability; (ii) three years from the Closing Date for employment practices and fiduciary liability; and (iii) two years from the Closing Date for professional errors and omissions liability. The Company agreed to bear up to \$75,000 of the policy cost at Closing.

**Employment Matters**

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At closing, Stephen Guthrie and Steven Meyers entered into employment and non-competition agreements with the Company. In addition, the Company agreed to continue EnerPath's 401(k) plan through December 31, 2015.

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**THE ISSUANCE OF SECURITIES**

As previously noted, on March 24, 2015, the Company and Bison entered into the Note Purchase Agreement (the "Financing Transaction"). Pursuant to the Note Purchase Agreement, the Company issued a Note due March 24, 2020 in the principal amount of \$11,750,000. The proceeds from the Note Issuance were used to finance the EnerPath Acquisition and to pay fees and expenses incurred in connection therewith (including certain fees and expenses incurred by Bison in connection with the Note Purchase Agreement). The Company has made certain representations, warranties and covenants in the Note Purchase Agreement, including representations and warranties regarding EnerPath and each of its subsidiaries. Under the terms of the Note Purchase Agreement, the Company must indemnify Bison and its affiliates from losses, damages and claims arising out of any breach by the Company of its representations, warranties, and covenants. As of the date of the Note Issuance, Bison owned 10,000 shares of Series C Preferred Stock which was, as of such date, convertible into approximately 30% of the Common Stock, making Bison the Company's single largest stockholder.

The Board of Directors approved the Financing Transaction on March 23, 2015 with Andreas Hildebrand and Peter Macdonald, the two directors who were designated to the Board of Directors by Bison, recusing themselves from the Board of Directors' consideration of the Financing Transaction.

On March 31, 2015, Bison and the Company entered into an amendment to the Note (the "Amendment"). As amended, the Note provides that the Company may pay interest at a rate (the "Interest Rate") of 10.5% per annum on the outstanding principal amount, paid semi-annually in cash, or allow interest to accrue and be added to the principal amount at a rate of 12.5% per annum. Upon the occurrence of an event of default under the Note, the Interest Rate would increase by 2.0% per annum until the Note is redeemed or the event of default is cured.

All or any portion of the principal amount of the Note plus all accrued but unpaid interest thereon, but not more than the original principal amount of the Note, may, at the election of the Note holder, be converted into our Common Stock on the earlier of March 24, 2018 or a change of control of the Company. The Note, if converted, would have a dilutive effect on earnings per share and on the equity ownership of the present holders of Common Stock.

The initial conversion price of the Note (\$3.16) was greater than the book and the market value of the Common Stock on March 24, 2015. However, the conversion price is subject to anti-dilution adjustments and adjustments in connection with stock splits and similar occurrences and certain other events set forth in the Note. Such adjustments could result in a deemed future price for the Common Stock into which the Note is convertible that is less than the book or market value of the Common Stock on March 24, 2015.

The Nasdaq rules require an issuer to obtain stockholder approval prior to the issuance of securities in connection with:

- the acquisition of the stock or assets of another company that involves the issuance or potential issuance of common stock (or securities convertible into or exercisable for common stock) where the number of shares of common stock to be issued is or will be equal to or in excess of 20% of the number of shares of common stock outstanding before the issuance of the stock or securities; or

- a transaction other than a public offering involving the sale, issuance or potential issuance, by the issuer, of common stock (or securities convertible into or exercisable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the common stock.

In order to comply with the Nasdaq rules discussed above, the Note provides that no portion of the amount due under the Note may be converted into more than 19.99% of the outstanding Common Stock prior to the date on which the stockholders of the Company are deemed to have approved the removal of this cap, which will be no earlier than 20 calendar days after the date this Information Statement is first mailed to our stockholders.

The Note is guaranteed by each subsidiary of the Company, including EnerPath and each of its subsidiaries, but will be subordinated to permitted senior indebtedness of the Company of between \$8 million and \$15 million in

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the aggregate. The actual amount of permitted senior indebtedness will depend on the Company's Consolidated Adjusted EBITDA (as defined in the Note) over a trailing four-quarter period. The Note is secured by a lien on all of the assets of the Company and each of its subsidiaries. The Company may not prepay the Note. The holder of the Note may require the Company to redeem the Note upon an event of default, a change of control, or the Company giving notice of its determination to exercise the Company's redemption right for the Series C Preferred Stock. The Company is subject to certain financial affirmative and negative covenants, including a minimum Consolidated Adjusted EBITDA covenant for trailing 12-month periods beginning March 31, 2016, as set forth in the Note, as amended. In addition, should the Company fail to meet certain trailing 12-month EBITDA targets for the quarters ending June 30, September 30, or December 31, 2015, then for each such quarter in which such EBITDA target is not met, an additional \$1 million in interest will accrue and be added to the principal (however, principal in excess of \$11,750,000 may not be converted into shares of Common Stock). As of June 30, 2015, the Company was in compliance with all applicable covenants under the Note, as amended.

On the Closing Date, as contemplated by the Note Purchase Agreement, the Company amended and restated the Shareholder and Investor Rights Agreement, dated as of December 23, 2014 (the "Original Shareholder Agreement"), by and among the Company, Bison and the other stockholders parties thereto (as amended and restated, the "Amended and Restated Shareholder Agreement") and the Registration Rights Agreement, dated as of December 23, 2014, by and among the Company, Bison and the other stockholders parties thereto (as amended and restated, the "Amended and Restated Registration Rights Agreement"). Pursuant to the terms of the Amended and Restated Shareholder Agreement, in the event the Company proposes to issue new securities (subject to certain exceptions), the Company must allow Bison to purchase a proportion of the new securities equal to the number of shares of Common Stock beneficially owned by Bison (including for this purpose the shares of Common Stock into which the Note could convert) divided by the total number of shares of Common Stock outstanding on a fully-diluted basis. The operational consent rights and director appointment rights held by Bison under the Original Shareholder Agreement remain in the Amended and Restated Shareholder Agreement; with the exception that, in the event Bison is no longer entitled to designate at least one director under the terms of the Series C Preferred Stock, Bison will be entitled under the Amended and Restated Shareholder Agreement to designate that number of directors that is consistent with its ownership of Common Stock (including shares of Common Stock that are issuable upon conversion of the Series C Preferred Stock and the Note, assuming the Note was immediately convertible) provided it holds at least 5% of the Common Stock (computed in the same fashion).

Pursuant to the Amended and Restated Registration Rights Agreement, Bison is entitled to certain registration rights in connection with the Common Stock into which its shares of Series C Preferred Stock and the Note may convert, including the right to demand the registration of such shares at any time after December 23, 2015 and rights to include such shares in certain other registration statements filed by the Company. Additionally, certain other stockholders of the Company are entitled to include certain of their shares of Common Stock in a registration statement filed by the Company. The Company has agreed to indemnify the other parties to the Amended and Restated Registration Rights Agreement in connection with any claims related to their sale of securities under a registration statement, subject to certain exceptions.

Table of Contents**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

As of March 24, 2015, the record date, there were 9,526,636 shares of our Common Stock and 10,000 shares of our Series C Preferred Stock issued and outstanding. Each share of Common Stock entitles the holder thereof to one vote with respect to each item to be voted on by holders of the shares of Common Stock. In addition, each share of Series C Preferred Stock entitles the holder thereof to 416.66 votes per share with respect to each item to be voted on, in each case voting together as a single class with holders of our Common Stock, except as provided by law or by the provisions of our Certificate of Incorporation. As of such date, we had no other securities, voting or nonvoting, outstanding.

The following tables set forth information regarding the beneficial ownership of our securities as of June 30, 2015 by:

- each person known by us to be the beneficial owner of more than 5% of the outstanding shares of our voting securities;
- each of our directors and named executive officers; and
- all of our directors and executive officers as a group (eight persons).

Each stockholder's beneficial ownership is based on 9,564,148 shares of our Common Stock outstanding as of June 30, 2015. Beneficial ownership is determined in accordance with the rules of the SEC. Except as otherwise noted, the persons or entities named have sole voting and investment power with respect to all shares shown as beneficially owned by them, and the address of each person listed in the following table is c/o Lime Energy Co., 3 Convery Blvd., Suite 600, Woodbridge, New Jersey 07095.

**Beneficial Owners of Greater Than 5% of Our Voting Securities (determined in accordance with Rule 13d-3 under the Securities Exchange Act of 1934):**

Title of Class	Name and Address	Amount of Shares Directly Held	Issuable Upon Exercise of Options Exercisable Within 60 Days (1)	Issuable Upon Conversion of Preferred Stock	Total	% of Class
Common Stock	The John Thomas Hurvis Revocable Trust dated March 8, 2002 4065 Commercial Ave. Northbrook, IL 60062	1,956,920			1,956,920	20.5



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Common Stock

Nettlestone Enterprises  
Limited  
PO Box 665  
Roseneath, The Grange,  
St. Peter Port,  
Guernsey GY1 3SJ

483,809

483,809

5.1

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Common Stock	Richard P. Kiphart 3 Convery Blvd., Suite 600, Woodbridge, NJ 07095	4,101,413		4,101,413	42.9
Common Stock	Greener Capital Partners II, L.P. 2150 Allston Way, Suite 280 Berkeley, CA 94704	787,028		787,028	8.2
Series C Preferred Stock	Bison Capital Partners IV, L.P. and Bison Capital Partners IV, GP, L.P. 780 Third Avenue 30th Floor New York, NY 10017	10,000	4,166,666(2)	4,166,666(2)	100(2)

\* Denotes beneficial ownership of less than 1%.

(1) Represents options to purchase Common Stock exercisable within 60 days of June 30, 2015.

(2) As of June 30, 2015, Bison holds 100% of the 10,000 outstanding shares of Series C Preferred Stock, which were convertible (subject to adjustment in accordance with the terms of the Series C Preferred Stock) into 4,166,666 shares of Common Stock (representing beneficial ownership of 30.4% of the Common Stock). Bison Capital Partners IV GP, L.P. is the general partner of Bison and shares voting and investment power with Bison. Each disclaims beneficial ownership of the 27,352 shares of Common Stock held by Andreas Hildebrand and the 26,061 shares of Common Stock held by Peter Macdonald.

**Directors and Executive Officers:**

Title of Class	Name	Amount of Shares Directly Held	Issuable Upon Exercise of Options Exercisable Within 60 Days (1)	Total	% of Class
Common Stock	Gregory T. Barnum	37,971(2)	19,916	57,887	*
Common Stock	Mary Colleen Brennan	1,667(3)		1,667	*
Common Stock	Christopher W. Capps	58,131(4)		58,131	*
Common Stock	Andreas Hildebrand	18,524(5)		18,524	*
Common Stock	Richard P. Kiphart	4,096,052(6)		4,096,052	42.8
Common Stock	Peter Scott Macdonald	17,593(7)		17,593	*
Common Stock	Tommy Mike Pappas	17,836(8)		17,836	*
Common Stock	C. Adam Procell	11,258(9)	9,827	21,085	*
All Directors and Executive Officers as a Group		4,259,032	29,743	4,288,775	44.8

\* Denotes beneficial ownership of less than 1%.

(1) Represents options to purchase Common Stock exercisable within 60 days of June 30, 2015.

(2) This amount does not include 6,802 shares of unvested restricted stock.

(3) This amount does not include 3,333 shares of unvested restricted stock.

(4) This amount does not include 5,722 shares of unvested restricted stock.

(5) This amount does not include 8,828 shares of unvested restricted stock.

(6) This amount does not include 5,361 shares of unvested restricted stock.

(7) This amount does not include 8,468 shares of unvested restricted stock.

(8) This amount does not include 7,099 shares of unvested restricted stock.

(9) This amount does not include 16,770 shares of unvested restricted stock.

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**Changes in Control**

We are not aware of any arrangements, including any pledge by any person of our stock, the operation of which may at a subsequent date result in a change of control of the Company, other than matters described herein.

**No Dissenters' Right of Appraisal**

Neither the DGCL nor our Certificate of Incorporation provides our stockholders with dissenters' rights in connection with the Note Issuance or the Note Purchase Agreement. This means that no stockholder is entitled to receive any cash or other payment as a result of, or in connection with, the Note Purchase Agreement and the Note Issuance, even if a stockholder has not been given an opportunity to vote.

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**ENERPATH AUDITED FINANCIAL STATEMENTS**

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INDEPENDENT ACCOUNTANTS' AUDIT REPORT

March 10, 2015

To the Board of Directors and Stockholders of

EnerPath International Holding Company

1758 Orange Tree Lane

Redlands, CA 92374

We have audited the accompanying statements of financial position of EnerPath International Holding Company and subsidiaries as of December 31, 2014 and 2013, and the related statements of activities and cash flows for the years then ended. The prior year information is presented for comparative purposes only and has been derived from the Company's 2013 financial statements from our report dated March 14, 2014.

The accompanying Consolidated Financial Statements include the accounts of EnerPath International Holding Company and subsidiary corporations, after elimination of all material intercompany accounts, transactions, and profits.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditor's Responsibility**

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Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amount and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimate made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

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**Opinion**

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of EnerPath International Holding Company and subsidiaries as of December 31, 2014 and 2013, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

FOX & STEPHENS, CPAs, INC.

