ULTIMATE SOFTWARE GROUP INC
Form DEFM14A
March 26, 2019
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 14A

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

Filed by the Registrant Filed by a Party other than the Registrant o
Check the appropriate box:

- oPreliminary Proxy Statement
- o**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- oDefinitive Additional Materials
- oSoliciting Material under §240.14a-12

THE ULTIMATE SOFTWARE GROUP, INC.
(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- oNo fee required.
- oFee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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

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

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

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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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Dear Stockholders: March 26, 2019

You are cordially invited to attend a special meeting of the stockholders of The Ultimate Software Group, Inc. (Ultimate, we, us or our), which will be held on Tuesday, April 30, 2019, at 10:00 a.m., local time, at Ultimate s principal corporate office at 2000 Ultimate Way, Weston, Florida 33326.

At the special meeting, our stockholders will be asked to consider and vote on a proposal to adopt the Agreement and Plan of Merger that we entered into on February 3, 2019, which we refer to as the merger agreement, providing for the acquisition of The Ultimate Software Group, Inc. by Unite Parent Corp. in a transaction that we refer to as the merger. If the merger agreement is adopted and the merger is completed, each share of our common stock (other than certain shares specified in the merger agreement) will be converted into the right to receive $331.50 per share in cash, without interest and subject to any required withholding taxes, representing a premium of approximately 32% over the trailing 30-day volume weighted average price of our common stock for the period ended February 1, 2019, the last trading day prior to the execution of the merger agreement.

The Ultimate board of directors unanimously recommends that our stockholders vote **FOR** the proposal to adopt the merger agreement and **FOR** the other matters to be considered at the special meeting.

The enclosed proxy statement describes the merger agreement, the merger and related matters, and attaches a copy of the merger agreement. We urge stockholders to read the entire proxy statement carefully, as it sets forth the details of the merger agreement and other important information related to the merger.

Your vote is very important. The merger cannot be completed unless a majority of the outstanding shares of our common stock entitled to vote on the adoption of the merger agreement vote in favor of the proposal to adopt the merger agreement. If you fail to vote in person or by proxy, or fail to instruct your broker on how to vote, it will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement.

On behalf of the entire board of directors, I want to thank you for your continued support.

Sincerely yours,

Scott Scherr

Chairman, President and Chief Executive Officer

Neither the U.S. Securities and Exchange Commission nor any state securities regulatory agency has approved or disapproved the merger, passed upon the merits or fairness of the merger, the merger agreement or the other transactions contemplated thereby or passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

This proxy statement is dated March 26, 2019, and is first being mailed to stockholders on or about March 28, 2019.

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THE ULTIMATE SOFTWARE GROUP, INC.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

Date: April 30, 2019

Time: 10:00 a.m., local time

Place: 2000 Ultimate Way, Weston, Florida 33326

Record Date: March 27, 2019

Meeting Agenda:

To consider and vote upon the following proposals:

1. to adopt the Agreement and Plan of Merger, dated as of February 3, 2019 (as it may be amended from time to time, referred to in this proxy statement as the merger agreement), by and among The Ultimate Software Group, Inc., a Delaware corporation (referred to in this proxy statement as Ultimate or the Company), Unite Parent Corp., a Delaware corporation (referred to in this proxy statement as Parent), and Unite Merger Sub Corp., a Delaware corporation and an indirect wholly owned subsidiary of Parent (referred to in this proxy statement as Merger Sub), pursuant to which Merger Sub will be merged with and into the Company (referred to in this proxy statement as the merger);
2. to approve, on an advisory (non-binding) basis, certain compensation that may be paid or become payable to the Company's named executive officers in connection with the merger; and
3. to approve the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

Please vote your shares.

If you are a stockholder of record, you may vote in the following ways:

We encourage stockholders to vote promptly. **If you fail to vote, the effect will be the same as a vote AGAINST the**	**By Telephone**	**By Internet**	**By Mail**	**In Person**
	You can vote by calling 1-800-690-6903.	You can vote online at www.proxyvote.com.	You can vote by mail by marking, dating and signing your proxy card and	You can vote in person at the special meeting. Please refer to the section of this proxy

proposal to adopt the merger agreement.	returning it in the postage-paid envelope.	statement entitled *The Special Meeting — Date, Time and Place of the Special Meeting* for further information regarding attending the special meeting.

If your shares of common stock are held by a broker, bank or other nominee on your behalf in street name, your broker, bank or other nominee will send you instructions as to how to provide voting instructions for your shares. Many brokerage firms and banks have a process for their customers to provide voting instructions by telephone or via the Internet, in addition to providing voting instructions by a voting instruction form.

