VERAMARK TECHNOLOGIES INC
Form SC 14D9
June 17, 2013
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

(Rule 14d-101)

Solicitation/Recommendation Statement

Under Section 14(d)(4) of the Securities Exchange Act of 1934

VERAMARK TECHNOLOGIES, INC.

(Name of Subject Company)

VERAMARK TECHNOLOGIES, INC.

(Name of Person Filing Statement)

Common Stock, par value $0.10 per share

(Title of Class of Securities)

923351100

(CUSIP Number of Class of Securities)

Anthony C. Mazzullo

President & Chief Executive Officer

Veramark Technologies, Inc.

1565 Jefferson Rd, Suite 120

Rochester, New York 14623

(585) 381-6000

(Name, address and telephone number of person authorized to receive Notices and communications

on behalf of the persons filing statement)

With copies to:

Thomas R. Anderson, Esq.

Daniel R. Kinel, Esq.

John D. Callan Jr., Esq.

Harter Secrest & Emery LLP

1600 Bausch & Lomb Place

Rochester, New York 14604

(585) 232-6500

¨ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

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Item 1. Subject Company Information
Name and Address.

The name of the subject company to which this Solicitation/Recommendation Statement on Schedule 14D-9 (together with the attached exhibits, the Schedule 14D-9) relates is Veramark Technologies, Inc., a Delaware corporation (Veramark or the Company). The address and telephone number of the Company s principal executive office is 1565 Jefferson Road, Suite 120, Rochester, New York 14623 and (585) 381-6000.

Securities.

The title of the class of equity securities to which this Schedule 14D-9 relates is the Company s common stock, par value $0.10 per share (the Shares). As of June 13, 2013, there were 10,845,111 Shares issued and outstanding and an additional 6,000,000 Shares reserved for issuance under the Company s equity compensation plans. 1,347,208 of such Shares were issuable upon the exercise of outstanding options or the vesting of stock awards, granted pursuant to such plans, of which 41,000 Shares are not issuable in connection with the Merger because the applicable option exercise price exceeds the Offer Price.

Item 2. Identity and Background of Filing Person
Name and Address.

The name, business address and business telephone number of the Company, which is both the person filing this Schedule 14D-9 and the subject company, are set forth above under the heading, *Name and Address* in Item 1, which information is incorporated by reference herein. The company maintains a website at www.veramark.com. The website address is provided as an inactive textual reference only and the website and the information on or connected to the website are not a part of this Schedule 14D-9 and are not incorporated herein by reference.

Business and Background of the Company s Directors and Executive Officers.

The name, age, principal business address, principal occupation and business experience during the past five years of each of the Company s directors and executive officers is set forth in Annex A hereto. Each such person has not been convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors) and has not been a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining such person from future violations of, or prohibiting activities subject to, U.S. federal or state securities laws, or a finding of any violation of U.S. federal or state securities laws.

Tender Offer and Merger.

This Schedule 14D-9 relates to the tender offer (the Offer) by Hubspoke Holdings, Inc., a Delaware corporation (Parent), TEM Holdings, Inc. (Merger Sub) a Delaware corporation and a wholly-owned subsidiary of Hubspoke and Clearlake Capital Partners II, L.P. (Clearlake L.P.), an affiliate of each of Parent and Merger Sub, to purchase all of the issued and outstanding Shares at a price per Share equal to $1.18, subject to any required withholding of taxes (the Offer Price), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated June 17, 2013 (as amended or supplemented from time to time, the Offer to Purchase), and in the related Letter of Transmittal (as amended or supplemented from time to time, the Letter of Transmittal). The Offer is described more fully in a Tender Offer Statement on Schedule TO (as amended or supplemented from time to time and, together with the exhibits thereto (including the Offer to Purchase), the Schedule TO), filed by Merger Sub, Parent and Clearlake L.P. with the Securities and Exchange Commission (the SEC) on June 17, 2013. The Offer to Purchase and Letter of Transmittal are filed as Exhibits (a)(1)(A) and (a)(1)(B) to this Schedule 14D-9, respectively, and are incorporated herein by reference.

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The Offer is being made pursuant to an Agreement and Plan of Merger, dated as of June 11, 2013, among the Company, Parent and Merger Sub (as such agreement may be amended from time to time, the Merger Agreement). Following the consummation of the Offer and subject to the terms and conditions set forth in the Merger Agreement, Merger Sub will merge with and into the Company, with the Company surviving (the Surviving Company) as a wholly-owned subsidiary of Parent (the Merger and, together with the Offer and the other transactions contemplated by the Merger Agreement, the Transactions). The closing of the Merger is subject to approval of the Merger by the holders of a majority of the outstanding Shares. However, the parties have agreed that if, after the purchase of the Shares tendered in the Offer and after giving effect to any Shares purchased pursuant to a top-up option, Parent, Merger Sub and their respective subsidiaries own at least 90% of the number of Shares then issued and outstanding (the 90% Requirement), then, following the satisfaction or waiver of the other conditions to the closing of the Merger, Parent will effect a short-form merger pursuant to applicable provisions of the Delaware General Corporation Law (the DGCL) that will not require the consent of the Company s stockholders. At the effective time of the Merger (the Effective Time), each issued and outstanding Share (other than Shares held by the Company or owned by Merger Sub, Parent or any wholly-owned subsidiary of Parent or the Company, or held by stockholders who are entitled to demand, and who properly demand, appraisal of such shares pursuant to, and who complies in all respects with Section 262 of the DGCL) that is not tendered pursuant to the Offer will be converted into the right to receive an amount equal to the Offer Price, without interest, subject to any required withholding of taxes.

Merger Sub commenced (within the meaning of Rule 14d-2 promulgated under the Securities Exchange Act of 1934, as amended (the Exchange Act)), the Offer on June 17, 2013. Subject to the terms and conditions of the Merger Agreement and the Offer, which allow for limited extensions, the Offer will expire at midnight, Rochester, New York time, on July 15, 2013, the date that is 20 business days (for this purpose calculated in accordance with Rules 14d-1(g)(3) and 14d-2 promulgated under the Exchange Act) following commencement of the Offer.

The foregoing summary of the Offer, the Merger and the Merger Agreement is qualified in its entirety by the description contained in the Offer to Purchase and the Letter of Transmittal and the Merger Agreement. A copy of the Merger Agreement is filed as Exhibit (e)(1) to this Schedule 14D-9 and is incorporated herein by reference. The Merger Agreement has been included as an exhibit to the Schedule 14D-9 to provide information regarding its terms. It is not intended to modify or supplement any factual disclosures about the Company, Parent or Merger Sub in any public reports filed with the SEC by the Company, Parent Clearlake L.P. or Merger Sub. In particular, the assertions embodied in the representations, warranties and covenants contained in the Merger Agreement were made only for purposes of the Merger Agreement and as of specified dates, were solely for the benefit of the parties to the Merger Agreement, and are subject to the limitations agreed upon by the parties to the Merger Agreement, including being qualified by confidential disclosure schedules provided by the Company to Parent and Merger Sub in connection with the execution of the Merger Agreement. These disclosure schedules contain information that modifies, qualifies and creates exceptions to the representation and warranties set forth in the Merger Agreement. Moreover, certain representation and warranties in the Merger Agreement have been made for the purposes of allocating risk between the parties to the Merger Agreement instead of establishing matters of fact. Accordingly, the representations and warranties in the Merger Agreement may not constitute the actual state of facts about the Company, Parent or Merger Sub. The representations and warranties set forth in the Merger Agreement may also be subject to a contractual standard of materiality different from that generally applicable under federal securities laws. Investors are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties or covenants, or any descriptions thereof, as characterizations of the actual state of facts or the actual condition of the Company, Parent or Merger Sub or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company s public disclosures.