/s/ Fox & Stephens, CPAs

Rancho Cucamonga, California



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Combined Balance Sheet as of

December 31, 2014 and 2013

	2014	2013
<b>CURRENT ASSETS</b>		
Cash	\$ 709,131	\$ 404,711
Accounts receivable	7,380,184	6,194,832
Deferred income taxes	935,993	1,048,013
Inventory	2,807,056	1,973,337
Other current assets	192,627	203,536
Total Current Assets	12,024,990	9,824,429
<b>LONG-TERM ASSETS</b>		
Property, Plant and Equipment, net	182,033	309,083
Other assets, net	82,246	88,068
Total Long-term Assets	264,279	397,151
Total Assets	\$ 12,289,270	\$ 10,221,580
<b>CURRENT LIABILITIES</b>		
Accounts payable	\$ 5,110,656	\$ 3,881,227
Line of credit	3,700,000	3,000,000
Accrued liabilities	929,020	825,084
Current portion of long-term debt	63,455	59,744
Total Current Liabilities	9,803,131	7,766,055
<b>LONG-TERM LIABILITIES</b>		
Long-term debt - net	157,636	233,462
Total Long-Term Liabilities	157,636	233,462
<b>STOCKHOLDERS EQUITY</b>		
Common stock	228,214	228,214
Retained earnings	2,112,789	2,006,349
Less: Treasury Stock	(12,500)	(12,500)
Total Stockholders Equity	2,328,503	2,222,063
Total Liabilities and Shareholders Equity	\$ 12,289,270	\$ 10,221,580

SEE INDEPENDENT ACCOUNTANTS AUDIT REPORT

The accompanying notes are an integral part of the financial statements

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**ENERPATH INTERNATIONAL HOLDING COMPANY**  
**AND SUBSIDIARIES**

Combined Statement of Operations

for the Years Ended December 31, 2014 and 2013

	2014		2013			
<b>REVENUES</b>	\$	40,624,565	100%	\$	27,482,603	100%
<b>DIRECT COSTS</b>		33,450,421	82		21,285,598	77
<b>GROSS PROFIT</b>		7,174,144	18		6,197,005	23
<b>OPERATING EXPENSES</b>						
Sales		496,317	1		461,064	2
Marketing		92,345			130,506	
Finance		756,590	2		701,041	3
General and Administrative		2,619,195	6		2,341,309	9
IT Operations		507,012	1		369,857	1
Operations Overhead		169,660			171,792	1
Software Development		2,117,544	5		1,684,653	6
Total Operating Expenses		6,758,663	17		5,860,222	21
<b>INCOME (LOSS) FROM OPERATIONS</b>		415,481	1		336,783	1
<b>OTHER INCOME (EXPENSE)</b>		(176,250)			(125,220)	
<b>INCOME (LOSS) BEFORE TAXES</b>		239,231	1		211,563	1
<b>PROVISION FOR INCOME TAXES</b>						
Current income tax		20,771			15,700	
Deferred income tax		112,020			119,642	
Change in California tax code					(343,330)	(1)
Total Provision for income taxes		132,791			(207,988)	(1)
<b>NET INCOME (LOSS)</b>	\$	106,440		%	419,551	2%

SEE INDEPENDENT ACCOUNTANTS' AUDIT REPORT

The accompanying notes are an integral part of the financial statements

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**ENERPATH INTERNATIONAL HOLDING COMPANY  
AND SUBSIDIARIES**

Combined Statement of Changes in Retained Earnings

for the Years Ended December 31, 2014 and 2013

	2014	2013
<b>BALANCE AT BEGINNING OF PERIOD</b>	\$ 2,006,349	\$ 1,586,798
Net income (Loss)	106,440	419,551
<b>BALANCE AT END OF PERIOD</b>	\$ 2,112,789	\$ 2,006,349

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The accompanying notes are an integral part of the financial statements

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**ENERPATH INTERNATIONAL HOLDING COMPANY**  
**AND SUBSIDIARIES**

Combined Statement of Cash Flows

for the Years Ended December 31, 2014 and 2013

	2014	2013
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Net income (Loss)	\$ 106,440	\$ 419,551
Adjustments to reconcile net income to net cash provided by operations:		
Gain (Loss) on disposal of assets	1,671	(2,000)
Depreciation and amortization	178,048	177,678
Decrease (increase) in:		
Accounts receivable	(1,185,352)	(4,403,603)
Deferred income taxes	112,020	(174,300)
Inventory	(833,719)	(1,303,251)
Other current assets	10,909	(63,703)
Increase (decrease) in:		
Accounts payable	1,229,429	2,689,512
Accrued liabilities	103,934	479,240
Net Cash Provided (Used) by Operating Activities	(276,620)	(2,180,876)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Increase (decrease) in deposits	1,502	(7,582)
Purchase of fixed assets	(48,347)	(222,226)
Net Cash Provided (Used) by Investing Activities	(46,845)	(229,808)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
Stock options		173,377
Net borrowings on Line of Credit	700,000	2,050,211
Long-term debt borrowing		267,789
Long-term debt payments	(72,115)	(31,909)
Net Cash Provided (Used) by Financing Activities	627,885	2,459,468

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The accompanying notes are an integral part of the financial statements

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**ENERPATH INTERNATIONAL HOLDING COMPANY  
AND SUBSIDIARIES**

Combined Statement of Cash Flows

for the Years Ended December 31, 2014 and 2013

	<b>2014</b>	<b>2013</b>
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	\$ 304,420	\$ 48,784
<b>CASH AND CASH EQUIVALENTS - BEGINNING OF YEAR</b>	404,711	355,927
<b>CASH AND CASH EQUIVALENTS - END OF YEAR</b>	\$ 709,131	\$ 404,711
<b>SUPPLEMENTAL DISCLOSURES</b>		
Cash paid for income taxes	\$ 15,700	\$ 3,662
Cash paid for interest	234,626	127,275

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The accompanying notes are an integral part of the financial statements

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**ENERPATH INTERNATIONAL HOLDING COMPANY**

**AND SUBSIDIARIES**

Notes to Financial Statements

DECEMBER 31, 2014 AND 2013

**1. Nature of Operations**

EnerPath International Holding Company (EPIHC) and its two wholly owned subsidiaries, EnerPath Services, Inc. (ESI) and EnerPath, Inc. (EP) are presented as combined financial statements. All of the companies share common management, and general and administrative expenses with corporate offices in Redlands, California, Cambridge, Massachusetts, Rochester, New York, Nanuet, New Jersey and Knoxville, Tennessee. EPIHC is incorporated in Delaware.

EnerPath Services, Inc. provides energy efficiency (EE) upgrades through sponsored programs that reduce energy costs for commercial businesses and residential customers. ESI utilizes survey tools developed by EP to conduct energy efficiency surveys and identify opportunities for installation of EE equipment, retrofits and upgrades. Upon customer acceptance of recommendations, ESI then subcontracts energy equipment installation and manages all quality assurance of the project from beginning to end to assure accurate realization of energy savings and projected cost reductions for customers. ESI specializes in EE equipment and programs in the areas of lighting, lighting controls, HVAC, pumps & motors, refrigeration, water, gas and other EE improvements for utility companies, commercial, industrial, institutional, hospitality, government and retail markets throughout the United States. ESI is expanding its business in the public utility market place by developing and managing energy efficiency programs for business and residential customers. The two largest customers accounted for 43% and 38% of sales in 2014 and 59% and 27% of sales in 2013.

EnerPath, Inc. develops software and manages customized customer dashboards with a focus in the energy services and public utility market place. EP provides energy survey, subcontractor and quality verification tools to manage the entire work flow for ESI and other clients. EP licenses software which is oriented to all types of energy consuming assets found in buildings for both commercial and residential customers. It also provides a proven platform for public utilities to track many of their customer incentives and rebate programs, which currently includes a refrigerator recycling program. The largest customer accounted for 55% of sales in 2014 and 43% of sales in 2013.

**2. Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

**3. Date of Management's Review**

In preparing the financial statements, management has evaluated events and transactions for potential recognition or disclosure through March 10, 2015, the date these financial statements were available to be issued.

SEE INDEPENDENT ACCOUNTANTS' AUDIT REPORT

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**ENERPATH INTERNATIONAL HOLDING COMPANY**

**AND SUBSIDIARIES**

Notes to Financial Statements  
December 31, 2014 and 2013

**4. Summary of Significant Accounting Policies**

A. Revenue and Cost Recognition

Costs of revenues earned include all direct material and subcontractor costs and those indirect costs related to contract performance, such as supplies, repairs, and depreciation costs. Operating costs are charged to expense as incurred. Changes in job performance, job conditions, estimated profitability and final contract settlements, may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

B. Inventories

Inventories are reported at the lower of cost or market using the first-in, first-out method.

C. Property and Equipment

Depreciation and amortization is provided on the straight-line and declining-balance methods over the estimated useful lives of the assets.

D. Income Taxes

Accelerated and straight-line depreciation is used for tax reporting and financial statement reporting.

E. Uncertain Tax Positions



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In accordance with FASB ASC 740-10, the Company holds uncertain tax positions in the form of unrecognized tax benefits. Included in the accompanying Balance Sheets at December 31, 2014, are deferred tax assets of \$935,993, representing tax loss and credit carry forwards. Realization of that asset is dependent on the Company's ability to generate future taxable income.

Management believes that it is more likely than not the forecasted taxable income will be sufficient to utilize the tax carry forward before their expiration to fully recover the asset. However, there can be no assurance that the company will meet its expectations of future income. As a result, the amount of the deferred tax assets considered realizable could be reduced in the near term if estimates of future taxable income are reduced. Such an occurrence could materially adversely affect the Company's results of operations and financial condition.

SEE INDEPENDENT ACCOUNTANTS' AUDIT REPORT

Table of Contents**ENERPATH INTERNATIONAL HOLDING COMPANY****AND SUBSIDIARIES**

Notes to Financial Statements  
December 31, 2014 and 2013

**5. Property, Plant and Equipment**

Property, Plant and Equipment consists of the following:

	<b>2014</b>	<b>2013</b>
Equipment	\$ 610,227	\$ 599,636
Software	181,115	181,115
Leasehold improvements	63,821	54,848
Trucks and autos	205,199	224,367
Furniture and fixtures	117,359	94,504
	1,177,721	1,154,470
Less: Accumulated depreciation	995,688	845,387
Total Property, Plant and Equipment	\$ 182,033	\$ 309,083

Other assets include organizational costs of \$64,769, net of accumulated amortization of \$23,595 for 2014 and \$19,275 for 2013.

**6. Line of Credit**

ESI has a line of credit with New Resource Bank which matures August 20, 2015. It has a credit limit of \$4,000,000 and bears interest at Prime (currently 3.25 percent) plus 2.5 percent with a minimum rate of 5.75 percent. It is secured by all of ESI's assets and has interest only monthly payments. As of December 31, 2014, the total outstanding loan amount was \$3,700,000. The Line of Credit contains covenants relating to maintaining quarterly income and cash flow requirements. ESI was in compliance with all covenants as of December 31, 2014.

**7. Accrued Liabilities**

Accrued liabilities consisted of the following:

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	2014		2013	
Accrued compensation	\$	590,747	\$	693,137
Income taxes		16,132		13,300
Other		322,141		118,647
	\$	929,020	\$	825,084

SEE INDEPENDENT ACCOUNTANTS' AUDIT REPORT

Table of Contents**ENERPATH INTERNATIONAL HOLDING COMPANY****AND SUBSIDIARIES**

Notes to Financial Statements  
December 31, 2014 and 2013

**8. Long-term Debt**

Long-term debt at December 31, 2014 and 2013 were as follows:

	2014	2013
Auto and equipment loans and leases		
Interest rates: ranging from 0.0% to 9.32%		
Monthly payments: ranging from \$385 to \$1,478		
Total principal:	\$ 145,359	\$ 199,871
Loan from Shareholders		
Interest rate: 10%		
Monthly payments: \$978.94		
Total principal:	75,732	93,335
Less: current portion	63,455	59,744
Total Long-term Debt	\$ 157,636	\$ 233,462

Principal repayments due in the next five years are as follows:

2015	63,455
2016	56,129
2017	46,062
2018	55,445

**9. Operating Leases**

ESI and EP lease its premises in Redlands, Cambridge, Rochester, Nanuet and Knoxville under monthly or yearly operating leases. All of the leases offer renewals at the end of each term. The total monthly lease payments are as follows:

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Redlands	\$	7,332
Cambridge		6,388
Rochester		4,537
Nanuet		3,360
Knoxville		800

Total lease payments for ESI and EP in 2014 and 2013 were \$290,872 and \$203,968, respectively.

SEE INDEPENDENT ACCOUNTANTS AUDIT REPORT

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Notes to Financial Statements

December 31, 2014 and 2013

**10. Income Taxes**

The deferred income tax asset consists of the following:

	2014	2013
Federal deferred tax	\$ 517,451	\$ 600,457
New York deferred tax	85,709	104,226
California deferred tax	332,833	343,330
<b>Total Deferred income taxes</b>	<b>\$ 935,993</b>	<b>\$ 1,048,013</b>

The provision for taxes on income consists of the following:

	2014	2013
<b>Current:</b>		
State income tax	\$ 20,771	\$ 15,700
	20,771	15,700
<b>Deferred:</b>		
Federal income tax	83,006	85,354
State income tax	29,014	34,288
	112,020	119,642
<b>Other provisions:</b>		
Change in California tax code		(343,330)
		(343,330)
<b>Total provision for income taxes</b>	<b>\$ 132,791</b>	<b>\$ (207,988)</b>

The statutory Federal tax rate on pretax income differs from the actual rate because of the effect of graduated tax rates, book to tax depreciation differences, certain expenses not being deductible for tax purposes and state income taxes. The Deferred tax asset consists of a federal net operating loss carry forward of \$1,521,920, a California net operating loss carry forward of \$3,765,075 and a New York net operating loss carry forward of \$1,207,169. If not utilized, they will expire in 2033.

**11. Related Party Transactions**

During the year ended December 31, 2014, ESI loaned related company, EP a net total of \$5,176,764. Also during the year, EPIHC loaned related company ESI a net total of \$85,668. Both of these loans were eliminated in the combination of the financial statements.

During the year ended December 31, 2013, the company borrowed \$100,000 from shareholders. The term of the loan is five years with an interest rate of 10%. Total interest ESI paid on this loan was \$8,814 in 2014 and \$4,104 in 2013.

SEE INDEPENDENT ACCOUNTANTS AUDIT REPORT

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**ENERPATH INTERNATIONAL HOLDING COMPANY**

**AND SUBSIDIARIES**

Notes to Financial Statements

DECEMBER 31, 2014 AND 2013

**12. Concentration of Credit Risk**

At December 31, 2014, New York State Electric and Gas owed ESI \$1,929,978 and Los Angeles Department of Water and Power owed ESI \$3,487,487. These receivables were paid subsequent to year end.

The Company maintains its cash deposits in accounts at New Resource Bank which, at times during the year may exceed the federally insured limits. The balances are insured by the Federal Deposit Insurance Corporation (FDIC) up to \$250,000 per financial institution.

**13. Employee Benefit Plan**

EnerPath Services, Inc. and EnerPath, Inc. have adopted a 401(k) Profit Sharing Plan which covers all employees. Employer contributions are currently 100% for up to 3% of employee contributions and 50% up to a maximum of 5% percent of eligible salary contributions. Total employer contributions to this plan for the years ended December 31, 2014 and 2013 were \$119,146 and \$93,760, respectively.

**14. Stock Option Plan**

The Company's 2009 Stock Option Plan (the Plan), which is shareholder-approved, permits the granting of share options and shares to its employees for up to 45,001 shares of common stock. The company believes that such awards better align the interests of its employees with those of its shareholders. Option awards are generally granted with an exercise price equal to the market price of the Company's stock at the date of grant; those options generally vest over four years. Certain option and share awards provide for accelerated vesting at the discretion of the plan administrator, as defined in the Plan.