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We are commencing our solicitation of proxies on or about March 26, 2019, which is before the March 27, 2019 record date for the special meeting. We will continue to solicit proxies until the April 30, 2019 stockholders meeting. Each stockholder of record on March 27, 2019 will receive a proxy statement and have the opportunity to vote on the matters described in the proxy statement. Any proxies delivered prior to the record date will be valid and effective so long as the stockholder providing the proxy is a holder of record on the record date. If you are not a holder of record on the record date, any proxy you deliver will be invalid and will not be counted at the special meeting. If you deliver a proxy prior to the record date and remain a holder on the record date, you do not need to deliver another proxy after the record date. If you deliver a proxy prior to the record date and do not revoke that proxy, your proxy will be deemed to cover the number of shares you own on the record date even if that number is different from the number of shares you owned when you executed and delivered your proxy. Proxies received from persons who are not holders of record on the record date will not be effective.

The Ultimate Software Group, Inc. board of directors has unanimously determined that the merger is advisable, fair to, and in the best interests of, the Company and its stockholders, and unanimously approved and adopted the merger agreement, the merger and the other transactions contemplated by the merger agreement. **The Ultimate board of directors unanimously recommends that the stockholders of Ultimate vote (1) FOR the proposal to adopt the merger agreement, (2) FOR the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger, and (3) FOR the proposal to approve the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies.** If you sign, date and return your proxy card without indicating how you wish to vote on a proposal, your proxy will be voted **FOR** each of the foregoing proposals in accordance with the recommendation of the Ultimate board of directors.

Your vote is important, regardless of the number of shares of common stock you own. The adoption of the merger agreement requires the affirmative vote of a majority of the outstanding shares of common stock entitled to vote thereon and is a condition to the completion of the merger. The approval of the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger and the approval of the proposal to adjourn the special meeting, if necessary or appropriate, including to solicit additional proxies, each requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon, but approval of these two proposals is not a condition to the completion of the merger. **If you fail to vote in person or by proxy, or fail to instruct your broker, bank or other nominee on how to vote, the shares of common stock that you own will not be counted as present at the special meeting for purposes of determining whether a quorum is present at the special meeting, which will have the same effect as a vote AGAINST the proposal to adopt the merger agreement.**

Under Delaware law, stockholders who do not vote in favor of the proposal to adopt the merger agreement will have the right to seek appraisal of the fair value of their shares of the Company as determined by the Delaware Court of Chancery if the merger is completed, but only if they submit a written demand for an appraisal before the vote on the proposal to adopt the merger agreement and comply with the other Delaware law procedures summarized in the accompanying proxy statement. See the section of this proxy statement entitled *Appraisal Rights*.

You may revoke your proxy at any time before the vote at the special meeting by following the procedures outlined in the accompanying proxy statement.

Only holders of record of Ultimate common stock as of the close of business on March 27, 2019, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting.

Before voting your shares, we urge you to, and you should, read the entire proxy statement carefully, including its annexes and the documents incorporated by reference in the proxy statement. If you have any questions or need assistance in submitting a proxy or your voting instructions, please contact our proxy solicitor:

MacKenzie Partners, Inc.
1407 Broadway, 27th Floor
New York, NY 10018
Call Toll-free: (800) 322-2885
(212) 929-5500 (Call Collect)
Email: proxy@mackenziepartners.com

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By order of the Board of Directors,

Vivian Maza
Secretary

Weston, Florida
March 26, 2019

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SUMMARY

This summary highlights selected information contained in this proxy statement, including with respect to the merger agreement and the merger. We encourage you to, and you should, read carefully this entire proxy statement, its annexes and the documents referred to or incorporated by reference in this proxy statement, as this summary may not contain all of the information that may be important to you in determining how to vote. Each item in this summary includes a page reference directing you to a more complete description of that item contained in later parts of this proxy statement. You may obtain the information incorporated by reference into this proxy statement without charge by following the instructions under the section of this proxy statement entitled Where You Can Find Additional Information.

The Companies (page 22)

The Ultimate Software Group, Inc.

With offices in the United States, Canada, France, Germany, England, and Singapore, The Ultimate Software Group, Inc. (referred to as Ultimate, the Company, we, our or us) (NASDAQ: ULTI) is a leading provider of cloud-base human capital management solutions—often referred to as human capital management (HCM)—and employee experience solutions. Ultimate s UltiPro product suite is a comprehensive, engaging solution that has human resources (HR) and payroll at its core and includes benefits management, talent acquisition, talent management, time management, and global people management functionality available in 14 languages with 61 country-specific localizations. Ultimate also offers a-la-carte employee experience solutions, such as HR Service Delivery and Perception, an employee-sentiment analysis solution.