As set forth in the Schedule TO, the principal executive offices of Parent and Merger Sub are located at 379 Thornall Street, 10th Floor, Edison, New Jersey 08837, and the principal executive offices of Clearlake L.P. are 233 Wilshire Blvd., Suite 800, Santa Monica, CA 90401.

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The information relating to the Offer, including the Schedule TO, this Schedule 14D-9 and related documents can be obtained without charge from the SEC s website at www.sec.gov.

The Company does not take any responsibility for the accuracy or completeness of any information described or referenced herein that is contained in the Schedule TO and related documents, including information concerning Parent, Merger Sub or Clearlake L.P., their respective officers or directors or any failure by Parent, Clearlake L.P. or Merger Sub to disclose events or circumstances that may have occurred and may affect the accuracy or completeness of such information.

Item 3. Past Contacts, Transactions, Negotiations and Agreements
Arrangements with Parent and its Executive Officers, Directors and Affiliates.

Ownership of Shares

According to the Offer to Purchase, as of June 13, 2013, neither Parent, Merger Sub, Clearlake L.P. nor any of their affiliates currently own any Shares.

Interest in the Offer and the Merger

The interest of Parent and its affiliates in respect of the Offer and the Merger are different from the interests of the Company s stockholders because Parent has an interest in acquiring Shares at the lowest possible price, whereas the Company s stockholders have an interest in selling their Shares for the highest possible price. Certain of the Company s executive officers and directors may have financial interests and inducements related to the transactions contemplated by the Merger Agreement, including the Offer and the Merger, that are different from, or in addition to, the interests of holders of Shares generally. The Company s Board of Directors (the Board) was aware of these potentially differing interests and inducements and considered them, among other matters, in evaluation and negotiating the Merger Agreement and in reaching its decision to approve the Merger Agreement and the transactions contemplated thereby, as more fully discussed below in *Item 4 The Solicitation or Recommendation*.

In addition, while the public stockholders of the Company will cease to have any interest in the Company after they sell their Shares in the Offer or after their Shares are converted in the Merger, Parent will benefit from any future increases in the value of the Company and bear the risks of any future decreases in the value of the Company.

Plans for the Company

The Merger Agreement provides that, following the consummation of the Offer and subject to the conditions set forth in the Merger Agreement, Merger Sub will be merged with and into the Company and that, following the Merger and until thereafter amended, Merger Sub s certificate of incorporation as in effect immediately prior to the Effective Time will be the certificate of incorporation of the Surviving Company and at the Effective Time Merger Sub s bylaws will be the bylaws of the Surviving Company until thereafter amended. Merger Sub s directors immediately prior to the Effective Time will become the only directors of the Surviving Company at the Effective Time and Merger Sub s officers at such time will become the only officers of the Surviving Company.

According to the Schedule TO, Parent, Clearlake L.P. and Merger Sub intend to continue to evaluate the business and operations of the Company during the pendency of the Offer and the Merger and will take such actions as it deems appropriate under the circumstances then existing. Thereafter, Parent, Clearlake L.P. and Merger Sub intend to review such information as part of a comprehensive review of the Company s business, operations, capitalization and management with a view to optimizing development of the Company s potential in conjunction with Parent s existing businesses. Parent, Clearlake L.P. and Merger Sub expect that all aspects of the Company s business will be fully integrated into Parent. However, plans may change based on further

analysis including changes in the Company s business, corporate structure, charter, bylaws, capitalization, board of directors, management, officers, indebtedness or dividend policy, although, except as disclosed in the Offer to Purchase, Parent, Clearlake L.P. and Merger Sub have no current plans with respect to any of such matters.

Except as described in the Offer to Purchase, neither Parent, Clearlake L.P. nor Merger Sub has any present plans or proposals that would relate to or result in (i) any extraordinary transaction involving the Company or any of its subsidiaries (such as a merger, reorganization or liquidation), (ii) any purchase, sale or transfer of a material amount of assets of the Company or any of its subsidiaries, (iii) any change in the Board or management of the Company, (iv) any material change in the Company s capitalization or dividend rate or policy or indebtedness, (v) any other material change in the Company s corporate structure or business, (vi) any class of equity securities of the Company being delisted from a national securities exchange or ceasing to be authorized to be quoted in an automated quotation system operated by a national securities association, or (vii) any class of equity securities of the Company becoming eligible for termination of registration pursuant to Section 12(g) of the Exchange Act.

The foregoing summary description of Parent s, Clearlake L.P. s and Merger Sub s plans for the Company is qualified in its entirety by reference to the Schedule TO. We strongly urge you to review the Schedule TO and all attached materials.

Merger Agreement

The summary of the Merger Agreement contained in *Section 11. The Merger Agreement; Other Agreement* of the Offer to Purchase and the description of the terms and conditions of the Offer contained in *Section 1. Terms of the Offer* of the Offer to Purchase are incorporated herein by reference. A copy of the Merger Agreement is filed as Exhibit (e)(1) to this Schedule 14D-9 and Exhibit (d)(1) to the Schedule TO and is incorporated herein by reference. Any reference to provision of the Merger Agreement contained herein are qualified in their entirety by the provisions of the Merger Agreement.

Non-Disclosure Agreement

The Company and Clearlake Capital Group, L.P. (Clearlake), an affiliate of Clearlake L.P., which is the sole beneficial owner of Parent, entered into a Mutual Non-Disclosure Agreement, effective as of May 8, 2013, as amended by an Amendment, dated May 24, 2013 (collectively, the Non-Disclosure Agreement). Pursuant to the Non-Disclosure Agreement, subject to certain exceptions, the Company and Clearlake agreed to keep confidential all information regarding the other party pertaining to all information that is furnished by or on behalf of a party to or for the other party, whether in written, oral, electronic, Web site-based or other form, and any copies, reports, analyses, compilations or studies that contain, otherwise reflect or are generated from such information (Confidential Information). For purposes of the Non-Disclosure Agreement, Confidential Information includes, but is not limited to, customer and vendor-related data, services and support information and information about products, architectures, software, strategies, plans, techniques, drawings, designs, specifications, technical or know-how data, research and developments, ideas, trade secrets, inventions, and patent disclosures that may be disclosed between the parties and the existence or terms of any non-binding proposal provided by Clearlake to the Company.

Clearlake also agreed under the Non-Disclosure Agreement not to, either directly or indirectly, solicit any employee of the Company to terminate his, her or its relationship with the Company. This provision of the Non-Disclosure Agreement does not, however, prohibit Clearlake from hiring an employee of the Company who (i) applies for a position with Clearlake or its affiliates without any specific solicitation or as a result of general solicitation via advertisements for employment or searches not specifically direct towards employees of the Company; (ii) is hired by a portfolio company of Clearlake without the knowledge of, direction or encouragement of Clearlake; or (iii) is terminated by the Company. As an affiliated entity of Clearlake, Parent and Merger Sub are subject to all of the obligations and restrictions contained in the Non-Disclosure Agreement.