A summary of the option activity under the Plan as of December 31, 2014, and changes during the year then ended is presented below:

**Options**

**Shares**



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Outstanding at January 1, 2014	14,664
Granted	1,500
Forfeited or expired	(3,401)
Exercised	
Outstanding at December 31, 2014	12,763
Exercisable at December 31, 2014	12,763

SEE INDEPENDENT ACCOUNTANTS' AUDIT REPORT

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**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED COMBINED FINANCIAL INFORMATION**

***EnerPath Acquisition***

On March 24, 2015 (the Closing Date), Lime Energy Co. (the Company) entered into and consummated the transactions contemplated by an Agreement and Plan of Merger (the Merger Agreement) by and among EIHC MergerSub, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company (Merger Sub), EnerPath International Holding Company, a Delaware corporation (EnerPath), Janina Guthrie, as the Stockholder Representative, and all of the stockholders of EnerPath (the Stockholders) (the transactions contemplated by the Merger Agreement, collectively, the EnerPath Acquisition) pursuant to which Merger Sub merged with and into EnerPath with EnerPath being the surviving corporation of the merger. EnerPath is a California-based provider of software solutions and program administration for utility energy efficiency programs.

The consideration paid in connection with the EnerPath Acquisition was approximately \$11.0 million in cash which was financed through the issuance of a subordinated convertible note payable to Bison Capital Partners IV, L.P. (the Note).

The unaudited pro forma condensed consolidated combined statements of operations for the year ended December 31, 2014 and the three months ended March 31, 2015 are presented as if the EnerPath Acquisition had occurred on January 1, 2014.

The unaudited pro forma condensed consolidated combined financial information is presented for illustrative purposes only and is not necessarily indicative of the consolidated financial position or result of operations that would have actually been reported had the acquisition occurred as of the dates indicated, nor is it necessarily indicative of future consolidated financial position or results of operations. The unaudited pro forma condensed consolidated combined financial information does not include, nor does it assume, any benefits from cost savings or synergies of the combined operations or the costs necessary to achieve these cost savings, or synergies, and such differences may be material.

The unaudited pro forma condensed consolidated combined financial information was prepared using the acquisition method of accounting and was based on the audited consolidated financial statements of the Company and EnerPath as of and for the year ended December 31, 2014. The preliminary estimates of the fair values of the assets acquired and liabilities assumed and assumptions could change significantly during the purchase price measurement period as we finalize the valuations of the assets acquired and liabilities assumed, and the related tax balances. Such changes could result in material variances between the Company's future financial results and the amounts presented in the unaudited pro forma information, including variances in the estimated purchase price, fair values recorded and expenses associated with these items.

The unaudited pro forma condensed consolidated combined financial information should be read in conjunction with the Company's historical consolidated financial statements and notes thereto included in its Annual Report on Form 10-K for the year ended December 31, 2014, its Quarterly Report on Form 10-Q for the three months ended March 31, 2015 and with EnerPath's historical consolidated financial statements and notes thereto included in this Information Statement. The acquisition of EnerPath and a preliminary purchase price allocation are reflected in the Balance Sheet in the Company's Quarterly Report on Form 10-Q for the three months ended March 31, 2015.



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## Lime Energy Co.

## Unaudited Pro Forma Condensed Consolidated Combined Statement of Operations

Year ended December 31, 2014

(\$ in thousands, except share data)

	Historical Lime Energy Co.	Historical EnerPath International Holding Company	Pro Forma Adjustments	Notes	Pro Forma Condensed Combined
<b>Revenue</b>	\$ 58,816	\$ 40,625	\$		\$ 99,441
Cost of sales	41,162	33,450	(7,416)	D	67,196
Gross Profit	17,654	7,175	7,416		32,245
Selling, general and administrative expense	20,195	6,759	7,416	D	34,370
Amortization of intangibles			1,306	A	1,306
<b>Operating (loss) income</b>	(2,541)	416	(1,306)		(3,431)
<b>Other Income (Expense)</b>					
Interest income	100	58			158
Interest expense	(189)	(235)	(1,524)	B, C	(1,948)
Total other expense	(89)	(177)	(1,524)		(1,790)
(Loss) income from continuing operations before income taxes	(2,630)	239	(2,830)		(5,221)
Provision for income taxes		133	(133)	E	
(Loss) income from continuing operations	(2,630)	106	(2,697)		(5,221)
<b>Discontinued Operations:</b>					
Income from operation of discontinued business	7				7
<b>Net (loss) income</b>	\$ (2,623)	\$ 106	\$ (2,830)		\$ (5,347)
Preferred dividend	(2,979)				(2,979)
Net (loss) income available to common stockholders	\$ (5,602)	\$ (27)	\$ (2,697)		\$ (8,326)
Basic and diluted loss per common share from Continuing operations	\$ (1.44)	\$ (0.01)	\$ (0.69)		\$ (2.14)

Discontinued operations

Basic and Diluted Loss Per Common Share	\$	(1.44)	\$	(0.01)	\$	(0.69)	\$	(2.14)
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**Weighted Average Common Shares**

<b>Outstanding</b>		3,884,826						3,884,826
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## Lime Energy Co.

## Unaudited Pro Forma Condensed Consolidated Combined Statement of Operations

Three months ended March 31, 2015

(\$ in thousands, except share data)

	Historical Lime Energy Co. Three months ended March 31, 2015	Historical EnerPath International Holding Company January 1, 2015 to March 23, 2015	Pro Forma Adjustments	Notes	Pro Forma Condensed Combined
<b>Revenue</b>	\$ 18,299	\$ 10,412	\$		\$ 28,711
Cost of sales	12,800	8,731	(1,750)	D	19,781
Gross Profit	5,499	1,681	1,750		8,930
Selling, general and administrative expense	5,806	1,451	1,750	D	9,007
Acquisition costs	694		(694)	G	
Amortization of intangibles	31		295	A	326
<b>Operating (loss) income</b>	(1,032)	230	399		(403)
<b>Other Income (Expense)</b>					
Interest income	35				35
Interest expense	(60)	(52)	(342)	B, C, F	(454)
Extinguishment of debt	(1,420)				(1,420)
Loss from change in derivative liability	(805)				(805)
Total other expense	(2,250)	(52)	(342)		(2,644)
(Loss) income from continuing operations before income taxes	(3,282)	178	57		(3,047)
Income tax benefit	1,246				1,246
(Loss) income from continuing operations	(2,036)	178	57		(1,801)
<b>Discontinued Operations:</b>					
Loss from operation of discontinued business	(63)				(63)
<b>Net (loss) income</b>	\$ (2,099)	\$ 178	\$ 57		\$ (1,864)
Preferred dividend	(308)				(308)

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Net (loss) income available to common stockholders	\$	(2,407)	\$	178	\$	57	\$	(2,172)
Basic and diluted loss per common share from								
Continuing operations	\$	(0.24)	\$	0.02	\$	0.01	\$	(0.22)
Discontinued operations		(0.01)						(0.01)
Basic and Diluted Loss Per Common Share	\$	(0.25)	\$	0.02	\$	0.01	\$	(0.23)
<b>Weighted Average Common Shares</b>								
<b>Outstanding</b>		9,502,906						9,502,906

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**Notes to Unaudited Pro Forma Condensed Consolidated Combined Financial Information**

(amounts in thousands, except share data)

1. Description of Transaction

On March 24, 2015 (the Closing Date), Lime Energy Co. (the Company) entered into and consummated the transactions contemplated by an Agreement and Plan of Merger (the Merger Agreement) by and among EIHC MergerSub, Inc., a Delaware corporation and a wholly-owned subsidiary of the Company (Merger Sub), EnerPath International Holding Company, a Delaware corporation (EnerPath), Janina Guthrie, as the Stockholder Representative, and all of the stockholders of EnerPath (the Stockholders) (the transactions contemplated by the Merger Agreement, collectively, the EnerPath Acquisition) pursuant to which Merger Sub merged with and into EnerPath with EnerPath being the surviving corporation of the merger. EnerPath is a California-based provider of software solutions and program administration for utility energy efficiency programs.

The consideration paid in connection with the EnerPath Acquisition was approximately \$11.0 million in cash which was financed through the issuance of a subordinated convertible note payable to Bison Capital Partners IV, L.P. (the Note).

2. Basis of Presentation

The unaudited pro forma condensed consolidated combined financial information was prepared using the acquisition method of accounting and was based on the audited financial statement of the Company and EnerPath as of and for the year ended December 31, 2014. Certain reclassifications were made to the overall presentation of the historical EnerPath consolidated financial statements to conform to the Company's presentation. The unaudited pro forma condensed consolidated combined statement of operations for the year ended December 31, 2014 and the three months ended March 31, 2015 are presented as if the EnerPath acquisition had occurred on January 1, 2014.

The unaudited pro forma condensed consolidated combined financial information is presented for illustrative purposes only and is not necessarily indicative of the consolidated financial position or results of operations. The unaudited pro forma condensed consolidated combined financial information does not include, nor does it assume, any benefits from cost savings or synergies of the combined operations or the costs necessary to achieve these cost savings, or synergies, and such differences may be material.

The estimated fair values of the assets acquired and liabilities assumed, and the related tax balances, are based on preliminary estimates and assumptions. These preliminary estimates and assumptions could change significantly during the purchase price measurement period as we finalize the valuations of the assets acquired and liabilities assumed, and the related tax balances. Such changes could result in material variances between the Company's future financial results and the amounts presented in the unaudited pro forma information, including variances in the estimated purchase price, fair values recorded and expenses associated with these items.



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The unaudited pro forma condensed consolidated combined financial information should be read in conjunction with the Company's historical consolidated financial statements and notes thereto included in its Annual Report on Form 10-K for the year ended December 31, 2014, its Quarterly Report on Form 10-Q for the three months ended March 31, 2015 and with EnerPath's historical consolidated financial statements and notes thereto included in this Information Statement. The acquisition of EnerPath and a preliminary purchase price allocation are reflected in the Balance Sheet in the Company's Quarterly Report on Form 10-Q for the three months ended March 31, 2015.

Acquisition-related transaction costs are not included as a component of consideration transferred but are accounted for as expenses in the periods in which such costs are incurred. The unaudited pro forma condensed consolidated combined statements of operations do not include EnerPath acquisition-related transaction costs.

Table of Contents3. Assets Acquired and Liabilities Assumed

A summary of the total purchase price consideration to be allocated by Lime in the acquisition of EnerPath is provided below (in thousands).

Total purchase price consideration to be allocated \$11,000

The preliminary estimated assets acquired and liabilities assumed by Lime in the acquisition of EnerPath, reconciled to the consideration transferred, are provided below and are presented at the date of closing of the acquisition (in thousands).

Current assets	\$	9,107
Property and equipment		153
Other assets		41
Intangible assets - finite life		5,595
Goodwill		1,987
Total assets acquired		16,883
Current Liabilities assumed		(4,637)
Deferred income tax liability		(1,246)
Total purchase price consideration to be allocated	\$	11,000

4. Pro Forma Adjustments

This note should be read in conjunction with *Note 1. Description of Transaction and Note 2 Basis of Presentation*.

Adjustments under the heading **Pro Forma Adjustments** represent the following:

A. To record the preliminary estimated amortization expense of the intangible assets acquired from EnerPath. The preliminary assessment of the acquired intangible asset categories, fair value and average amortization periods are as follows:

	Fair Value	Average Amortization Period	Estimated Annual Amortization Expense
Trade name	\$ 825	3 years	\$ 275
EnerWorks System Software	3,265	4 years	816
Customer relationships	1,505	Cash flow/7 years	215
	\$ 5,595		\$ 1,306

B. To record amortization of the Note discount over the life of the Note. That discount is to be amortized to interest expense over the term of the Note using the effective interest method.

C. To record interest on the convertible Note issued in connection with the EnerPath acquisition at a rate of 10.0%.

D. To adjust EnerPath's classifications to align with the Company's presentation. This includes the reclassification of EnerPath sales and program management labor from Cost of sales to Selling, general and administrative expense.

E. To eliminate EnerPath's provision for income tax as of the date of the acquisition as the Company has sufficient net operating losses to cover EnerPath's provision for federal income taxes.

F. To eliminate interest on historical EnerPath debt.

G. To eliminate costs incurred related to the acquisition of EnerPath that were incurred during the three months ended March 31, 2015 as these costs are non-recurring.

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**MARKET PRICE AND DIVIDEND INFORMATION**

There is no established public trading market for EnerPath common stock. Immediately prior to the Merger, there were ten holders of EnerPath, with Stephen Guthrie, Janina Guthrie, and Jonathan Baty each owning more than 5% of the then issued and outstanding shares of common stock of EnerPath. As a result of the Merger, EnerPath became a wholly-owned subsidiary of the Company.

On March 24, 2015, Stephen Guthrie received options to purchase 50,000 shares of the Company's Common Stock at an exercise price of \$2.82 per share.

Historically, EnerPath has not paid any dividends. No cash dividends were declared for fiscal years 2013 and 2014. There is no plan for EnerPath to pay any future payments of dividends to the Company; instead, EnerPath will retain cash for working capital requirements.

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**ENERPATH MANAGEMENT'S DISCUSSION AND ANALYSIS OF  
FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

*The following discussion and analysis of financial condition and results of operations was provided to us by EnerPath and should be read in conjunction with EnerPath's financial statements included in this Information Statement. This discussion and analysis contains forward-looking statements that are based on the beliefs of EnerPath's management, as well as assumptions made by, and information currently available to, its management. Actual results could differ materially from those discussed in or implied by forward-looking statements for various reasons.*

**Overview**

EnerPath, which has been in the energy efficiency business for over 20 years, delivers large-scale energy efficiency programs to utilities, cities and corporations in the United States and Canada.

EnerPath provides utilities with comprehensive energy efficiency programs that enable the utilities to reduce the energy consumption of their customers and achieve overall energy reduction goals. EnerPath delivers these energy efficiency programs on a performance basis where it is only paid for realized energy efficiency savings. Working on behalf of the utilities, EnerPath designs and implements DSM Programs for the utilities' customers (mainly small- and mid-sized businesses and residential customers) in order to deliver energy solutions that achieve improvements in energy efficiency and customer satisfaction. In designing a DSM Program, EnerPath works with the utility to understand its needs and constraints and configure the program to best achieve the utility's goals. Implementing a DSM Program involves contacting, on behalf of the utility, potential customers using customer lists and other marketing tools; performing energy audits; structuring and selling projects pursuant to program parameters; procuring equipment; installing energy efficiency measures through subcontractors; arranging financing as needed; and conducting completed project quality inspections and customer surveys.