Ultimate s solutions are delivered via software-as-a-service (SaaS), now more commonly known as cloud computing, to organizations with employees in the United States, Canada, Europe, Asia Pacific, and other global locations. At the close of 2018, we had more than 5,600 organizations as customers and more than 48 million people records in our cloud environment. We attained our leadership position, we believe, through our exclusive focus on solutions that help companies manage their employees in an engaging way. Key factors in our success have been our people-centric product design, cloud technology, and strong customer relationships nurtured by our services team and throughout the Ultimate organization.

Additional information about Ultimate is contained in its public filings, certain of which are incorporated by reference herein. See the sections of this proxy statement entitled *Where You Can Find Additional Information* and *The Companies — The Ultimate Software Group, Inc.*

Unite Parent Corp.

Unite Parent Corp., referred to as Parent, is a Delaware corporation that was formed on January 28, 2019, solely for the purpose of engaging in the transactions contemplated by the merger agreement, and has not engaged in any business activities other than in connection with its formation, the transactions contemplated by the merger agreement and arranging of the equity financing and debt financing in connection with the merger. See the section of this proxy statement entitled *The Companies — Unite Parent Corp.*

Unite Merger Sub Corp.

Merger Sub is a Delaware corporation and an indirect wholly owned subsidiary of Parent that was formed on January 28, 2019, solely for the purpose of engaging in the transactions contemplated by the merger agreement, and has not engaged in any business activities other than in connection with its formation, the transactions contemplated by the

merger agreement and arranging of the equity financing and debt financing in connection with the merger. Upon completion of the merger, Merger Sub will merge with and into Ultimate and will cease to exist. See the section of this proxy statement entitled *The Companies — Unite Merger Sub Corp.*

Parent and Merger Sub were each formed by the H&F Entities (as defined in this proxy statement).

In connection with the transactions contemplated by the merger agreement, the H&F Entities, the Blackstone Entities, the GIC Entity, CPPIB and the JMI Entities (each as defined in this proxy statement) have committed to capitalize Parent, on the date of the closing of the merger, with an aggregate equity subscription of up to $8.133 billion, subject to the terms and conditions set forth in the equity commitment letters. See the section of this proxy statement entitled *The Companies.*

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The Special Meeting (page 24)

Date, Time and Place of the Special Meeting

The special meeting of stockholders of Ultimate (referred to in this proxy statement as the special meeting) will be held at 2000 Ultimate Way, Weston, Florida 33326 on Tuesday, April 30, 2019, at 10:00 a.m., local time.

Purposes of the Special Meeting

At the special meeting, Ultimate stockholders will be asked to consider and vote on the following proposals:

- to adopt the Agreement and Plan of Merger, dated as of February 3, 2019, by and among the Company, Parent and Merger Sub, which, as it may be amended from time to time, is referred to in this proxy statement as the merger agreement ;
- to approve, on an advisory (non-binding) basis, certain compensation that may be paid or become payable to the Company's named executive officers in connection with the merger, the value of which is disclosed in the table in the section of this proxy statement entitled *The Merger — Interests of the Company's Directors and Executive Officers in the Merger — Quantification of Potential Payments and Benefits to the Company's Named Executive Officers in Connection with the Merger* ; and
- to approve the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

Our stockholders must adopt the merger agreement for the merger to occur. If our stockholders fail to adopt the merger agreement, the merger will not occur. See the sections of this proxy statement entitled *The Special Meeting* and *The Merger Agreement*.

We do not expect that any matters other than the proposals set forth above will be brought before the special meeting. If, however, such a matter is properly presented at the special meeting or any adjournment or postponement thereof, the persons appointed as proxies will have discretionary authority to vote the shares represented by duly executed proxies.

Record Date, Notice and Quorum

The holders of record of Ultimate common stock as of the close of business on March 27, 2019, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting. At the close of business on March 25, 2019, 31,680,263 shares of Company common stock were outstanding.

We are commencing our solicitation of proxies on or about March 26, 2019, which is before the March 27, 2019 record date for the special meeting. We will continue to solicit proxies until the April 30, 2019 stockholders meeting. Each stockholder of record on March 27, 2019 will receive a proxy statement and have the opportunity to vote on the matters described in the proxy statement. Any proxies delivered prior to the record date will be valid and effective so long as the stockholder providing the proxy is a holder of record on the record date. If you are not a holder of record on the record date, any proxy you deliver will be invalid and will not be counted at the special meeting. If you deliver a proxy prior to the record date and remain a holder on the record date, you do not need to deliver another proxy after the record date. If you deliver a proxy prior to the record date and do not revoke that proxy, your proxy will be deemed to cover the number of shares you own on the record date even if that number is different from the number of shares you owned when you executed and delivered your proxy. Proxies received from persons who are not holders of record on the record date will not be effective.

The presence at the special meeting, in person or represented by proxy, of the holders of a majority of the voting power of the shares of capital stock of the Company issued and outstanding on the record date will constitute a quorum for purposes of the special meeting. A quorum is necessary to transact business at the special meeting. If a quorum is not present at the special meeting, we expect that the special meeting will be adjourned to a later date.