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The foregoing summary description of the Non-Disclosure Agreement is qualified in its entirety by reference to the Non-Disclosure Agreement and the Amendment thereto, copies of which are filed as Exhibits (d)(3)(i) and (d)(3)(ii), respectively, to the Schedule TO and are incorporated herein by reference.

Tender and Support Agreements

In order to induce Parent to enter into the Merger Agreement, Parent and Merger Sub entered into a Tender and Support Agreement dated June 15, 2013 (the Tender and Support Agreements) with each of the Company s directors and Ronald C. Lundy, Senior Vice President of Finance and Chief Financial Officer of the Company (each a Stockholder and, collectively, the Stockholders). The Stockholders hold, beneficially or of record, approximately 464,405 outstanding Shares in the aggregate, which represents approximately 4.3% of the Shares issued and outstanding. The Stockholders also hold options to purchase 393,500 Shares (of which 20,000 are at an exercise price in excess of $1.18). The Stockholders entered into the Tender and Support Agreements solely in their capacities as stockholders of the Company.

Pursuant to the Tender and Support Agreements, the Stockholders have agreed, among other things, to: (i) tender their Shares in the Offer; (ii) vote their Shares in favor of the Merger, and (iii) vote their Shares against any alternative acquisition proposal, all on the terms and subject to the conditions set forth in the Tender and Support Agreements. The Tender and Support Agreements will each terminate if the Merger Agreement is also terminated, and each provide an exclusion for actions taken in each persons exercise of his fiduciary obligations. The Company is not party to the Tender and Support Agreements.

The foregoing summary description of the Tender and Support Agreements is qualified in its entirety by reference to the Form of Tender and Voting Agreement, a copy of which is filed as Exhibit (e)(3) to the Schedule TO and is incorporated herein by reference.

Arrangements between the Company and its Executive Officers, Directors and Affiliates.

Security Ownership, Compensation and Other Arrangements

Certain contracts, agreements, arrangements and understandings between the Company and its executive officers, directors and affiliates are described in Amendment No. 1 to the Company s Annual Report on Form 10-K/A for the Fiscal Year Ended December 31, 2012 in the following sections of Item 11 Executive Compensation : Summary Compensation Table, Employment Agreements, Stock Options, Outstanding Equity Awards at Fiscal Year End, Retirement Benefits, Potential Payments upon Termination of Change in Control, Director Compensation, and Item 12 Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters, each of which is attached as Exhibit (e)(4) to this Schedule 14D-9 and incorporated herein by reference. Such contracts, agreements, arrangements and understandings are also described in the Information Statement attached to this Schedule 14D-9 as Annex A, which is incorporated herein by reference.

In addition, certain of the Company s executive officers and directors may be deemed to have certain interest in the Offer, the Merger or the other Transactions that may be different from or in addition to those of the Company s stockholders generally. Those interests may create potential conflicts of interest. The Special Committee was aware of those interests and considered them, among other matters, in reaching its decision to approve the Merger Agreement and the Transactions.

Consideration for Shares Tendered Pursuant to the Offer

If the directors and executive officers of the Company who own Shares tender their Shares for purchase pursuant to the Offer, they will receive the same Offer Price on the same terms and conditions as the other stockholders of the Company. As of June 13, 2013, the directors and executive officers of the Company and their affiliates hold, beneficially or of record, approximately 658,227 Shares in the aggregate, excluding stock options. If the directors, executive officers and their affiliates were to tender all of their Shares pursuant to the Offer and those Shares were accepted for purchase and purchased by Merger Sub, the directors, executive officers and their affiliates would receive an aggregate of $776,707.86 in cash, subject to any required withholding of taxes.

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The following table sets forth, as of June 13, 2013, the cash consideration that each executive officer, director and his or her affiliates would be entitled to receive in respect of his, her or its outstanding Shares, assuming such individual were to tender all of his or her outstanding Shares pursuant to the Offer and those Shares were accepted for purchase and purchased by Merger Sub.

Name	Total Number of Shares	Consideration Payable in Respect of Shares (in $)
Joshua B. Bouk	82,600	97,468
Ronald J. Casciano	0	0
Seth J. Collins	90,000	106,200
Charles A. Constantino	15,000	17,700
Steve M. Dubnik	0	0
John E. Gould	48,000	56,640
Ronald C. Lundy	87,283	102,994
Anthony C. Mazzullo	224,122	264,464
Thomas W. McAlees	111,222	131,242

Effect of the Merger on Stock Options

The Merger Agreement provides that, at the Effective Time, each option to acquire Shares (each, an Option) that is outstanding immediately prior to the Effective Time, whether or not then vested or exercisable, will be cancelled and converted into the right to receive from Parent and the Surviving Company, as promptly as reasonably practicable after the Effective Time, an amount in cash, without interest, equal to the product of (i) the aggregate number of Shares subject to such Option, multiplied by (ii) the excess, if any, of the Offer Price over the per share exercise price under such Option, subject to any required withholding of taxes.

The table below sets forth information regarding the vested and unvested stock options held by the Company s directors and executive officers as of June 13, 2013:

Name	Number of Shares Underlying Options	Exercise Price/Share (in $)	Consideration Payable in Respect of Shares (in $)
Joshua B. Bouk	50,000	0.71	23,500
Ronald J. Casciano	10,000	0.49	6,900
	2,500	0.40	1,950
Seth J. Collins	10,000	0.65	5,300
	2,500	0.61	1,425
	2,500	0.40	1,950
Charles A. Constantino	10,000	1.53	0
	15,000	0.52	9,900
	2,500	0.61	1,425
	2,500	0.40	1,950
Steve M. Dubnik	10,000	0.50	6,800
	2,500	0.61	1,425

	2,500	0.40	1,950
John E. Gould	10,000	1.53	0
	25,000	0.52	16,500
	2,500	0.61	1,425
	2,500	0.40	1,950
Ronald C. Lundy	9,000	0.78	3,600
	15,000	0.78	6,000
Anthony C. Mazzullo	12,000	0.50	8,160
	95,000	0.63	52,250
	50,000	0.45	36,500
Thomas W. McAlees	50,000	0.71	23,500

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Effect of the Merger on Restricted Shares

Pursuant to the terms of the Merger Agreement, at the effective time of the Merger each restricted share, whether or not then vested or exercisable, will be cancelled and converted into the right to receive an amount in cash equal to the Offer Price multiplied by the applicable number of shares, subject to any required withholding of taxes. As of June 13, 2013, there were no outstanding restricted shares though 18,000 shares of restricted stock are to be issued pursuant to certain arrangements in place with an employee.

Continuing Employees

The Merger Agreement provides that to the extent that any of the individuals employed by the Company immediately prior to the Effective Time (each, a Company Employee) will participate in any employee benefit plan, arrangement or policy maintained by Parent or any of its subsidiaries following the Effective Time: (i) such Company Employee will receive credit for all purposes (other than accrual of benefits under a defined benefit pension plan) for service with the Company, (ii) with respect to medical, dental, vision or other health benefits or disability or life insurance benefits, Parent and its subsidiaries will use their best efforts to cause any and all pre-existing conditions limitations, waiting periods and evidence of insurability requirements to be waived with respect to such Company Employees and eligible dependents, (iii) Parent and its subsidiaries will use their commercially reasonable efforts to provide credit for any co-payments, deductible payments, premium amounts and similar payments or expenses incurred by the Company Employees in the plan year that includes the Effective Time.