EnerPath executes its programs through its proprietary EnerWorks software, which is a scalable, real-time delivery platform that greatly simplifies and streamlines the procedures involved in implementing a high-volume DSM Program. The multi-platform, multi-language system provides tools for field representatives, program managers, and utility customers that maximize the effectiveness of DSM Programs through improved customer participation and program management. The software enables real-time energy audits and engineering calculations, instant document production, and real-time web-based reporting and program management; all while creating a full audit trail for environmental and regulatory purposes. The EnerWorks platform also provides EnerPath and the utilities with rich data resources to apply to the design of future projects and programs.

EnerPath currently delivers energy efficiency solutions to four of the 25 largest electric utilities in the United States. These solutions, which include energy-efficient lighting upgrades, mechanical (HVAC) upgrades, water conservation measures, building controls, refrigeration, pool pumps, building shell improvements, and appliance recycling, are designed to reduce energy costs and lessen the impact of energy consumption on the environment.

*Revenue*

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EnerPath generates the majority of its revenue from the sale of services and the resale of energy efficiency products that it purchases from its various suppliers. It charges utility customers based upon an agreed-upon rate schedule for the energy efficiency part installed or the savings generated. A typical project for a utility customer can take a few days to a few weeks to complete.

The Company also generates some revenue from licensing EnerPath software as a service for utilities and other businesses to use in managing energy efficiency and recycling programs.

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*Gross Profit*

Gross profit equals revenue less direct costs, and indirect costs and overheads of programs. Direct costs of EnerPath's programs consist primarily of energy efficiency parts and subcontractor installation costs. Indirect costs and overheads include: (i) internal labor to audit/sell energy efficiency projects, (ii) internal labor to manage the utility programs, and (iii) program marketing and office expenses. Program indirect costs and overheads are included in the Company's selling, general and administrative expenses.

Gross profit and margin are key metrics to evaluate EnerPath's performance. Gross profit and margin depend mainly on direct cost efficiencies and mix of products, and revenue volume relating to coverage of indirect costs and overheads.

*Operating Expenses*

Operating expenses include the following components:

- Sales and marketing expenses relating to obtaining new programs and managing existing programs.
- General and administrative expenses relating to accounting and finance, operations, information technology, general management, and legal and insurance expenses.
- Software development expenses relating to developing and maintaining our internal program management software.

*Interest (Expense) and Other Income (Expense) Net*

Interest expense and other income expense include mainly interest expense on EnerPath's line of credit and long-term debt.

*Provision for Income Taxes*

Provisions for income taxes consist mainly of current state income taxes and deferred federal and state taxes relating to federal and state net operating loss carryforwards.



Table of Contents**Results of Operations Years Ended December 31, 2014 and 2013**

(in thousands)

	2014 Actual	% Sales	2013 Actual	% Sales	\$ Change	% Change
<b>Revenues</b>	\$ 40,625	100.0%	\$ 27,483	100.0%	\$ 13,142	47.8%
Direct Costs / Indirect Costs / Overheads	33,450	82.3%	21,286	77.5%	12,165	57.2%
<b>Gross Profit</b>	7,174	17.7%	6,197	22.5%	977	15.8%
<b>Operating Expenses</b>						
Sales	496	1.2%	461	1.7%	35	7.6%
Marketing	92	0.2%	131	0.5%	(38)	-29.2%
General & Administrative	2,619	6.4%	2,341	8.5%	278	11.9%
Finance	757	1.9%	701	2.6%	56	7.9%
IT Operations	507	1.2%	370	1.3%	137	37.1%
Operations Overhead	170	0.4%	172	0.6%	(2)	-1.2%
Software Development	2,118	5.2%	1,685	6.1%	433	25.7%
Total Operating Expenses	6,759	16.6%	5,860	21.3%	898	15.3%
<b>Income (Loss) from Operations</b>	415	1.0%	337	1.2%	79	23.4%
Other Income (Expense)	(176)	-0.4%	(125)	-0.5%	(51)	40.8%
<b>Income (Loss) Before Taxes</b>	239	0.6%	212	0.8%	28	13.1%
<b>Provision for Income Taxes</b>						
Current Income Tax	21	0.1%	16	0.1%	5	32.3%
Deferred Income Tax	112	0.3%	120	0.4%	(8)	-6.4%
Change in California Tax Code		0.0%	(343)	-1.2%	343	-100.0%
Total Provision for Income Taxes	133	0.3%	(208)	-0.8%	341	-163.8%
<b>Net Income (Loss)</b>	\$ 106	0.3%	\$ 420	1.5%	(313)	-74.6%

*Revenue*

Contract revenues increased by \$13.1 million, or 47.8%, to \$40.6 million in 2014 from \$27.5 million in 2013. This revenue increase was mainly due to the following new energy efficiency programs started in 2013:

- The Los Angeles Department of Power and Water started a new energy efficiency program with EnerPath in the second quarter of 2013, which resulted in a \$10.0 million revenue increase in 2014.



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- Tennessee Valley Authority added a second energy efficiency program with EnerPath in the second quarter of 2013, which resulted in a \$2.2 million revenue increase in 2014.
- Orange and Rockland Utilities, Inc., an electric and gas utility headquartered in Pearl River, NY, began a new energy efficiency program with EnerPath in the fourth quarter of 2013, which resulted in a \$1.5 million revenue increase in 2014.
- ComEd, an Exelon company, also began licensing EnerPath's energy efficiency program management software in the fourth quarter of 2013, which resulted in \$0.4 million revenue increase in 2014.

The revenue increases were partially offset by: (i) revenue decreases of \$0.8 million in the New York State Electric & Gas, and Rochester Gas & Electric's Small Business Energy Efficiency Program due to bad winter weather in the Northeast in 2014 that affected our installation activities in connection with energy efficiency projects, and (ii) revenue decreases of \$0.3 million in Riverside Public Utilities (RPU)'s energy efficiency program in California due to a delay in the renewal of the underlying contract in the second half of 2014.

*Gross Profit*

Gross profit increased by \$1.0 million, or 15.8%, to \$7.2 million in 2014 from \$6.2 million in 2013. This was the result of higher revenue of \$13.1 million, which was partially offset by lower gross margin. Gross margin decreased from 22.5% in 2013 to 17.7% in 2014 due to: (i) selling a larger mix of higher cost new LED energy efficiency products in 2014, and (ii) subcontractor installation inefficiencies caused by bad winter weather in the Northeast in 2014, and shipment of incomplete energy efficiency measure parts by a vendor in the first half of 2014.

*Operating Expenses*

Operating expenses increased by \$0.9 million, or 15.3% from \$5.9 million in 2013 to \$6.8 million in 2014. This was mainly the result of higher expenses to support new programs/revenues including higher general insurance, new computers, and software development staffing increases to improve and support internally EnerPath's software development program.

*Interest (Expense) and Other Income (Expense) Net*

Interest expense increased \$0.1 million from \$0.1 in 2013 to \$0.2 million due mainly to increased borrowing under EnerPath's line of credit in order to finance higher accounts receivable and inventory resulting from program revenue growth.

*Provision for Income Taxes*

The provision for income taxes increased by \$0.3 million from income tax benefit of \$0.2 million in 2013 to income tax expense of \$0.1 in 2014. The income tax benefit in 2013 was the result of California reinstating the Net Operating Loss carryover deduction in January 2012. Due to this change in tax code, the allowance that was previously created against the deferred tax asset was reversed.

**Liquidity and Capital Resources    Years Ended December 31, 2014 and 2013**

*Overview*

As of December 31, 2014, EnerPath had cash and cash equivalents of \$0.7 million with no restricted cash, compared to cash of \$0.4 million as of December 31, 2013. It also had contractual obligations at December 31, 2014 totaling \$0.5 million including long-term debt and operating leases for iPads to run program software and for office space. \$0.3 million of these contractual obligations are to be paid in 2015.

EnerPath's principal cash requirements are for operating expenses. Operating expenses include purchasing energy efficiency parts and subcontract installations for programs, employee costs including wages, taxes, benefits, travel, telephone and computer expenses, outside services including accounting, legal, insurance and contracting

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services, funding accounts receivable and inventory, and capital expenditures.

Since its inception, EnerPath has financed its operations mainly through operating profits and borrowings under its secured lines of credit. EnerPath also monitors operating profits closely and sometimes delays or reduces certain operating expenses to improve profitability, and works with its supplier distributors to extend payment terms during periods of revenue growth.

*Cash Flows Years Ended December 31, 2014 and 2013*

	<b>2014 Actual</b>	<b>2013 Actual</b>
Net income (Loss)	\$ 106	\$ 420
Adjustments to reconcile net income to net cash provided by operations:		
Gain (Loss) on Disposal of Assets	2	(2)
Depreciation and Amortization	178	178
Decrease (Increase) in:		
Accounts Receivable	(1,185)	(4,404)
Deferred Income Taxes	112	(174)
Inventory	(834)	(1,303)
Other Current Assets	11	(64)
Increase (Decrease) in:		
Accounts Payable	1,229	2,690
Other Current Liabilities	104	479
<b>Net Cash Provided (Used) by Operations</b>	<b>(277)</b>	<b>(2,181)</b>
Decrease (Increase) in Other Assets	2	(8)
Purchase of Fixed Assets	(48)	(223)
<b>Net Cash Provided (Used) by Investing Activities</b>	<b>(46)</b>	<b>(230)</b>
Stock options		173
Line of Credit Borrowings (Payments)	700	2,050
Long-term Debt & Capital Lease Borrowings		268
Long-term Debt & Capital Lease Payments	(72)	(32)
<b>Net Cash Provided (Used) by Financing Activities</b>	<b>628</b>	<b>2,459</b>
<b>Net Increase (Decrease) in Cash and Cash Equivalents</b>	<b>\$ 304</b>	<b>\$ 48</b>
<b>Cash and Cash Equivalents at Beginning of Period</b>	<b>405</b>	<b>356</b>
<b>Cash and Cash Equivalents at End of Period</b>	<b>\$ 709</b>	<b>\$ 405</b>
<b>Supplemental Disclosures</b>		
Cash Paid for Income Taxes	\$ 16	\$ 4
Cash Paid for Interest	235	127

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*Net Cash*

Net cash increased \$0.3 million to \$0.7 million in 2014 versus increasing only slightly in 2013. In 2013, cash used by operations and investing activities of \$2.2 million and \$0.2 million respectfully were completely offset by cash provided by financing activities of \$2.5 million, which resulted in the slight net cash increase. In 2014, cash used by operations of \$0.3 million were more than offset by cash provided by financing activities of \$0.6 million, which resulted in the net cash increase of \$0.3 million.

*Operating Activities*

Operating activities used \$0.3 million in 2014, compared to using \$2.2 million in 2013 when accounts receivable and inventory growth were higher due to higher program revenue from starting new 2013 programs.

*Investing Activities*

Investing activities consumed nominal cash in 2014, compared to consuming \$0.2 million of cash in 2013 when additional computers and software were added to EnerPath's data center to expand its capabilities.

*Financing Activities*

Financing activities generated \$0.6 million in cash in 2014, as compared to generating \$2.5 million in 2013. This resulted from increasing our line of credit borrowing by \$0.7 million to \$3.7 million in 2014. In 2013, EnerPath increased its line of credit borrowings, long-term debt, and stockholder investments by \$2.0, \$0.3, and \$0.2 million, respectively, to finance cash used by operations and investing activities.

*Sources of Liquidity*

EnerPath's sources of liquidity have included its line of credit, long-term debt borrowing, and outside investments.

Immediately prior to its acquisition by Lime, EnerPath had a balance of \$3.1 million under its line of credit with New Resource Bank and long-term debt of \$0.2 million. These loans were paid off in connection with the closing of the acquisition of EnerPath by Lime.

*Changes in and Disagreements with Accountants on Accounting and Financial Disclosures*

None.

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**FORWARD-LOOKING STATEMENTS AND INFORMATION**

This Information Statement includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. You can identify our forward-looking statements by the words expects, projects, believes, anticipates, intends, plans, predicts, estimates and similar expressions.

The forward-looking statements are based on management's current expectations, estimates and projections about us. The Company cautions you that these statements are not guarantees of future performance and involve risks, uncertainties, and assumptions that we cannot predict. In addition, the Company has based many of these forward-looking statements on assumptions about future events that may prove to be inaccurate. Accordingly, actual outcomes and results may differ materially from what the Company has expressed or forecast in the forward-looking statements.

You should rely only on the information the Company has provided in this Information Statement. The Company has not authorized any person to provide information other than that provided herein. The Company has not authorized anyone to provide you with different information. You should not assume that the information in this Information Statement is accurate as of any date other than the date on the front of the document.

**WHERE YOU CAN FIND MORE INFORMATION**

We file annual, quarterly, and current reports and other information with the SEC. Our filings with the SEC are available to the public on the SEC's website at [www.sec.gov](http://www.sec.gov). Those filings are also available to the public on our corporate website at [www.lime-energy.com](http://www.lime-energy.com). The information we file with the SEC or contained on, or linked to through, our corporate website or any other website that we may maintain is not part of this Information Statement. You may also read and copy, without charge, any document we file with the SEC at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549. You can call the SEC at 1-800-SEC-0330 to obtain information on the operation of the Public Reference Room.

**DELIVERY OF DOCUMENTS TO STOCKHOLDERS SHARING AN ADDRESS**

The Company will deliver only one copy of this Information Statement to multiple stockholders sharing an address unless the Company has received contrary instructions from one or more of the stockholders. Any stockholder at a shared address to which a single copy of this Information Statement is delivered who wishes to receive a separate copy of this Information Statement may mail a request to receive separate copies to the Company at 3 Convery Blvd., Suite 600, Woodbridge, New Jersey 07095, Attn: Corporate Secretary, or call the Company at (732) 791-5380. Upon receipt of such request, the Company will promptly deliver the Information Statement. Stockholders who receive multiple copies of this Information Statement at a shared address and who wish to receive a single copy may direct their request to the address provided above.

**ANNUAL REPORT ON FORM 10-K, INCORPORATION BY REFERENCE, AND ADDITIONAL INFORMATION**



We hereby incorporate by reference into this Information Statement Item 6 Selected Financial Data, Item 7 Management's Discussion and Analysis of Financial Condition and Results of Operations, Item 7A Quantitative and Qualitative Disclosures About Market Risk, and Item 8 Financial Statements and Supplementary Data of the Company's Annual Report on Form 10-K for the year ended December 31, 2014, including audited financial statements as of and for the period ending on that date, and Item 1 Financial Statements, Item 2 Management's Discussion and Analysis of Financial Condition and Results of Operations and Item 3 Quantitative and Qualitative Disclosures About Market Risk of the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015.