Pursuant to the Merger Agreement, for the twelve month period immediately following the Effective Time, Parent will cause the Surviving Company to provide to each Company Employee who remains employed by the Surviving Company substantially similar compensation and for the remainder of the current benefit year employee benefits as those in effect for each such Company Employee as of immediately prior to the Effective Time. Additionally, the Surviving Company will not relocate any Company Employee outside of a reasonable commuting distance from the Company Employee s home for at least twelve months after the Effective Time. Further, if Parent or its subsidiaries terminates the employment of any Company Employee (other than an employee who is already entitled to severance under a separate arrangement with the Company) within six months after the Effective time other than for cause or due to the death or disability of an employee, Parent and its subsidiaries will pay such Company Employee a lump sum amount representing the balance of the salary such Company Employee would have received in the six month period following the Effective Time, and any severance that the Company Employee would have received in accordance with the Company s past practices. No Company Employee who is entitled to severance under a separate arrangement will be entitled to receive the foregoing described severance and, instead, will receive only the benefits to which he or she is entitled under such arrangement.

The foregoing summary is qualified in its entirety by reference to the Merger Agreement, which is filed as Exhibit (e)(1) to this Schedule 14D-9 and is incorporated herein by reference. See also *Merger Agreement* above.

Employment and Related Arrangements

Anthony C. Mazzullo The Company has an employment agreement with Anthony C. Mazzullo to serve as its President and Chief Executive Officer of the Company. The initial term of such employment agreement ended on December 31, 2012, on which date the agreement automatically renewed for a one-year period upon its terms. The agreement will continue to automatically renew for successive one-year periods on December 31 of each year, unless written notice is provided by either party at least 90 days prior to the expiration of the initial or any renewal term. The agreement provides for a minimum gross salary of $275,000 per year and an annual bonus to be determined each year by the Board of Directors in its sole discretion. It also provides Mr. Mazzullo with 100,000 options to purchase shares of the Company s common stock, which will vest 50% at the end of each year of the initial term of the contract, upon meeting certain performance criteria. The agreement also requires the Board to nominate Mr. Mazzullo as a director each year during the term of the agreement.

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Joshua B. Bouk The Company has an employment agreement with Joshua B. Bouk to serve as its Senior Vice President. The initial term of that employment agreement ended on March 3, 2011, on which date the agreement automatically renewed for a one-year period upon its terms. The agreement provides for a minimum gross salary of $130,000 per year. The agreement also provides that Mr. Bouk shall be a participant in the management performance bonus each year. Finally, the agreement granted Mr. Bouk options to purchase 60,000 shares of restricted stock, which will vest ratably upon meeting certain performance criteria.

On March 31, 2011, Mr. Bouk s employment agreement was amended. The amendment extended the first renewal term of the agreement through March 31, 2012, increased Mr. Bouk s salary to $157,500 and granted him 50,000 shares of the Company s $0.10 par value common stock, vesting ratably over a two-year period subject to meeting certain performance criteria. Under the terms of the employment agreement, as amended, the agreement automatically renewed for a one-year period on March 3, 2013, and will continue to automatically renew for successive one-year periods on March 3 of each year, unless written notice is provided by either party at least 30 days prior to the expiration of the initial or any renewal term.

Thomas W. McAlees The Company has an employment agreement with Thomas W. McAlees to serve as its Vice President. The initial term of that employment agreement ended on March 3, 2011, on which date the agreement automatically renewed for a one-year period upon its terms. The agreement provides for a minimum gross salary of $130,000 per year. The agreement also provides that Mr. McAlees shall be a participant in the management performance bonus each year. Finally, the agreement granted Mr. McAlees options to purchase 60,000 shares of restricted stock, which will vest ratably upon meeting certain performance criteria.

On March 31, 2011, Mr. McAlees employment agreement was amended. The amendment extended the first renewal term of the agreement through March 31, 2012, increased Mr. McAlees salary to $157,500, and granted him 50,000 shares of the Company s $0.10 par value common stock, vesting ratably over a two-year period subject to meeting certain performance criteria. Under the terms of the employment agreement, as amended, the agreement automatically renewed for a one-year period on March 3, 2013, and will continue to automatically renew for successive one-year periods on March 3 of each year, unless written notice is provided by either party at least 30 days prior to the expiration of the initial or any renewal term.

Ronald C. Lundy On October 15, 2008, the Company entered into an Amended Salary Continuation Agreement (the Salary Continuation Agreement), effective as of October 10, 2008, with Ronald C. Lundy, its Vice President of Finance and Chief Financial Officer, which amended a Salary Continuation Agreement (the Original Agreement) dated October 14, 1998. Pursuant to the terms of the Salary Continuation Agreement, the Original Agreement was amended in its entirety and replaced with the Salary Continuation Agreement. The principal provision of the Salary Continuation Agreement was the deletion of a formula based retirement benefit that Mr. Lundy was eligible to receive at retirement age under the Original Agreement. In its place, the Salary Continuation Agreement established a fixed amount payable when Mr. Lundy reaches retirement age. The material terms of the Salary Continuation Agreement include: (i) a retirement benefit paid by the Company to Mr. Lundy, or his designated beneficiary, if Mr. Lundy lives to retirement age and has completed the requisite number of years of service, with such payment beginning at retirement age and continuing for a minimum of ten (10) years and thereafter until Mr. Lundy s death; (ii) fixing the retirement benefit at $43,680 per annum irrespective of any additional years of employment beyond the date of the Salary Continuation Agreement; and (iii) providing that the retirement benefit can be forfeited in the event Mr. Lundy engages in identified prohibited acts, including a prohibition from competition.

Generally Additional details about the compensation and benefits paid by the Company to its directors and named executive officers (as defined in Regulation S-K, Item 402(a)(3)) are provided in the Information Statement, which is attached to this Schedule 14D-9 as Annex A and is incorporated herein by reference, as well as Amendment No. 1 to the Company s Annual Report on Form 10-K for the Fiscal Year Ended December 31, 2012 under the following sections of Item 11 Executive Compensation : Summary Compensation Table, Stock Options, Outstanding Equity Awards at Fiscal Year End, Retirement Benefits, Potential Payments

upon Termination of Change in Control, Director Compensation, and Item 12 Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters, each of which is attached as Exhibit (e)(4) to this Schedule 14D-9 and incorporated herein by reference. The executive officers, including the named executive officers, of the Company are generally entitled to participate in the compensation and benefit programs described in the foregoing sections of Amendment No. 1 to the Company s Annual Report on Form 10-K for the Fiscal Year Ended December 31, 2012.

Employment Agreements Following the Merger

As of the date of this Schedule 14D-9, Parent and Merger Sub have informed the Company that no members of the Company s current management has entered into any agreement, arrangement or understanding with Parent, Merger Sub or their affiliates regarding employment with the Surviving Company. However, Parent may in the future enter into employment or consultancy, compensation, retention, severance or other employee or consultant benefit arrangements with the Company s executive officers and other key Company employees. Parent may also choose not to enter into employment or consultancy, compensation, retention, severance or other employee or consultant benefit arrangements with the Company s executive officers and other key Company employees.

Change in Control Bonus Agreements

On April 29, 2013, the Compensation Committee of the Board approved the Company entering into Change in Control Bonus Agreements (the CIC Bonus Agreements) with each of its named executive officers and certain other non-executive employees, who had undertaken significant efforts in connection with the Varsity transaction (described below in *Item 4 The Solicitation or Recommendation.*), and whose efforts would be crucial during the period until that or another transaction closed, including: Anthony C. Mazzullo, President and Chief Executive Officer, Ronald C. Lundy, Senior Vice President of Finance and Chief Financial Officer, Joshua B. Bouk, Senior Vice President of Strategic Services, and Thomas W. McAlees, Senior Vice President of Engineering and Operations. The members of the Special Committee and the Board who are not on the Compensation Committee were aware of these bonus arrangements, which had been discussed in prior meetings of the Special Committee and Board. Each of the CIC Bonus Agreements was entered into effective from April 30, 2013 until the earlier of a change in control, as such term is defined in the CIC Bonus Agreements, or December 31, 2013. Each CIC Bonus Agreement provides that, subject to the continued employment of the executive with the Company through the occurrence of a Change in Control, the Company will pay such named executive officer a lump sum cash payment within five days following the Change in Control, as follows: Mr. Mazzullo $40,000; Mr. Lundy $20,000; Mr. Bouk $20,000; and Mr. McAlees $25,000. The Company will also pay an aggregate lump sum cash payment of $20,000 to certain other non-executive employees with whom the Company has entered into CIC Bonus Agreements.

Under the CIC Bonus Agreements, a Change in Control shall be deemed to occur if: (i) any person or group, other than the Company or a trustee or other fiduciary holding securities under an employee benefit plan of the Company, or a corporation owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company, becomes the beneficial owner, directly or indirectly, of securities representing more than 50% of the combined voting power of the Company s then-outstanding securities entitled to vote for the election of directors; (ii) a merger or consolidation with another corporation, unless the Company s stockholders own at least 50% of the combined voting power of the resulting entity s voting securities entitled to vote for the election of directors; (iii) the sale or disposition of all or substantially all of the Company s business or assets; or (iv) individuals who, as of April 30, 2013, constitute the members of the board of directors of the Company cease to constitute at least a majority of the board of directors of the Company.

The foregoing description of the CIC Bonus Agreements does not purport to be complete and is qualified in its entirety by reference to the form of CIC Bonus Agreements, which is filed as Exhibit (e)(16) to this Schedule 14D-9.

Director and Officer Indemnification and Insurance

In accordance with the terms of the Merger Agreement, Parent and Merger Sub have agreed that all rights of indemnification, advancement of expenses and exculpation currently existing in favor of any former, present and future (up until the Effective Time) directors or officers of the Company (each, an Indemnified Party), as provided in the Company s certificate of incorporation or by-laws or pursuant to any other agreement in effect immediately prior to the execution and delivery of the Merger Agreement, shall survive the Merger and be assumed by the Surviving Company.

For six years following the Effective Time, to the fullest extent permitted under applicable law, Parent and the Surviving Company will indemnify, defend and hold harmless each Indemnified Party against all losses, claims, damages, liabilities, fees, expenses, judgments and fines arising in whole or in part out of actions or omissions in their capacity as a director or officer of the Company occurring at or prior to the Effective Time, including in connection with the transactions contemplated by the Merger Agreement. Further, Parent and the Surviving Company will reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, judgments and fines as such expenses are incurred.

Pursuant to the Merger Agreement, the Surviving Company will maintain its officers and directors liability insurance policies, in effect immediately prior to the execution and delivery of the Merger Agreement (the D&O Insurance), for a period of six (6) years after the Effective Time, but only to the extent related to actions or omissions prior to the Effective Time. The Surviving Company may cause coverage to be extended by obtaining a six-year tail policy on the D&O Insurance on terms and conditions no less favorable than the existing D&O Insurance, provided, however, that the Surviving Company is not required to expend in excess of $250,000 for any such tail policy.

Item 4. The Solicitation or Recommendation

Recommendation of the Special Committee and the Company s Board of Directors.

The Special Committee (defined below) of the Board, after due deliberation and consideration and upon consultation with its financial and legal advisors, unanimously adopted resolutions at a meeting held on June 11, 2013: (i) determining that the Merger Agreement was superior to the Varsity Merger Agreement (defined below) and, therefore, that the Varsity Merger Agreement should be terminated and that the $500,000 termination fee should be paid to Varsity (defined below) at the required time; (ii) approving the Merger Agreement, the Offer, the Merger and the other Transactions, (iii) determining that the terms of the Offer, the Merger and the other Transactions are advisable, substantively and procedurally fair to and in the best interests of the holders of Shares, (iv) recommending that the Company s Board of Directors adopt resolutions (A) approving, and ratifying the Special Committee s approval of, the termination of the Varsity Merger Agreement, (B) approving, and ratifying the Special Committee s approval of, the Merger Agreement, the Offer, the Merger and the Transactions contemplated by the Merger Agreement, (C) determining that the terms of the Offer, the Merger and the Transactions, are advisable, substantively and procedurally fair to and in the best interest of the holders of Shares, (D) recommending that the holders of Shares accept the Offer and tender their shares pursuant to the Offer, and (E) recommending that the holders of Shares adopt the Merger Agreement if required by applicable law (collectively, the Special Committee Recommendation).

Following the meeting of the Special Committee, at a meeting of the Board held on June 11, 2013, the Board, upon consultation with its financial and legal advisors and the unanimous recommendation of the Special Committee, unanimously adopted resolutions: (i) determining that the Merger Agreement was superior to the Varsity Merger Agreement and, therefore, that the Varsity Merger Agreement should be terminated and that the $500,000 termination fee should be paid to Varsity at the required time; (ii) approving, and ratifying the Special Committee s approval of, the termination of the Varsity Merger Agreement, (iii) approving, and ratifying the Special Committee s approval of, the Merger Agreement, the Offer, the Merger and the Transactions contemplated by the Merger Agreement; (iv) determining that the terms of the Offer, the Merger and

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Transactions are advisable, substantively and procedurally fair to and in the best interest of the holders of Shares; (v) recommending that the holders of Shares accept the Offer and tender their shares pursuant to the Offer; and (vi) recommending that the holders of Shares adopt the Merger Agreement if required by applicable law.

The Board, based on the Special Committee Recommendation, hereby recommends that the Company s stockholders accept the Offer, tender their Shares pursuant to the Offer and, if required by applicable law, adopt the Merger Agreement.

A copy of the letter to the Company s stockholders, dated June 17, 2013, communicating the Board s recommendation, is filed as Exhibit (a)(5)(A) to this Schedule 14D-9 and is incorporated herein by reference. A copy of a press release of the Company, dated June 17, 2013, announcing the Merger Agreement, the Offer and the Merger, is filed as Exhibit (a)(5)(B) to this Schedule 14D-9 and is incorporated herein by reference.

Background of the Offer; Reasons for the Recommendation of the Special Committee.