The Company will provide upon request and without charge to each stockholder receiving this Information Statement a copy of the Company's annual report on Form 10-K for the fiscal year ended December 31, 2014, including the financial statements and financial statement schedule information included therein, as filed with the SEC. Reports and other information filed by us can be inspected and copied at the public reference facilities

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maintained at the SEC at 100 F Street, N.E., Washington, D.C. 20549. Copies of such material can be obtained upon written request addressed to the SEC, Office of FOIA/PA Operations, 100 F Street, N.E., Washington, D.C. 20549-2736, at prescribed rates.

The SEC's website contains reports, proxy and Information Statements and other information regarding issuers, including the Company, that file electronically with the SEC through the Electronic Data Gathering, Analysis and Retrieval System.

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**ANNEX A**

**MERGER AGREEMENT**

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**EXECUTION VERSION**

**AGREEMENT AND PLAN OF MERGER**

**among**

**LIME ENERGY CO.**

**EIHC MERGERSUB, INC.**

**ENERPATH INTERNATIONAL HOLDING COMPANY**

**the STOCKHOLDERS named herein**

**and**

**JANINA GUTHRIE, as Stockholder Representative**

**dated as of**

**March 24, 2015**

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Exhibits

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Schedule 1 Illustration of adjustment to Closing Merger Consideration in respect of the Estimated Closing Adjustment

Schedule 2 Closing Tangible Net Worth Illustration

Schedule 3 Net Assets Illustration

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**AGREEMENT AND PLAN OF MERGER**

This AGREEMENT AND PLAN OF MERGER (this **Agreement** ), dated as of March 24, 2015, is entered into among LIME ENERGY CO., a Delaware corporation ( **Parent** ), EHC MergerSub, Inc., a Delaware corporation ( **Merger Sub** ) and wholly owned subsidiary of Parent, ENERPATH INTERNATIONAL HOLDING COMPANY, a Delaware corporation ( **Company** ), each holder of Company Common Stock (as defined herein) (each a **Stockholder** and, collectively, the **Stockholders** ) and Janina Guthrie, solely in her capacity as Stockholder Representative ( **Stockholder Representative** ).

**RECITALS**

WHEREAS, the parties intend that Merger Sub be merged with and into the Company, with the Company surviving that merger on the terms and subject to the conditions set forth herein (the **Merger** );

WHEREAS, the board of directors of the Company (the **Company Board** ) has unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of the Company and its Stockholders, (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, and (c) resolved to recommend adoption of this Agreement by the Stockholders in accordance with the Delaware General Corporation Law (the **DGCL** );

WHEREAS, contemporaneously with the execution and delivery of this Agreement, each of Stephen Guthrie and Janina Guthrie have executed and delivered to Parent a Voting Agreement;

WHEREAS, following the execution and delivery of this Agreement, the Company shall seek to obtain, in accordance with Section 228 of the DGCL, a unanimous written consent of its stockholders approving this Agreement, the Merger and the transactions contemplated hereby in accordance with Section 251 of the DGCL;

WHEREAS, the respective boards of directors of Parent and Merger Sub have unanimously (a) determined that this Agreement and the transactions contemplated hereby, including the Merger, are in the best interests of Parent, Merger Sub and their respective stockholders, and (b) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger; and

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WHEREAS, a portion of the cash otherwise payable by Parent to the Stockholders in connection with the Merger shall be placed in escrow by Parent, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Escrow Agreement (as defined herein).

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

The following terms have the meanings specified or referred to in this **Article I**:

**Acquisition Proposal** has the meaning set forth in **Section 6.03(a)**.

**Action** means any written (or, if the Company has Knowledge thereof, unwritten) claim, action, cause of action, demand, lawsuit, arbitration, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

**Affiliate** of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term control (including the terms controlled by and under common control with ) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**Agreement** has the meaning set forth in the preamble.

**Ancillary Documents** means the Escrow Agreement, the Non-Competition Agreements, the Voting Agreements and all other agreements, contracts, instruments, certificates or documents required to be delivered in connection with the transactions contemplated herein.

**Audited Financial Statements** has the meaning set forth in **Section 3.06**.

**Balance Sheet** has the meaning set forth in **Section 3.06**.

**Balance Sheet Date** has the meaning set forth in **Section 3.06**.

**Basket** has the meaning set forth in **Section 9.04(a)**.

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**Benefit Plan** has the meaning set forth in **Section 3.20(a)**.

**Business Day** means any day except Saturday, Sunday or any other day on which commercial banks located in the City of New York are authorized or required by Law to be closed for business.

**California Long-Arm Statute** means Section 2115 of the California Corporations Code.

**Cap** has the meaning set forth in **Section 9.04(a)**.

**Cash and Equivalents** means, as of any date, the aggregate amount of unrestricted cash and cash equivalents and marketable securities of the Company and its Subsidiaries as of such date determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end. For the avoidance of doubt, Cash and Equivalents will be calculated (i) net of issued but uncleared checks and drafts and (ii) including checks, other wire transfers and drafts deposited or available for deposit for the account of the Company or any of its Subsidiaries.

**CERCLA** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.

**Certificate** has the meaning set forth in **Section 2.10(a)**.

**Certificate of Merger** has the meaning set forth in **Section 2.04**.

**Closing** has the meaning set forth in **Section 2.02**.

**Closing Date** has the meaning set forth in **Section 2.02**.

**Closing Indebtedness Certificate** means a certificate executed by the Chief Financial Officer of the Company certifying on behalf of the Company an itemized list of all outstanding Indebtedness as of the open of business on the Closing Date and the Person to whom such outstanding Indebtedness is owed and an aggregate total of such outstanding Indebtedness.



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**Closing Merger Consideration** means the Purchase Price, plus (a) the Estimated Closing Adjustment and (b) the aggregate cost of the Tail Policies set forth in **Section 6.07(c)** (up to \$57,000 and only if such cost is either paid by the Company prior to Closing or included in Net Indebtedness), minus (v) the Indemnification Escrow

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Amount, (w) the Purchase Price Adjustment Escrow Amount, (x) the Stockholder Representative Expense Amount, (y) the outstanding Net Indebtedness, and (z) the amount of unpaid Transaction Expenses of the Company as of the open of business on the Closing Date.

**Closing Per Share Merger Consideration** means (a) the Closing Merger Consideration divided by (b) the Fully Diluted Share Number.

**Closing Transaction Expenses Certificate** means a certificate executed by the Chief Financial Officer of the Company, certifying the amount of Transaction Expenses remaining unpaid as of the open of business on the Closing Date (including an itemized list of each such unpaid Transaction Expense with a description of the nature of such expense and the Person to whom such expense is owed).

**Closing Tangible Net Worth** means: Net Assets excluding the intangible assets of the Company and its Subsidiaries, as determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end, each as determined as of the open of business on the Closing Date. An illustration of Closing Tangible Net Worth is shown in Schedule 2.

**Closing Tangible Net Worth Statement** has the meaning set forth in **Section 2.17(b)(i)**.

**Code** means the Internal Revenue Code of 1986, as amended.

**Company** has the meaning set forth in the preamble.

**Company and its Subsidiaries** means the Company and (i) EnerPath, Inc., a California corporation, formerly known as EnerNet, Inc., dba EnerPath, and (ii) EnerPath Services, Inc., a Michigan corporation, formerly known as D-Base Communications, Inc., dba Energy Controls & Concepts.

**Company Board** has the meaning set forth in the recitals.

**Company Board Recommendation** has the meaning set forth in **Section 3.02(b)**.

**Company Charter Documents** has the meaning set forth in **Section 3.03**.

**Company Common Stock** means the common stock, par value \$0.01 per share, of the Company.

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**Company Disclosure Letter** means the disclosure letter delivered by the Company concurrently with the execution and delivery of this Agreement.

**Company Intellectual Property** means all Intellectual Property that is owned or held for use by the Company or any of its Subsidiaries.

**Company IP Agreements** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to Intellectual Property to which the Company or any of its Subsidiaries is a party, beneficiary or otherwise bound.

**Company IP Registrations** means all Company Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names and copyrights, issued and reissued patents, registered design rights, any other forms of registered Intellectual Property, and applications for any of the foregoing.

**Company Technology** means any and all Technology that is owned or held for use by the Company.

**Consideration Spreadsheet** has the meaning set forth in **Section 2.18(a)**.

**Contracts** means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

**D&O Indemnified Party** has the meaning set forth in **Section 6.07(a)**.

**D&O Indemnifying Parties** has the meaning set forth in **Section 6.07(b)**.

**Tail Policies** has the meaning set forth in **Section 6.07(c)**.

**DGCL** has the meaning set forth in the recitals.

**Direct Claim** has the meaning set forth in **Section 9.05(c)**.

**Disclosure Letters** means the disclosure letters delivered by the Company, the Stockholders (if any) and Parent (if any) concurrently with the execution and delivery of this Agreement.

**Disputed Amounts** has the meaning set forth in **Section 2.17(c)(iii)**.

**Dollars or \$** means the lawful currency of the United States.

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**Effective Time** has the meaning set forth in **Section 2.04**.

**Encumbrance** means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**Environmental Attributes** means any emissions and renewable energy credits, energy conservation credits, benefits, offsets and allowances, emission reduction credits or words of similar import or regulatory effect (including emissions reduction credits or allowances under all applicable emission trading, compliance or budget programs, or any other federal, state or regional emission, renewable energy or energy conservation trading or budget program) that have been held, allocated to or acquired for the development, construction, ownership, lease, operation, use or maintenance of the Company or any of its Subsidiaries as of: (i) the date of this Agreement; and (ii) future years for which allocations have been established and are in effect as of the date of this Agreement.

**Environmental Claim** means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

**Environmental Law** means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, human health or safety, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials. The term **Environmental Law** includes, without limitation, the following (including their implementing regulations and any state analogs): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the

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Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**Environmental Notice** means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

**Environmental Permit** means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

**ERISA Affiliate** means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a single employer within the meaning of Section 414 of the Code.

**Escrow Agent** means Wilmington Trust, N.A.

**Escrow Agreement** means the Escrow Agreement to be entered into by Parent, Stockholder Representative and the Escrow Agent at the Closing, substantially in the form of Exhibit A.

**Escrow Funds** has the meaning set forth in **Section 2.11(c)**.

**Estimated Closing Adjustment** has the meaning set forth in **Section 2.17(a)(ii)**.

**Estimated Closing Tangible Net Worth** has the meaning set forth in **Section 2.17(a)(i)**.

**Estimated Closing Tangible Net Worth Statement** has the meaning set forth in **Section 2.17(a)(i)**.

**Exchange Agent** has the meaning set forth in **Section 2.10(b)**.

**Financial Statements** has the meaning set forth in **Section 3.06**.

**Financing Agreement** means that certain Financing Agreement dated on or about the date hereof and signed by and between Parent and Bison Capital Equity



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Partners IV, L.P. ( **Bison** ) that sets forth certain terms on which Bison will provide financing for the transactions contemplated by this Agreement.

**FIRPTA Statement** has the meaning set forth in **Section 7.10**.

**Fully Diluted Share Number** means the aggregate number of Shares outstanding immediately prior to the Effective Time (other than Shares owned by the Company which are to be cancelled and retired in accordance with **Section 2.08(a)**).

**GAAP** means United States generally accepted accounting principles in effect from time to time.

**Government Contracts** has the meaning set forth in **Section 3.09(a)(viii)**.

**Governmental Authority** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction, provided however, all utility companies and Subsidiaries and Affiliates thereof, including without limitation Consolidated Edison Company of New York, Inc., shall be excluded from the definition of Governmental Authority.

**Governmental Order** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**Guarantees** means those certain personal guarantees entered into by Stephen Guthrie, Janina Guthrie, Johnathan Baty and/or Therese D. Kyker prior to the date hereof that guarantee the performance by the Company or any of its Subsidiaries of the terms (the **Guaranteed Terms** ) of any Contract and any banking accounts and/or credit card accounts (a) to which the Company or any of its Subsidiaries is a party and (b) with Guaranteed Terms in effect as of the Effective Time.

**Hazardous Materials** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, polychlorinated biphenyls and greenhouse gases (including, without limitation, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride).

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**Indebtedness** means (without duplication as to the list set forth below) with respect to the Company and its Subsidiaries, all (a) indebtedness for borrowed money; (b) obligations for the deferred purchase price of property or services, (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (g) guarantees made by the Company or any of its Subsidiaries on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (f); and (h) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (g); provided that Indebtedness shall not include any item that may be counted as an account payable or accrued expense that is set forth on the Estimated Closing Tangible Net Worth Statement or the Closing Tangible Net Worth Statement.

**Indemnification Escrow Amount** means an amount equal to ten percent (10%) of the Closing Merger Consideration.

**Indemnification Escrow Fund** has the meaning set forth in **Section 2.11(a)**.

**Indemnified Party** has the meaning set forth in **Section 9.05**.

**Indemnifying Party** has the meaning set forth in **Section 9.05**.

**Independent Accountant** has the meaning set forth in **Section 2.17(c)(iii)**.

**Insurance Policies** has the meaning set forth in **Section 3.16**.

**Intellectual Property** means all intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing, however arising, pursuant to the Laws of any jurisdiction throughout the world, whether registered or unregistered, including any and all: (a) trademarks, service marks, trade names, brand names, logos, trade dress, design rights and other similar designations of source, sponsorship, association or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications and renewals for, any of the foregoing; (b) internet domain names, whether or not trademarks, registered by any business, private registrar or Governmental Authority, web addresses, web pages, websites and related content, accounts with Twitter, Facebook and other social media companies and the content found thereon and related thereto, and URLs; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights, author, performer, moral and neighboring rights, and all registrations, applications for registration and renewals of such copyrights; (d) trade secrets, database rights, and all other proprietary rights in the Technology, and all confidential and

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proprietary information and all rights therein; (e) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications, and other patent rights and any other Governmental Authority-issued indicia of invention ownership (including inventor's certificates, petty patents and patent utility models); (f) software and firmware, including data files, source code, object code, application programming interfaces, architecture, files, records, schematics, computerized databases and other related specifications and documentation; (g) semiconductor chips and mask works; and (h) any rights to pursue, recover or retain damages, costs or attorneys' fees for past, present and future infringement or misappropriation of the foregoing.

**Key Employee** means the following employees of the Company or its Subsidiaries: Stephen Guthrie and Steven Meyers.

**Key Employee Agreement** means an employment agreement or memorandum of employment executed by a Key Employee.

**Knowledge** means, when used with respect to the Company, the actual or constructive knowledge of any director or officer of the Company or any of its Subsidiaries (which includes, for the avoidance of doubt Stephen Guthrie, Steven Meyers and Paul Smith), after reasonable inquiry.