Background of the Offer; Prior Proposed Transaction

The Board and members of the Company s senior management have met regularly to review and assess the long-term vision and strategy for the Company and ways to enhance the value of its common stock, which has been listed on the Nasdaq OTC Bulletin Board since June 2002 and which experiences limited trading volume. Based on historic growth, the existence of large competitors, including Tangoe and IBM, and the fragmented nature of the industry in which the Company operates, senior management and the Board recognized that it could be difficult to enhance stockholder value merely through organic growth from operations, which growth would be uncertain given the Company s resource constraints and, even if it was achieved, could take a significant period of time and might not be substantial enough to appreciably enhance stockholder value. Senior management and the Board, therefore, also considered strategic acquisitions as an additional means to achieve growth in its fragmented industry, a strategy adopted by other companies in the Company s industry. Implementing such a strategy of additional growth through acquisitions also posed challenges, including possible integration issues, resource constraints and inability to consummate acquisitions for a variety of reasons.

In furtherance of such strategy, the Company acquired Source Loop s enterprise-focused telecom expense management (TEM) business on June 18, 2010. In 2011 and 2012, the Company, however, unsuccessfully pursued additional acquisition opportunities that it believed would be accretive to its growth strategy and enhance stockholder value. In the course of pursuing these opportunities, senior management and the Board recognized that the size of acquisitions necessary to effect meaningful growth likely could not be funded merely by capital and current non-financial resources available to the Company and justify significant additional borrowing, if available, in light of projected cash flow. Therefore, the Company likely would have to issue its capital stock as part of any acquisition or merger consideration. Even if potential acquisition targets were willing to accept the Company s capital stock as partial payment of purchase price, senior management and the Board understood that such issuances would likely cause significant dilution to the existing stockholders and put additional downward pressure on the price of the Company s capital stock given the limited market liquidity of its capital stock, which might not be offset by any benefits of such acquisition or merger transactions.

Given apparent growth challenges and to help it analyze various strategic alternatives, in August 2011, the Board directed Mr. Mazzullo to conduct a search for a financial advisor who could advise the Company about strategic alternatives, including obtaining additional capital to permit it to accelerate growth. During that process, Mr. Mazzullo conducted telephone interviews of approximately fifteen investment banking firms, several of whom declined to engage in substantial discussions with the Company because the Company s revenue was less than their minimum engagement requirements. Mr. Mazzullo conducted further research on the additional firms, including several follow-up interviews, and evaluated the firms based on their past experience with public companies, experience with technology companies like the Company, experience acting as an advisor on strategic alternatives, global foot print, size and capabilities, proposed fees and the results of client reference checks. On September 14, 2012, America s Growth Capital, LLC d/b/a AGC Partners (AGC Partners) met

with Mr. Mazzullo, two members of the Board and Woods Oviatt, then corporate counsel to the Company, to discuss AGC Partners qualifications. Based on these discussion, interviews, reference checks and other information available to him, Mr. Mazzullo recommended that the Company engage AGC Partners, as its financial advisor, which it ultimately did on November 2, 2012, after consultation with the Board.

In the course of selecting a financial advisor, Mr. Mazzullo and Seth Collins, a member of the Board, interviewed Martin Wolf Securities (MWS) and its principal, Martin Wolf. In connection with that discussion, MWS (consistent with all other advisors with whom the Company engaged in more than a mere telephone screen) executed a confidentiality agreement, dated May 21, 2012, with the Company. Instead of continuing to be considered for such an engagement, in July 2012, MWS approached the Company and orally expressed an interest in making an investment into the Company. Based on that indication, Mr. Mazzullo and Mr. Collins met with Mr. Wolf from MWS on July 31, 2012 to discuss his level of interest, during which meeting they provided him with historical financial information of the Company. On August 17, 2012, Mr. Mazzullo and Mr. McAlees met with James Zedella, an associate of Mr. Wolf and likely partner in any proposed transaction with the Company, to discuss technical aspects of the Company s VeraSMART solution. On or about August 31, 2012, MWS sent the Company a written expression of interest to engage in a possible strategic acquisition transaction. However, given that the Company was currently in the process of selecting a financial advisor it waited to engage in any discussions about that expression of interest until it had formally engaged a financial advisor to assist it in evaluating all of its strategic alternatives.

On November 12, 2012, the Company met with AGC Partners to formally commence its analysis of strategic alternatives for the Company, including re-engaging in discussions with MWS to better understand and evaluate the alternative that it might present. On November 12, 2012, therefore, AGC Partners was introduced via email to MWS. AGC Partners contacted MWS to initiate discussions and to provide comments on the August 2012 expression of interest. As a result of these discussions, on November 30, 2012, MWS presented the Company with a non-binding indication of interest letter (the Varsity Indication of Interest), on behalf of Varsity Acquisition, LLC, a Delaware limited liability company (Varsity) that was formed by MWS, its principal Mr. Wolf and James Zedella for the purpose of engaging in a transaction with the Company. The Varsity Indication of Interest expressed Varsity s interest in acquiring all outstanding shares of the Company s common stock and all outstanding in-the-money options for between $10,750,000 and $11,000,000 in the aggregate, which represented a per Share price of approximately $1.00 based on Varsity s assumption that only a limited number of the over 1,470,000 outstanding stock options to acquire Shares would be vested and in the money. The Varsity Indication of Interest, including the proposed purchase price, was subject to customary due diligence and the negotiation of applicable agreements and expired on December 6, 2012. The effective $1.00 per Share price that Varsity was proposing in the Varsity Indication of Interest represented a premium of approximately 79% over the $0.56 per share closing price of the Company s common stock on November 30, 2012 and was higher than any closing price of the Company s common stock since August 2, 2007.

In connection with Varsity s Indication of Interest, it also provided the Company with a proposed form of Confidentiality, Nondisclosure and Standstill Agreement (the Varsity Confidentiality Agreement). In addition to containing confidentiality and employee non-solicitation covenants, the Varsity Confidentiality Agreement draft contained a 45-day exclusivity provision and a $500,000 termination fee if the Company terminated its discussions with Varsity prior to executing a definitive agreement with Varsity (unless Varsity had reduced the proposed consideration in a manner that would net a stockholder less than $0.95 per share, changed the form of consideration or added other extraordinary terms). In the Varsity Confidentiality Agreement, Varsity disclosed to the Company that Varsity principals, including Mr. Zedella, Mr. Wolf and MWS, owned between 200,000 and 250,000 Shares.

During the Board s regular fourth quarter meeting on December 4, 2012, management made a presentation to the Board about the Company s 2012 performance, the Company s 2013 operating plan and its 5-year strategic plan. The Board asked management questions about the long-range plan, including the likelihood the Company would be awarded certain contracts it had been pursuing. AGC Partners then made a presentation to the Board

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about preliminary financial information concerning the Company, the competitive landscape of its fragmented industry, recent consolidation efforts in that industry, and strategic alternatives for the Board to consider to enhance stockholder value, including maintaining the status quo /organic growth, growth through acquisitions, capital raising, and a possible sale, merger or other strategic transaction, including the proposed transaction with Varsity. In connection with all of these alternatives, AGC Partners discussed with the Board various advantages and disadvantages related to each strategy, including, among other things, whether a particular strategy would likely enhance stockholder value and liquidity, whether the execution risk of the strategy was high or low, whether the Company had sufficient capital or resources to implement the strategy, whether such strategy would result in dilution to current stockholders, whether such strategy was disruptive to operations, whether such strategy posed integration concerns, and the time required to implement each given strategy.

The Board then discussed the Varsity Indication of Interest and Varsity Confidentiality Agreement and also asked for advice on these matters from representatives of AGC Partners and Harter Secrest & Emery LLP, legal counsel to the Company (Harter Secrest), who were in attendance at the meeting. Harter Secrest advised the Board of its fiduciary obligations in connection with the Varsity Indication of Interest. As a follow-on to its discussion of the strategic alternatives, AGC Partners noted that a transaction with Varsity could provide near-term liquidity to stockholders assuming that Varsity had sufficient capital resources to complete a transaction. In addition, given that Varsity was the only party receiving confidential information and was a financial buyer, and it was not part of a broader market solicitation that would likely include competitors of the Company, working with Varsity potentially mitigated confidentiality concerns that might exist in a broader sale process. As a result, it was determined that the risk of confidentiality breaches could be reduced and the timing of a transaction could be accelerated with Varsity under appropriate circumstances. AGC Partners also noted that a transaction with Varsity (or another sell-side transaction) could be potentially disruptive by distracting management from its ongoing business activities and could impact the Company s near-term financial condition due to the size of the termination fee that Varsity proposed in the Varsity Confidentiality Agreement. As a part of the strategic alternatives discussion and in connection with the discussion of an acquisition transaction by the Company, it was also discussed that if the Company remained public it would likely have to pursue acquisitions of meaningful size to achieve the sufficient growth needed to enhance stockholder value.

The Board discussed the proposed purchase price and whether third-parties might be willing to offer more than what Varsity had proposed. AGC Partners referred the Board to the summary information contained in its presentation and, based on that preliminary information, expressed its belief that the Varsity offer was reasonable at that particular time based upon its analysis in which it considered, among other items, the Company s historical and projected 2012 financial statements, and relevant multiples based on comparable public company valuations, information on over twenty recent private transactions in the TEM and related industries and a premiums analysis on over 60 recent public company sales transactions based on industry and market capitalization criteria. Harter Secrest and AGC Partners further advised the Board that one way to determine if another party would be willing to pay more for the Shares than Varsity was to conduct a process to solicit potential buyers, which process could also include Varsity, as a means to garner interest in a potential acquisition transaction of the Company. Additionally, AGC Partners discussed with the Board the alternative of conducting such a market check through a go-shop process after entering into a definitive agreement with a potential acquirer such as Varsity, which could provide a means by which the Company could seek and potentially achieve superior proposals to acquire the Company.

In addition to discussing these alternatives, the Board and the Company s advisors discussed the amount and the proposed $500,000 termination fee it could owe Varsity under the Varsity Confidentiality Agreement if it terminated discussions with Varsity prior to entering into a definitive agreement. The Board did not act on the Varsity Indication of Interest and Varsity Confidentiality Agreement at that meeting. However, in light of considerations discussed during the meeting, the Board asked Mr. Collins to contact Mr. Wolf for the sole purpose of asking him to contact AGC Partners, as the Company s financial advisor, so that AGC Partners could determine Varsity s level of interest and flexibility in negotiating terms of the potential transaction contemplated by the Varsity Indication of Interest, including items such as a higher price, the elimination of the proposed

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termination fee if the Company terminated its discussions with Varsity prior to executing a definitive agreement, the inclusion of a go-shop process following the execution of a definitive merger agreement, and mechanisms by which transaction expenses for both parties could be minimized. If Varsity indicated a receptiveness to negotiate certain terms and if Mr. Mazzullo believed that it was in the best interest of the Company and its stockholders to do so, the Board authorized Mr. Mazzullo, with the assistance of AGC Partners and Harter Secrest, to provide the Board s feedback to Varsity about the terms reflected in the Varsity Indication of Interest and Varsity Confidentiality Agreement in order to obtain Varsity s best proposal, which could then be reported back to the Board for consideration.

Mr. Collins contacted Mr. Wolf on December 5, 2012 and MWS, in turn, had a conversation with AGC Partners on December 6, 2012 during which conversation AGC Partners confirmed that Varsity was willing to negotiate certain terms reflected in the Varsity Indication of Interest and Varsity Confidentiality Agreement. Therefore, AGC Partners provided Varsity with preliminary feedback on Varsity s proposal based on the discussion during the December 4, 2012 Board meeting. Over the course of the next several days, Mr. Mazzullo, Harter Secrest and AGC Partners worked together on a counter-proposal to the Varsity Indication of Interest and Varsity Confidentiality Agreement consistent with the Board s feedback to, among other items, include a firm $1.00 per Share purchase price, include a go-shop right, include a termination fee not to exceed $500,000 if the Company accepted a superior offer after entering into a definitive agreement with Varsity, delete the pre-signing termination fee under the proposed Varsity Confidentiality Agreement, and set the exclusivity period at 45 days. On December 10, 2012, AGC Partners presented the revised and unsigned indication of interest documents, which incorporated these terms, to Varsity s representatives for consideration.

Over approximately the next week, AGC Partners had multiple discussions with MWS to discuss the updated terms reflected in the Company s drafts (including changes related to the firm $1.00 per Share price, the go-shop right and the deletion of a pre-definitive agreement termination fee in exchange for 45-day exclusivity). Based on those conversations, AGC Partners, Mr. Mazzullo and Harter Secrest had numerous additional conversations to consider the feedback received from MWS on those terms.

On December 12, 2012, MWS provided AGC Partners with feedback on the December 10 redrafts, including Varsity s concerns over the elimination of the pre-definitive agreement termination fee of $500,000 initially proposed by Varsity and with the firm $1.00 purchase price given MWS s expressed concerns over transaction expenses depleting the Company s working capital and the fact that Varsity had not factored the cost of cashing out vested stock options in its original proposal. AGC Partners, Mr. Mazzullo and Harter Secrest discussed these and other more minor comments over the next several days and, based on the guidance obtained during those discussions from Mr. Mazzullo and certain members of the Board, AGC Partners provided feedback to MWS on, among other items, a level of transaction fees that would not reduce the per share purchase price, the inclusion of all issued Shares and in-the-money options to acquire Shares, a reduced pre-definitive agreement termination fee and the exclusivity period.

On December 20, 2012, and in response to the feedback it had received from AGC Partners, Varsity provided AGC Partners an updated draft of the Varsity Indication of Interest and Varsity Confidentiality Agreement, copies of which were then provided to the entire Board.