**Law** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**Lease Consents** means, collectively, those consents, in a form acceptable to Parent, to the Merger executed by each landlord under the Company's (or its Subsidiary's) lease agreements for the following properties: (i) 678 Mass Ave, 5th and 7th Floors, Cambridge, MA, (ii) 123 Center Park Drive, Suite 205, Knoxville, TN, (iii) 300 East Main St., East Rochester, NY and (iv) 152 and 154 Airport Executive Park Nanuet, NY.

**Liabilities** has the meaning set forth in **Section 3.07**.

**Losses** means losses, damages (including, consequential (except as provided below), special, and direct damages), liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that **Losses** shall not include reduction in net operating losses and business opportunities, or punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

**Majority Holder** has the meaning set forth in **Section 11.01(b)**.

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**Material Adverse Effect** means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, prospects, results of operations, condition (financial or otherwise) or assets of the Company and its Subsidiaries taken as a whole, or (b) the ability of the Company to consummate the transactions contemplated hereby on a timely basis; *provided, however*, that **Material Adverse Effect** shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to **Section 3.03** and **Section 6.06**; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however*, that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a **Material Adverse Effect** has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

**Material Contracts** has the meaning set forth in **Section 3.09(a)**.

**Material Customers** has the meaning set forth in **Section 3.15(a)**.

**Material Suppliers** has the meaning set forth in **Section 3.15(b)**.

**Maximum Premium** has the meaning set forth in **Section 6.07(c)**.

**Merger** has the meaning set forth in the recitals.

**Merger Consideration** means the Closing Merger Consideration, together with those portions of the Escrow Funds and the Post-Closing Adjustment (if any) that the Stockholders become entitled to receive pursuant to the terms of this Agreement and the Escrow Agreement.

**Merger Sub** has the meaning set forth in the preamble.

**Multiemployer Plan** has the meaning set forth in **Section 3.20(c)**.

**Net Assets** means the assets less the liabilities of the Company and its Subsidiaries without duplication, but excluding (a) the portion of any prepaid expense of which Parent will not receive the benefit following the Closing, (b) deferred Tax assets and liabilities, (c) receivables from or payables to any of the Company's Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, and



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(d) Net Indebtedness, and (e) any accrued Transaction Expenses, each determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end. An illustration of Net Assets is shown in Schedule 3.

**Net Indebtedness** means the Indebtedness outstanding as of the open of business on the Closing Date (without giving effect to the Merger or the other transactions contemplated hereby) less the Cash and Equivalents as of the open of business on the Closing Date (without giving effect to the Merger or the other transactions contemplated hereby).

**Non-Competition Agreements** means the non-competition, non-solicitation and confidentiality agreement executed by Stephen Guthrie and Steven Meyers in the form attached hereto as Exhibit B.

**O&R Contract** means that certain Agreement for Small Business Direct Install Program Between Consolidated Edison Company of New York, Inc. (on behalf of its affiliate, Orange & Rockland Utilities, Inc.) and EnerPath Services, Inc. (a wholly owned Subsidiary of Company, and formerly known as D-Base Communications, Inc., dba Energy Controls & Concepts), dated as of September 13, 2013, as amended.

**Open Source License** means license terms that: (a) license software or other material as free software or open source software, or (b) are, or are substantially similar to, a license now or in the future approved by the Open Source Initiative and listed at <http://www.opensource.org/licenses>, which licenses include all versions of the GNU GPL, the GNU LGPL, the GNU Affero GPL, the MIT license, the Eclipse Public License, the Common Public License, the CDDL, the Mozilla Public License, the Academic Free License, the BSD license and the Apache License.

**Option** means any option to purchase Company Common Stock granted under the Stock Option Plan and still outstanding as of immediately prior to the Effective Time.

**Optionholder** means the beneficial or record holder of an Option.

**Parent** has the meaning set forth in the preamble.

**Parent Disclosure Letter** means the disclosure letter delivered by Parent concurrently with the execution and delivery of this Agreement.

**Parent Indemnitees** has the meaning set forth in **Section 9.02**.



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**Permits** means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

**Permitted Encumbrances** has the meaning set forth in **Section 3.10(a)**.

**Person** means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

**Post-Closing Adjustment** has the meaning set forth in **Section 2.17(b)(ii)**.

**Post-Closing Tax Period** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date.

**Post-Closing Taxes** means Taxes of the Company and each of its Subsidiaries for any Post-Closing Tax Period.

**Pre-Closing Tax Period** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

**Pre-Closing Taxes** means Taxes of the Company for any Pre-Closing Tax Period.

**Pro Rata Share** means, with respect to any Stockholder, such Person's ownership interest in the Company as of immediately prior to the Effective Time, determined by dividing (a) the number of Shares owned of record by such Person as of immediately prior to the Effective Time, by (b) the Fully Diluted Share Number.

**Purchase Price** means \$11,000,000.

**Purchase Price Adjustment Escrow Amount** means \$250,000.

**Purchase Price Adjustment Escrow Fund** has the meaning set forth in **Section 2.11(b)**.



**Qualified Benefit Plan** has the meaning set forth in **Section 3.20(c)**.

**Real Property** means the real property owned, leased or subleased by the Company or any of its Subsidiaries, together with all buildings, structures and facilities located thereon.

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**Release** means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

**Releasees** has the meaning set forth in **Section 6.11**.

**Representative** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

**Representative Losses** has the meaning set forth in **Section 11.01(c)**.

**Required Consent** has the meaning set forth in **Section 6.06(b)**.

**Requisite Company Vote** has the meaning set forth in **Section 3.02(c)**.

**Resolution Period** has the meaning set forth in **Section 2.17(c)(ii)**.

**Review Period** has the meaning set forth in **Section 2.17(c)(i)**.

**Shares** has the meaning set forth in **Section 2.08(a)**.

**Statement of Objections** has the meaning set forth in **Section 2.17(c)(ii)**.

**Stock Option Plan** means the 2009 Stock Option/Stock Issuance Plan of the Company.

**Stockholder** has the meaning set forth in the preamble.

**Stockholder Disclosure Letter** means the disclosure letter delivered by the Stockholders concurrently with the execution and delivery of this Agreement.

**Stockholder Indemnitees** has the meaning set forth in **Section 9.02(d)**.

**Stockholder Representative** has the meaning set forth in the preamble.

**Stockholder Representative Expense Amount** means \$75,000.

**Stockholder Representative Expense Fund** has the meaning set forth in **Section 2.11(c)**.

**Straddle Period** has the meaning set forth in **Section 7.05**.

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**Subsidiary** or **Subsidiaries** of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, 50% or more of the equity interests of which) is owned directly or indirectly by such first Person or by another Subsidiary of such first Person.

**Subsidiary Securities** has the meaning set forth in **Section 3.05(d)**.

**Surviving Corporation** has the meaning set forth in **Section 2.01**.

**Technology** means all inventions, works, discoveries, innovations, know-how, information (including ideas, research and development, formulas, compositions, processes and techniques, data, designs, drawings, specifications, business and marketing plans and proposals, documentation and manuals), computer software, firmware, computer hardware, integrated circuits and integrated circuit masks, electrical and mechanical equipment and all other forms of technology, including improvements, modifications, works in process, derivatives or changes, whether tangible or intangible, embodied in any form, whether or not protectable or protected by patent, copyright, mask work right, trade secret law or otherwise, and all documents and other materials recording any of the foregoing.

**TNW Ceiling** has the meaning set forth in **Section 2.17(a)(ii)(A)**.

**TNW Floor** has the meaning set forth in **Section 2.17(a)(ii)(A)**.

**Target Tangible Net Worth** has the meaning set forth in **Section 2.17(a)(ii)**.

**Taxes** means all federal, state, local, foreign taxes, charges, fees, levies or other assessments, including, income, gross receipts, sales, use, production, capital gains, capital stock, ad valorem, alternative or add-on minimum, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, escheat, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs duty, or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

**Tax Claim** has the meaning set forth in **Section 7.06**.

**Tax Return** means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**Third Party Claim** has the meaning set forth in **Section 9.05(a)**.

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**Transaction Expenses** means all fees and expenses incurred by the Company and any Affiliate at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the Merger and the other transactions contemplated hereby and thereby, legal, accounting, investment banker and other third party service provider fees, fees and expenses of obtaining third party approvals, consents and waivers, fees and expenses associated with obtaining the release and termination of Encumbrances on the Company's or any of its Subsidiaries' assets, broker's fees, and severance, bonus or change of control payments, but excluding any unpaid costs of the Tail Policies referenced in **Section 6.07(c)**.

**Undisclosed Guaranteed Material Contract** means any Material Contract (a) that is not disclosed in the Company Disclosure Letter and (b) that contains Guaranteed Terms.

**Undisputed Amounts** has the meaning set forth in **Section 2.17(c)(iii)**.

**Union** has the meaning set forth in **Section 3.21(b)**.

**Voting Agreements** means the voting and support agreements in the form attached hereto as Exhibit C.

**WARN Act** means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign laws related to plant closings, relocations, mass layoffs and employment losses.

**ARTICLE II  
THE MERGER**

**Section 2.01**            **The Merger.** On the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time, (a) Merger Sub will merge with and into the Company, and (b) the separate corporate existence of Merger Sub will cease and the Company will continue its corporate existence under the DGCL as the surviving corporation in the Merger (sometimes referred to herein as the **Surviving Corporation** ).

**Section 2.02**            **Closing.** Subject to the terms and conditions of this Agreement, the closing of the Merger (the **Closing** ) shall take place on March 24, 2015, or at such other date as the Company and Parent may mutually agree upon in writing (the day on which the Closing takes place being the **Closing Date** ).

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**Section 2.03 Closing Deliverables.**

- (a) At or prior to the Closing, the Company shall deliver to Parent the following:
- (i) the Escrow Agreement duly executed by Stockholder Representative and the Escrow Agent;
- (ii) resignations of the directors and officers of the Company and each of its Subsidiaries pursuant to **Section 6.05**;
- (iii) a certificate, dated the Closing Date and signed by a duly authorized officer of Company, that each of the conditions set forth in **Section 8.02(a)** and **Section 8.02(b)** have been satisfied;
- (iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying (A) that attached thereto are true and complete copies of (1) all resolutions adopted by the Company Board authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby and (2) resolutions of the Stockholders approving the Merger and authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, (B) that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby and (C) the names and signatures of the officers of the Company authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder;
- (v) a good standing certificate (or its equivalent) of the Company and each of its Subsidiaries from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which each is organized;
- (vi) at least three Business Days prior to the Closing, the Closing Transaction Expenses Certificate;
- (vii) at least three Business Days prior to the Closing, the Closing Indebtedness Certificate;
- (viii) at least three Business Days prior to the Closing, the Estimated Closing Tangible Net Worth Statement contemplated in **Section 2.17(a)**;
- (ix) at least three Business Days prior to the Closing, the Consideration Spreadsheet contemplated in **Section 2.18**;

- (x) the FIRPTA Statement;
- (xi) the Non-Competition Agreements executed by each of Stephen Guthrie and Steven Meyers;
- (xii) a Key Employee Agreement in form and substance satisfactory to Parent executed by each Key Employee; and



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- (xiii) such other documents or instruments as Parent reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.
- (b) At the Closing, Parent shall deliver to the Company (or such other Person as may be specified herein) the following:
- (i) the Escrow Agreement duly executed by Parent;
- (ii) the Closing Merger Consideration in the form of the following payments:
- (A) payment to the Exchange Agent by wire transfer of immediately available funds an amount equal to the aggregate Closing Merger Consideration payable pursuant to **Section 2.08** in exchange for Shares;
- (B) payment to the Escrow Agent by wire transfer of immediately available funds the Indemnification Escrow Amount, the Purchase Price Adjustment Escrow Amount and the Stockholder Representative Expense Amount as set forth in **Section 2.11**;
- (C) payment to third parties by wire transfer of immediately available funds that amount of money due and owing from the Company to such third parties as Transaction Expenses as set forth on the Closing Transaction Expenses Certificate; and
- (D) payment to holders of outstanding Indebtedness, if any, by wire transfer of immediately available funds that amount of money due and owing from the Company to such holder of outstanding Indebtedness as set forth on the Closing Indebtedness Certificate;
- (iii) a certificate, dated the Closing Date and signed by a duly authorized officer of Parent and Merger Sub, that each of the conditions set forth in **Section 8.03(a)** and **Section 8.03(b)** have been satisfied;
- (iv) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Parent and Merger Sub certifying (A) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Parent and Merger Sub approving the Merger and authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, (B) that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby and (C) the names and signatures of the officers of



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Parent and Merger Sub authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder; and

(v) such other documents or instruments as the Company reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

**Section 2.04 Effective Time.** Subject to the provisions of this Agreement, at the Closing, the Company, Parent and Merger Sub shall cause a certificate of merger (the **Certificate of Merger** ) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the relevant provisions of the DGCL and shall make all other filings or recordings required under the DGCL. The Merger shall become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such other date or time as may be agreed by the Company and Parent in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being hereinafter referred to as the **Effective Time** ).

**Section 2.05 Effects of the Merger.** The Merger shall have the effects set forth herein and in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

**Section 2.06 Certificate of Incorporation; By-laws.** At the Effective Time, (a) the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the terms thereof or as provided by applicable Law, and (b) the by-laws of Merger Sub as in effect immediately prior to the Effective Time shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the terms thereof, the certificate of incorporation of the Surviving Corporation or as provided by applicable Law; *provided, however*, in each case, that the name of the corporation set forth therein shall be changed to the name of the Company.

**Section 2.07 Directors and Officers.** The directors and officers of Merger Sub, in each case, immediately prior to the Effective Time shall, from and after the Effective Time, be the directors and officers, respectively, of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death,

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resignation or removal in accordance with the certificate of incorporation and by-laws of the Surviving Corporation.

**Section 2.08 Effect of the Merger on Common Stock.** At the Effective Time, as a result of the Merger and without any action on the part of Parent, Merger Sub, the Company or any Stockholder:

(a) **Cancellation of Certain Company Common Stock.** Shares of Company Common Stock (the **Shares** ) that are owned by Parent, Merger Sub or the Company (as treasury stock or otherwise) or any of their respective direct or indirect wholly owned Subsidiaries shall automatically be cancelled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(b) **Conversion of Company Common Stock.** Each Share issued and outstanding immediately prior to the Effective Time (other than Shares to be cancelled and retired in accordance with **Section 2.08(a)**) shall be converted into the right to receive the Closing Per Share Merger Consideration, in cash, without interest, together with any amounts that may become payable in respect of such Share in the future from the Escrow Funds as provided in this Agreement and the Escrow Agreement or in respect of the Post-Closing Adjustment, at the respective times and subject to the contingencies specified herein and therein.