On December 21, 2012, the Board held a telephonic meeting to discuss the most recent Varsity Indication of Interest and Varsity Confidentiality Agreement. Representatives of AGC Partners and Harter Secrest were in attendance for the duration of this meeting. Mr. Mazzullo, AGC Partners and Harter Secrest updated the Board as to the status of the Varsity proposal as reflected in these documents, which included (1) a $1.00 per share price for each share of common stock and in-the-money options less Company transaction expenses in excess of $535,000 (AGC Partners estimated the transaction expenses in excess of the cap could be as high as $0.05/share given that such expenses in the Varsity proposal were not limited by type, as later became the case when such expenses were, in fact, limited to fees due to AGC Partners and Harter Secrest explicitly), which price was compared to the closing price of the Company s common stock of $0.65 on December 20, 2012, suggesting an

implied premium of approximately 54% assuming a price per Share of $1.00, (2) a 55-day exclusivity period until February 14, 2013 and, if the Company terminated or abandoned discussions with Varsity during that period of exclusivity, a provision obligating the Company to pay Varsity $200,000 (unless Varsity had reduced the purchase price to shareholders, changed the timing or nature of the consideration payable or materially changed any non-economic terms outlined in the Varsity Indication of Interest) (Expense Coverage), (3) a go-shop period, the length and terms of which would be negotiated and included in the definitive agreement, and (4) a termination fee of up to $500,000 to be paid to Varsity if the Company terminated the transaction, after entering into a definitive agreement, to pursue a superior offer or if a transaction was not completed for any reason other than a breach of the transaction agreements by Varsity. Varsity s offer to revise the Varsity Indication of Interest and Varsity Confidentiality Agreement, which anticipated an April 2013 closing date, would expire on December 21, 2012 at 5:00 p.m. EST and would be subject to confirmatory due diligence and the negotiation and execution of definitive agreements.

At this telephonic Board meeting on December 21, 2012, the Board asked various questions about the terms of the revised Varsity Indication of Interest and Varsity Confidentiality Agreement, including the per Share purchase price of $1.00 less certain expenses above $535,000. AGC Partners reaffirmed its belief, previously stated during the December 4, 2012 Board meeting, that this amount likely reflected a reasonable value for the Shares at that particular time and provided a substantial premium to the current trading price of the stock, both of which warranted serious further discussions with Varsity, especially in light of the inclusion of a go-shop right which would allow the Company to seek superior offers. The Board then discussed the length of the go-shop period based on input from AGC Partners and Harter Secrest about the length of such periods in other transactions and the time AGC Partners and the Company would likely require to solicit and act on other offers. Based on that discussion, the Board determined that forty-five (45) days was an appropriate period for such a go-shop process. The Board then unanimously authorized the Company to enter into the Varsity Indication of Interest and Varsity Confidentiality Agreement once AGC Partners confirmed that Varsity would agree to a go-shop period of no less than forty-five (45) days. On December 21, 2012, AGC Partners confirmed by email that Varsity would agree to a 45-day go-shop period and, additionally, that Varsity s counsel would provide initial drafts of the definitive agreements. With this confirmation, the Company executed the revised Varsity Indication of Interest and Varsity Confidentiality Agreement on December 21, 2012.

On January 4, 2013, Varsity was provided access to a virtual data room established by the Company and commenced its formal due diligence review of the Company. In the period between January 4, 2013 and February 5, 2013, Varsity continued to conduct its due diligence, which included several telephone discussions between senior management of the Company and Varsity s representatives about the Company s financial performance, operations and sales and opportunities.

On January 10 and 11, 2013, Varsity representatives held meetings with the Company s senior management in Rochester, New York to discuss various areas of due diligence, including the 2013 business plan, technology, human resources, finance and operations.

On January 14, 2013, Varsity representatives held meetings with the Company s senior management in Atlanta, Georgia to continue Varsity s due diligence efforts, including evaluating the Atlanta operations of the Company.

On January 24, 2013, AGC Partners communicated with MWS as to the status of Varsity s due diligence and the timing of delivery of draft definitive documentation. During this communication, it was determined that Varsity did not intend to provide a draft definitive agreement, in contrast to AGC Partners understanding. As a result the Company, AGC Partners and Harter Secrest discussed having Harter Secrest begin a draft of the agreement.

On February 5, 2013, the Board held a telephonic meeting to discuss the status of the proposed transaction with Varsity. Mr. Mazzullo informed the Board that due diligence was proceeding and that the Company had

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responded or was responding to all Varsity requests. He then advised the Board that the Company would not receive a draft definitive agreement from Varsity and, he had previously requested Harter Secrest to draft a definitive merger agreement (the Draft Varsity Merger Agreement) to ensure that transaction timing was not jeopardized, which draft had previously been provided to AGC Partners and Mr. Mazzullo for review. Harter Secrest orally summarized the form and material substance of the Draft Varsity Merger Agreement and discussed such draft with the Board, which it was authorized to provide to Varsity when finalized with the Company s senior management and AGC Partners, and which it did on February 6, 2013. The Board discussed the impact of this delay in light of the expiration of the exclusivity period on February 14, 2013. Harter Secrest and AGC Partners both indicated to the Board that it was unlikely that the Draft Varsity Merger Agreement would be fully negotiated by February 14, 2013.

During the same meeting, Mr. Mazzullo informed the Board of a call he had with Mr. Zedella on or about January 30, 2013, the purpose of which was to discuss status and due diligence on operational and financial matters. During that call, Mr. Zedella mentioned to Mr. Mazzullo that Varsity would prefer in any transaction that senior management exchange all or substantially all of their Shares for Varsity equity upon closing of any transaction, rather than tendering those shares. Mr. Mazzullo indicated that Mr. Zedella did not offer any specifics of a Share exchange and that Mr. Zedella suggested they would provide further information to management if and when they had more details of such a Share exchange.

The Board discussed that such an exchange of Shares could potentially create a conflict of interest that would warrant excluding Mr. Mazzullo and other senior management from aspects of the negotiations with Varsity and related Board deliberations. The Board discussed that it could consider forming a special independent committee of the Board to, among other things, manage the discussions and negotiations with Varsity and determine if conflicts of interest existed and, if so, the appropriate role, if any, of management in further negotiations with Varsity. In addition, the Board considered the merits of an independent committee overseeing the overall go-shop process given the lack of knowledge as to whether or not management might be considered a part of any potential alternative transaction. The Board deferred action on this matter but scheduled another meeting the following week to discuss it further.

On or around February 7, 2013, Mr. Mazzullo separately contacted Harter Secrest and the members of the Board to discuss the need for and the timing around the Company s receipt of a fairness opinion. Mr. Mazzullo expressed an interest in obtaining a fairness opinion from a firm other than AGC Partners because of, among other reasons, the fact that AGC Partners had an interest in the transaction given its success fee and a desire to obtain such an opinion at a more favorable price, if possible, given the Company s financial resources and given that per Share consideration to the stockholders in the proposed transaction could fluctuate negatively based upon transaction expenses. Given that Mr. Mazzullo had previously been authorized to conduct a search for such an advisor in September 2012 for a different purpose (which search had been narrowed to two firms), and based on the feedback he received from the members of the Board during his discussions, he re-started a search for an independent advisor to provide a fairness opinion for purposes of the proposed Varsity transaction. Over the course of the next several days, Mr. Mazzullo re-engaged in discussions with the two firms to whom he had narrowed his prior search and also reviewed information provided by an additional firm, which had been referred to him by Harter Secrest.

On February 11, 2013, the Board held a special telephonic meeting to discuss the formation of a special committee. Mr. Mazzullo indicated that he had not heard any additional information from Varsity on the exchange of Shares by management or any other agreements with senior management. The Board discussed the potential conflict of interest that could exist if Varsity formally requested senior management to exchange Company common stock for Varsity equity. Although such a request might not be made by Varsity and such a conflict might never arise, given Varsity s prior comments to management and a pending go-shop process with unknown outcomes, the Board believed it was possible that such a request could be made by Varsity or other unknown parties surfaced through the go-shop process. Therefore, the Board unanimously approved the formation of a special committee (the Special Committee), recognizing that such formation was taking place

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