(c) **Conversion of Merger Sub Capital Stock.** Each share of common stock, par value \$0.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one newly issued, fully paid and non-assessable share of common stock of the Surviving Corporation.

**Section 2.09 Option Termination.** Prior to the Effective Time, all Optionholders elected to terminate their Options and therefore as of the Effective Time there shall be no outstanding and unexercised Options.

**Section 2.10 Surrender and Payment.**

(a) At the Effective Time, all Shares shall automatically be cancelled and retired and shall cease to exist, and, subject to **Section 2.08**, each holder of a certificate formerly representing any Shares (each, a **Certificate** ) and each holder of record of an Option (if any) shall cease to have any rights as a stockholder of the Company or a holder of Options.

(b) Prior to the Effective Time, Parent shall appoint an exchange agent reasonably acceptable to the Company (the **Exchange Agent** ) to act as the exchange agent in the Merger.

(c) As promptly as practicable following the appointment of the Exchange Agent and in any event not later than five Business Days thereafter, the Exchange Agent

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shall mail to each holder of Company Common Stock instructions for effecting the surrender of Certificates in exchange for the applicable portion of Merger Consideration pursuant to **Section 2.08(b)**. The Exchange Agent shall, no later than the later of (i) the Closing Date or (ii) five Business Days after receipt of a Certificate, and any other customary documents that the Exchange Agent may reasonably require in connection therewith, pay to the holder of such Certificate a cash amount as provided in **Section 2.08(b)** with respect to such Certificate so surrendered and the Certificate shall forthwith be cancelled. Unless otherwise provided herein, no interest shall be paid or shall accrue on any cash payable upon surrender of any Certificate. Until so surrendered, each outstanding Certificate that prior to the Effective Time represented shares of Company Common Stock shall be deemed from and after the Effective Time, for all purposes, to evidence the right to receive the portion of the Merger Consideration as provided in **Section 2.08(b)**. If after the Effective Time, any Certificate is presented to the Exchange Agent, it shall be cancelled and exchanged as provided in this **Section 2.10**.

(d) [Intentionally Omitted]

(e) Each Stockholder shall also be entitled to any amounts that may be payable in the future in respect of the Shares formerly represented by such Certificate from the Escrow Funds as provided in this Agreement and the Escrow Agreement and on account of the Post-Closing Adjustment, at the respective time and subject to the contingencies specified herein and therein. Unless otherwise provided herein, no interest shall be paid or accrued for the benefit of Stockholders on the Merger Consideration.

(f) If any portion of the Merger Consideration is to be paid to a Person other than the Person in whose name the surrendered Certificate is registered, it shall be a condition to such payment that (i) such Certificate shall be properly endorsed or shall otherwise be in proper form for transfer, and (ii) the Person requesting such payment shall pay to the Exchange Agent any transfer or other Tax required as a result of such payment to a Person other than the registered holder of such Certificate or establish to the reasonable satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(g) Any portion of the Merger Consideration that remains unclaimed by the Stockholders six months after the Effective Time shall be returned to Parent, upon demand, and any such Stockholder who has not exchanged Certificates for the Merger Consideration in accordance with this **Section 2.10** prior to that time shall thereafter look only to Parent for payment of the Merger Consideration; *provided, that* any such portion of the Merger Consideration payable from the Escrow Funds shall be held and distributed to the Persons entitled thereof in accordance with the terms of this Agreement and the Escrow Agreement, at the respective times and subject to the contingencies specified herein and therein and any portion of the Post-Closing Adjustment to which the Stockholders may become entitled shall become payable at the times and subject to the contingencies specified herein. Notwithstanding the foregoing, Parent shall not be liable to any holder of Certificates for any amounts paid to a public official pursuant to

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applicable abandoned property, escheat or similar Laws. Any amounts remaining unclaimed by Stockholders two years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Entity) shall become, to the extent permitted by applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

**Section 2.11 Escrow Funds.** In accordance with the Escrow Agreement, Parent shall deposit or cause to be deposited with the Escrow Agent:

(a) the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the **Indemnification Escrow Fund** ), to be held for the purpose of securing the indemnification obligations of the Stockholders set forth in this Agreement and the obligations pursuant to **Section 2.17(d)** and **Section 7.03** for a period of eighteen (18) months from the Closing Date after which time the Indemnification Escrow Fund shall be disbursed by Escrow Agent to the Stockholders in accordance with their Pro Rata Shares, subject, in all cases, to the terms of the Escrow Agreement; *provided, that,* subject to the terms of this Agreement, Parent's rights under this Agreement shall not be limited to the Indemnification Escrow Fund;

(b) the Purchase Price Adjustment Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the **Purchase Price Adjustment Escrow Fund** ), to be held for the purpose of securing the obligations of the Stockholders in **Section 2.17(d)**, and after the Post-Closing Adjustment has been resolved and paid, the balance, if any, of the Purchase Price Adjustment Escrow Amount shall be disbursed by Escrow Agent to the Stockholders in accordance with their Pro Rata Shares, subject, in all cases, to the terms of the Escrow Agreement; and

(c) the Stockholder Representative Expense Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the **Stockholder Representative Expense Fund** and together, with the Indemnification Escrow Fund and the Purchase Price Adjustment Escrow Fund, the **Escrow Funds** ), to be held for the purpose of funding any expenses of Stockholder Representative arising in connection with the administration of Stockholder Representative's duties in this Agreement after the Effective Time, and the Stockholder Representative Expense Fund shall be fully disbursed on or before eighteen (18) months from the Closing Date by Escrow Agent to the Stockholders in accordance with their Pro Rata Shares, unless Stockholder Representative directs the Escrow Agent in writing to retain such funds for a longer period of time, subject, in all cases, to the terms of the Escrow Agreement.

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**Section 2.12**            **No Further Ownership Rights in Company Common Stock.** All Merger Consideration paid or payable upon the surrender of Certificates in accordance with the terms hereof shall be deemed to have been paid or payable in full satisfaction of all rights pertaining to the Shares formerly represented by such Certificate, and from and after the Effective Time, there shall be no further registration of transfers of Shares on the stock transfer books of the Surviving Corporation. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Merger Consideration provided for, and in accordance with the procedures set forth, in this **Article II** and elsewhere in this Agreement.

**Section 2.13**            **Adjustments.** Without limiting the other provisions of this Agreement, if at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of the Company shall occur, including by reason of any reclassification, recapitalization, stock split (including reverse stock split) or combination, exchange or readjustment of shares, or any stock dividend or distribution paid in stock, the Merger Consideration and any other amounts payable pursuant to this Agreement shall be appropriately adjusted to reflect such change.

**Section 2.14**            **Intentionally Omitted.**

**Section 2.15**            **Withholding Rights.** Each of the Exchange Agent, Escrow Agent, Parent, Merger Sub and the Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable to any Person pursuant to this **Article II** such amounts as may be required to be deducted and withheld with respect to the making of such payment under any provision of Tax Law. To the extent that amounts are so deducted and withheld by the Exchange Agent, Escrow Agent, Parent, Merger Sub or the Surviving Corporation, as the case may be, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which the Exchange Agent, Escrow Agent, Parent, Merger Sub or the Surviving Corporation, as the case may be, made such deduction and withholding.

**Section 2.16**            **Lost Certificates.** If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, an indemnification agreement pursuant to which such Person indemnifies Parent against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall issue, in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration to be paid in respect of the Shares formerly represented by such Certificate as contemplated under this **Article II**.



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**Section 2.17 Tangible Net Worth Adjustment.**

(a) **Closing Adjustment.**

(i) At least three Business Days before the Closing, the Company shall prepare and deliver to Parent a statement setting forth its good faith estimate of Closing Tangible Net Worth (the **Estimated Closing Tangible Net Worth**), which statement shall contain an estimated balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Tangible Net Worth (the **Estimated Closing Tangible Net Worth Statement**), and a certificate of the Chief Financial Officer of the Company that the Estimated Closing Tangible Net Worth Statement was prepared in accordance with GAAP, applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Estimated Closing Tangible Net Worth Statement was being prepared and audited as of a fiscal year end.

(ii) The **Estimated Closing Adjustment** shall be an amount (which may be positive or negative) equal to:

(A) If Estimated Closing Tangible Net Worth is greater than or equal to \$4,400,000 (the **TNW Floor**) and less than or equal to \$4,900,000 (the **TNW Ceiling**), then zero;

(B) If Estimated Closing Tangible Net Worth is less than the TNW Floor, then the Estimated Closing Tangible Net Worth minus the TNW Floor; or

(C) If Estimated Closing Tangible Net Worth is greater than the TNW Ceiling, then the Estimated Closing Tangible Net Worth minus the TNW Ceiling

(iii) The Closing Merger Consideration shall be increased or decreased dollar for dollar in respect of the Estimated Closing Adjustment, as illustrated on the calculation shown on Schedule 1 attached hereto.

(b) **Post-Closing Adjustment.**

(i) Within 90 days after the Closing Date, Parent shall prepare and deliver to Stockholder Representative a statement setting forth its calculation of Closing Tangible Net Worth, which statement shall contain a balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Tangible Net Worth (the **Closing Tangible Net Worth**

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**Statement** ) and a certificate of the Chief Financial Officer of Parent that the Closing Tangible Net Worth Statement was prepared in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent

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classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end as if such Closing Tangible Net Worth Statement was being prepared and audited as of a fiscal year end.

(ii) The **Post-Closing Adjustment** shall be an amount (which may be positive or negative) equal to the Estimated Closing Adjustment multiplied by negative one (-1); plus:

(A) if the Closing Tangible Net Worth is greater than or equal to TNW Floor and less than or equal to the TNW Ceiling, then zero;

(B) If the Closing Tangible Net Worth is less than the TNW Floor, then the Closing Tangible Net Worth minus the TNW Floor; or

(C) If the Closing Tangible Net Worth is greater than the TNW Ceiling, then the Closing Tangible Net Worth minus the TNW Ceiling.

(iii) The Merger Consideration shall be increased or decreased dollar for dollar in respect of the Post-Closing Adjustment.

(c) **Examination and Review.**

(i) Examination. After receipt of the Closing Tangible Net Worth Statement, Stockholder Representative shall have 30 days (the **Review Period**) to review the Closing Tangible Net Worth Statement. During the Review Period, Stockholder Representative and its accountants shall have full access to the books and records of the Surviving Corporation, the personnel of, and work papers prepared by, Parent and/or its accountants to the extent that they relate to the Closing Tangible Net Worth Statement and to such historical financial information (to the extent in Parent's possession) relating to the Closing Tangible Net Worth Statement as Stockholder Representative may reasonably request for the purpose of reviewing the Closing Tangible Net Worth Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not interfere with the normal business operations of Parent or the Surviving Corporation.

(ii) Objection. On or prior to the last day of the Review Period, Stockholder Representative may object to the Closing Tangible Net Worth Statement by delivering to Parent a written statement setting forth its objections in reasonable detail, indicating each disputed item or amount and the basis for its disagreement therewith (the **Statement of Objections**). If Stockholder Representative fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Tangible Net Worth Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Tangible Net Worth Statement shall be deemed to have been accepted by Stockholder Representative. If Stockholder Representative delivers the Statement of



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Objections before the expiration of the Review Period, Parent and Stockholder Representative shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the **Resolution Period** ), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Tangible Net Worth Statement with such changes as may have been previously agreed in writing by Parent and Stockholder Representative, shall be final and binding.

(iii) Resolution of Disputes. If Stockholder Representative and Parent fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ( **Disputed Amounts** and any amounts not so disputed, the **Undisputed Amounts** ) shall be submitted for resolution to the office of McGladrey LLP or, if McGladrey LLP is unable to serve, Parent and Stockholder Representative shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants (the **Independent Accountant** ) who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Tangible Net Worth Statement. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Tangible Net Worth Statement and the Statement of Objections, respectively.

(iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by the Stockholder Representative (on behalf of the Stockholders), on the one hand, and by Parent, on the other hand, based upon the percentage that the amount actually contested but not awarded to the Stockholder Representative or Parent, respectively, bears to the aggregate amount actually contested by the Stockholder Representative and Parent. Any such fees and expenses payable by the Stockholder Representative shall be paid from the Stockholder Representative Expense Fund to the extent available.

(v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after their engagement, and, absent manifest error, their resolution of the Disputed Amounts and their adjustments to the Closing Tangible Net Worth Statement and/or the Post-Closing Adjustment shall be conclusive and binding upon the parties hereto.

(d) **Payment of Post-Closing Adjustment.**

(i) If the Post-Closing Adjustment is a negative number, Stockholder Representative and Parent shall, within two Business Days after the final determination of the Post-Closing Adjustment, jointly instruct the Escrow Agent to disburse from the Purchase Price Adjustment Escrow Fund by wire transfer of immediately available funds (A) to Parent, the Post-Closing Adjustment, and (B) to the Exchange Agent, for

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distribution to the Stockholders in accordance with their Pro Rata Shares, such Stockholders' aggregate Pro Rata Share of any amounts remaining in the Purchase Price Adjustment Escrow Fund. If the Post-Closing Adjustment is greater than the amount held in the Purchase Price Adjustment Escrow Fund, then Stockholder Representative and Parent shall jointly instruct the Escrow Agent to, first, disburse from the Stockholder Representative Expense Fund by wire transfer of immediately available funds to Parent the amount by which the Post-Closing Adjustment exceeds the amount in the Purchase Price Adjustment Escrow Fund (up to the amount in the Stockholder Representative Expense Fund) and, second, disburse from the Indemnification Escrow Fund by wire transfer of immediately available funds to Parent the amount by which the Post-Closing Adjustment exceeds the sum of the amounts in the Purchase Price Adjustment Escrow Fund and the Stockholder Representative Expense Fund (up to the amount in the Indemnification Escrow Fund).

(ii) If the Post-Closing Adjustment is a positive number, Parent shall, within two Business Days after the final determination of the Post-Closing Adjustment, (A) deposit with the Exchange Agent, for distribution to the Stockholders in accordance with their Pro Rata Shares, such Stockholders' aggregate Pro Rata Share of the Post-Closing Adjustment, and (B) Stockholder Representative and Parent shall jointly instruct the Escrow Agent to disburse from the Purchase Price Adjustment Escrow Fund by wire transfer of immediately available funds to the Exchange Agent, for distribution to the Stockholders in accordance with their Pro Rata Shares, such Stockholders' aggregate Pro Rata Share of the Purchase Price Adjustment Escrow Fund.

(iii) The amount of any Post-Closing Adjustment shall bear interest from and including the Closing Date to but excluding the date of payment at a rate per annum equal to the rate of interest from time to time announced publicly by Bank of America as its prime rate, plus 3%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.

(e) **Adjustments for Tax Purposes.** Any payments made pursuant to **Section 2.17** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

**Section 2.18**                      **Consideration Spreadsheet.**

(a) At least three Business Days before the Closing and concurrently with the delivery of the Estimated Closing Tangible Net Worth Statement, the Company shall prepare and deliver to Parent a spreadsheet (the **Consideration Spreadsheet**), certified by the Chief Executive Officer of the Company, which shall set forth, as of the Closing Date and immediately prior to the Effective Time, the following:

(i) the names and addresses of all Stockholders and the number of shares of Company Common Stock held by such Persons;

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- (ii) detailed calculations of the Closing Merger Consideration, Fully Diluted Share Number and Closing Per Share Merger Consideration;
  - (iii) each Stockholder's Pro Rata Share (as a percentage interest and the interest in dollar terms) of the Closing Merger Consideration; and
  - (iv) each Stockholder's Pro Rata Share (as a percentage interest and the interest in dollar terms) of the amount to be contributed to the Escrow Funds.
- (b) The parties agree that Parent and Merger Sub shall be entitled to rely on the Consideration Spreadsheet in making payments under **Article II** and Parent and Merger Sub shall not be responsible for the calculations or the determinations regarding such calculations in such Consideration Spreadsheet.

**ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

Except as set forth in the correspondingly numbered Section of the Company Disclosure Letter, the Company represents and warrants to Parent that the statements contained in this **Article III** are true and correct as of the date hereof.

**Section 3.01 Organization and Qualification of the Company.** The Company is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. **Section 3.01** of the Company Disclosure Letter sets forth each jurisdiction in which the Company is licensed or qualified to do business, and the Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary, except where the failure to be so qualified, authorized or in good standing would not have a Material Adverse Effect. The Company has provided to Parent true, correct and complete copies of the certificate of incorporation and by-laws of the Company, each as in effect on the date hereof.

**Section 3.02 Authority; Board Approval.**

(a) The Company has full corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Documents to which it is a party and to consummate the transactions contemplated hereby and thereby, subject to, in the case of the consummation of the Merger, adoption of this Agreement by the affirmative vote or consent of Stockholders representing a majority of the outstanding Shares ( **Requisite Company Vote** ). The execution, delivery and performance by the Company of this Agreement and any Ancillary Document to which it is a party and the





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consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution, delivery and performance of this Agreement or the Ancillary Documents to which it is a party or to consummate the Merger and the other transactions contemplated hereby and thereby, subject only, in the case of consummation of the Merger, to the receipt of the Requisite Company Vote. The Requisite Company Vote is the only vote or consent of the holders of any class or series of the Company's capital stock required to approve and adopt this Agreement and the Ancillary Documents, approve the Merger and consummate the Merger and the other transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company, and (assuming due authorization, execution and delivery by each other party hereto) this Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other Laws affecting the enforcement of creditors' rights in general, and except that the enforceability of this Agreement is subject to general principles of equity (regardless of whether such enforceability is considered in a legal proceeding in equity or at Law). When each Ancillary Document to which the Company is or will be a party has been duly executed and delivered by the Company (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of the Company enforceable against it in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other Laws affecting the enforcement of creditors' rights in general, and except that the enforceability of this Agreement is subject to general principles of equity (regardless of whether such enforceability is considered in a legal proceeding in equity or at Law).

(b) The Company Board, by resolutions duly adopted by unanimous vote at a meeting of all directors of the Company duly called and held and, as of the date hereof, not subsequently rescinded or modified in any way, has, as of the date hereof (i) determined that this Agreement and the transactions contemplated hereby, including the Merger, are fair to, and in the best interests of, the Stockholders, (ii) approved and declared advisable the agreement of merger (as such term is used in Section 251 of the DGCL) contained in this Agreement and the transactions contemplated by this Agreement, including the Merger, in accordance with the DGCL, (iii) directed that the agreement of merger contained in this Agreement be submitted to the Stockholders for adoption, and (iv) resolved to recommend that the Stockholders adopt the agreement of merger set forth in this Agreement (collectively, the **Company Board Recommendation**) and directed that such matter be submitted for consideration of the Stockholders at a special meeting of the Stockholders or through written consent in accordance with Sections 2.07 and 2.09 of the by-laws of the Company. The Company has delivered to Parent true and correct copies of all resolutions or actions by written

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consent of the Company Board relating to this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby.

**Section 3.03            No Conflicts; Consents.**

(a)            The execution, delivery and performance by the Company of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, including the Merger, do not and will not: (i) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Company ( **Company Charter Documents** ) or those of any of its Subsidiaries; (ii) conflict with or result in a material violation or material breach of any provision of any Law or Governmental Order applicable to the Company or any of its Subsidiaries; (iii) except as set forth in **Section 3.03(a)** of the Company Disclosure Letter, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Material Contract (or group of like Contracts which, when considered in the aggregate, are material to the Company or any of its Subsidiaries) to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company or any of its Subsidiaries; or (iv) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company or any of its Subsidiaries.

(b)            Except as set forth in **Section 3.03(b)** of the Company Disclosure Letter, no consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to the Company or any of its Subsidiaries in connection with the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for the filing of the Certificate of Merger with the Secretary of State of Delaware.

**Section 3.04            Capitalization.**

(a)            The authorized capital stock of the Company consists of 300,000 Shares, of which 273,985 Shares are issued and outstanding as of the close of business on the date of this Agreement. Other than the Company Common Stock, the Company has no other classes or series of capital stock authorized, issued or outstanding.

(b)            **Section 3.04(b)** of the Company Disclosure Letter sets forth, as of the date hereof, (i) the name of each Person that is the registered owner of any Shares and the number of Shares owned by such Person, and (ii) a list of all holders of outstanding

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Options, including the number of Shares subject to each such Option, the grant date, exercise price and vesting schedule for such Option, the extent to which such Option is vested and exercisable and the date on which such Option expires. Each Option was granted in compliance in all material respects with all applicable Laws and all of the terms and conditions of the Stock Option Plan pursuant to which it was issued. Each Option was granted with an exercise price per share equal to or greater than the fair market value of the underlying shares on the date of grant and has a grant date identical to the date on which the Company Board or compensation committee actually awarded the Option. To Company's Knowledge, each Option qualifies for the tax and accounting treatment afforded to such Option in the Company's tax returns and the Company's financial statements, respectively, and does not trigger any liability for the Optionholder under Section 409A of the Code. The Company has heretofore provided or made available to Parent (or Parent's Representatives) true and complete copies of the standard form of option agreement and any stock option agreements that differ from such standard form.

(c) Except for Options to purchase 11,263 shares of Company Common Stock which had been granted to employees, consultants or directors pursuant to the Stock Option Plan (which will be cancelled prior to the Effective Time), but as of the date hereof have been canceled, and a reservation of an additional 14,752 shares of Company Common Stock for direct issuances or purchase upon exercise of Options to be granted in the future, under the Stock Option Plan, (i) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of the Company is authorized or outstanding, (ii) there is no commitment by the Company to issue shares, subscriptions, warrants, options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right and (iii) there are no Shares of Company capital stock held in treasury. There are no declared or accrued unpaid dividends with respect to any shares of Company Common Stock.

(d) All issued and outstanding shares of Company Common Stock are (i) duly authorized, validly issued, fully paid and non-assessable; (ii) not subject to any preemptive rights created by statute, the Company Charter Documents or any agreement to which the Company is a party; and (iii) free of any Encumbrances created by the Company in respect thereof. All issued and outstanding shares of Company Common Stock and Options were issued in compliance with applicable Law.

(e) No outstanding Company Common Stock is subject to vesting or forfeiture rights or repurchase by the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to the Company or any of its securities.

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(f) All distributions, dividends, repurchases and redemptions of the capital stock (or other equity interests) of the Company were undertaken in compliance with the Company Charter Documents then in effect, any agreement to which the Company then was a party and in compliance with applicable Law.

(g) There are no voting trusts, shareholder agreements, proxies or other restrictions that restrict, limit or govern the voting, sale or other disposition of any shares of Company Common Stock. No Person has any right of first offer or right of first refusal in connection with any future offer, sale or issuance of capital stock of the Company. The Company has no authorized or outstanding bonds, debentures, notes or other indebtedness the holders of which have the right to vote (or are convertible into, exchangeable for or evidencing the right to subscribe for or acquire securities having the right to vote) with the Stockholders on any matter.

**Section 3.05 Subsidiaries.**

(a) **Section 3.05(a)** of the Company Disclosure Letter sets forth the names of each Subsidiary of the Company and shows for each such Subsidiary: (i) its jurisdiction of organization; (ii) the authorized and outstanding capital stock or other equity securities of each such Subsidiary; and (iii) the identity of and number of shares of such capital stock or other equity securities owned of record by each holder thereof. Except as set forth on **Section 3.05(a)** of the Company Disclosure Letter, (x) the Company has no Subsidiaries and (y) the Company does not own any capital stock or other equity securities of any other Person.

(b) Each Subsidiary of the Company is duly organized, validly existing and in good standing in its jurisdiction of organization, with all requisite corporate or other similar power to own, lease and operate its property and to carry on its business as now being conducted.

(c) Each such Subsidiary is duly qualified and/or licensed to do business and is in good standing as a foreign corporation or limited liability company in each jurisdiction in which the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not, individually or in the aggregate, reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

(d) All of the issued and outstanding shares of capital stock or other equity securities of each Subsidiary of the Company are duly authorized, validly issued, fully paid and non-assessable and free of any preemptive rights with respect thereto and free and clear of any Encumbrances. Except as described on **Section 3.05(d)** of the Company Disclosure Letter, (i) no subscription, warrant, option, convertible or exchangeable security, or other right (contingent or otherwise) to purchase or otherwise acquire equity securities of any Subsidiary of the Company is authorized or outstanding, (ii) there is no commitment by any Subsidiary of the Company to issue shares, subscriptions, warrants,

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options, convertible or exchangeable securities, or other such rights or to distribute to holders of any of its equity securities any evidence of indebtedness or asset, to repurchase or redeem any securities of any Subsidiary of the Company or to grant, extend, accelerate the vesting of, change the price of, or otherwise amend any warrant, option, convertible or exchangeable security or other such right and (iii) there are no shares of capital stock or other equity securities of any Subsidiary of the Company (collectively, **Subsidiary Securities** ) held in treasury. There are no declared or accrued unpaid dividends with respect to any Subsidiary Securities. There are no Contracts relating to the grant, issuance, repurchase, redemption or other acquisition by any Subsidiary of the Company of any Subsidiary Securities. There are no voting trusts, shareholder agreements, proxies or other restrictions that restrict, limit or govern the voting, sale or other disposition of any Subsidiary Securities. No Person has any right of first offer, right of first refusal or preemptive right in connection with any future offer, sale or issuance of any Subsidiary Securities. No Subsidiary of the Company has any authorized or outstanding bonds, debentures, notes or other indebtedness the holders of which have the right to vote (or are convertible into, exchangeable for or evidencing the right to subscribe for or acquire securities having the right to vote) with the holders of any Subsidiary Securities on any matter. All Subsidiary Securities were issued in compliance with applicable Law.

(e) No outstanding Subsidiary Securities are subject to vesting or forfeiture rights or repurchase by any Subsidiary of the Company. There are no outstanding or authorized stock appreciation, dividend equivalent, phantom stock, profit participation or other similar rights with respect to any Subsidiary of the Company or any Subsidiary Securities.

(f) All distributions, dividends, repurchases and redemptions of the Subsidiary Securities were undertaken in compliance with the organizational documents of the applicable Subsidiary of the Company then in effect, any agreement to which the applicable Subsidiary of the Company then was a party and in compliance with applicable Law.

(g) None of the Company and its Subsidiaries is obligated to make any investment in or capital contribution to any Person.

(h) The Company has provided to Parent true, correct and complete copies of the certificate of incorporation, by-laws or other applicable organizational documents of each Subsidiary of the Company, each as in effect on the date hereof.

**Section 3.06 Financial Statements.** Complete copies of the Company's audited financial statements consisting of the balance sheet of the Company as of December 31 in each of the years 2012, 2013 and 2014 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the **Audited Financial Statements** and sometimes hereinafter referred to as , the **Financial Statements** ) have been provided by Company to Parent. The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis

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throughout the period involved. The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company and its Subsidiaries as of the respective dates they were prepared and the results of the operations of the Company and its Subsidiaries for the periods indicated. The balance sheet of the Company as of December 31, 2014 is referred to herein as the **Balance Sheet** and the date thereof as the **Balance Sheet Date**. The Company and its Subsidiaries maintain a standard system of accounting established and administered in accordance with GAAP. The Company and its Subsidiaries have established and maintain a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act) sufficient to provide reasonable assurance (i) regarding the reliability of the Company's and its Subsidiaries' financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, (ii) that receipts and expenditures of the Company and its Subsidiaries are being made only in accordance with the authorization of the Company's and its Subsidiaries' management and directors, and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of the Company's and its Subsidiaries' assets that could have a material effect on the Financial Statements.

**Section 3.07 Undisclosed Liabilities.** Except as set forth in **Section 3.07** in the Company Disclosure Letter, neither the Company nor any of its Subsidiaries has any liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise (**Liabilities**), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount, and (c) those which would not be reflected or reserved against the Balance Sheet as determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end.

**Section 3.08 Absence of Certain Changes, Events and Conditions.** Except as set forth on **Section 3.08** of the Company Disclosure Letter, since the Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company or its Subsidiaries, any:

- (a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) amendment of the charter, by-laws or other organizational documents of the Company or any of its Subsidiaries;
- (c) split, combination or reclassification of any shares of capital stock;

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(d) issuance, sale or other disposition of any capital stock (other than in connection with the termination of Options outstanding prior to the date of this Agreement), or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;

(e) declaration or payment of any dividends or distributions on or in respect of any capital stock or redemption, purchase or acquisition of capital stock;

(f) material change in any method of accounting or accounting practice, except as required by GAAP or as disclosed in the notes to the Financial Statements;

(g) material change in the Company's or any of its Subsidiaries' cash management practices and policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(h) entry into any Contract that would constitute a Material Contract;

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