Abstentions will be counted as shares present for purposes of determining the presence of a quorum. If your shares are held in street name by your broker, bank or other nominee and you do not instruct the nominee how to vote your shares, your broker, bank or other nominee will not vote on your behalf with respect to any of the proposals, and your shares will not be counted as present at the special meeting for purposes of determining whether a quorum is present for the transaction of business at the special meeting.

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Required Vote

Each share of common stock outstanding at the close of business on the record date is entitled to one vote on each of the proposals to be considered at the special meeting.

For the Company to complete the merger, Ultimate stockholders holding a majority of the shares of Company common stock outstanding at the close of business on the record date and entitled to vote on the adoption of the merger agreement must vote **FOR** the proposal to adopt the merger agreement. An abstention with respect to the proposal to adopt the merger agreement, or a failure to vote your shares of common stock (including a failure to instruct your broker, bank or other nominee to vote shares held on your behalf), will have the same effect as a vote **AGAINST** this proposal.

Approval of each of (1) the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger and (2) the proposal to adjourn the special meeting, if necessary or appropriate, including to solicit additional proxies, requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon, but is not a condition to the completion of the merger. An abstention with respect to either proposal will have the same effect as a vote AGAINST these proposals. A failure to return your proxy card or otherwise vote your shares of common stock (including a failure of your broker, bank or other nominee to vote shares held on your behalf) will have no effect on these proposals, assuming a quorum is present.

The Company s directors and executive officers have informed us that they intend to vote their shares of Company common stock in favor of the proposal to adopt the merger agreement and the other proposals to be considered at the special meeting, although they have no obligation to do so. As of March 25, 2019, our directors and executive officers owned, in the aggregate, approximately 879,455 shares of Company common stock, or approximately 2.7% of the outstanding shares of Company common stock.

Proxies; Revocation

Any Ultimate stockholder of record entitled to vote at the special meeting may submit a proxy by telephone or over the Internet, by returning the enclosed proxy card, or by attending the special meeting and voting in person. If your shares of common stock are held in street name by your broker, bank or other nominee, you should instruct your broker, bank or other nominee on how to vote your shares using the instructions provided by your broker, bank or other nominee.

Any proxy may be revoked at any time prior to its exercise by submitting a properly executed, later-dated proxy through any of the methods available to you, by giving written notice of revocation to our Secretary at The Ultimate Software Group, Inc., 2000 Ultimate Way, Weston, Florida 33326, or by attending the special meeting and voting in person.

The Merger (page 29)

You will be asked to consider and vote upon the proposal to adopt the merger agreement. A copy of the merger agreement is attached to this proxy statement as Annex A. The merger agreement provides, among other things, that at the effective time of the merger (referred to in this proxy statement as the effective time), Merger Sub will be merged with and into the Company, with the Company surviving the merger (referred to in this proxy statement as the surviving corporation). In the merger, each share of common stock, par value $0.01 per share, of the Company (referred to in this proxy statement as the common stock, the Company common stock or the Ultimate common stock) issued and outstanding immediately before the effective time (other than certain shares specified in the merger

agreement) will be converted into the right to receive $331.50 per share in cash (referred to in this proxy statement as the merger consideration), without interest and subject to any required withholding taxes. Upon completion of the merger, the Company will be an indirect wholly owned subsidiary of Parent, the Company common stock will no longer be publicly traded and the Company s existing stockholders will cease to have any ownership interest in the Company.

Treatment of Company Equity Awards (page 66)

Treatment of Company Restricted Stock Awards and Company Restricted Stock Unit Awards. Each Company restricted stock award and each Company restricted stock unit award that is outstanding immediately prior to the effective time, whether granted prior to the date of the merger agreement or granted after the date of the merger

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agreement as permitted by the merger agreement, will, as of the effective time, become fully vested and nonforfeitable, and will be cancelled and converted automatically into the right to receive an amount in cash equal to the merger consideration in respect of each vested share of Company common stock subject to such restricted stock award or restricted stock unit award, subject to applicable tax withholding.

Treatment of Stock Options. The merger agreement provides that each Company stock option, whether vested or unvested, that is outstanding and unexercised immediately prior to the effective time will, as of the effective time, become fully vested (to the extent unvested) and be converted into the right to receive an amount in cash equal to the product of (i) the excess, if any, of the merger consideration over the exercise price per share of such option, *multiplied by* (ii) the total number of shares of Company common stock subject to such Company stock option, subject to applicable tax withholding. The merger agreement provides that any Company stock option that has an exercise price per share of Company common stock that is greater than or equal to the merger consideration will be cancelled for no consideration. While the merger agreement provides for the foregoing treatment of each Company stock option that is outstanding immediately prior to the effective time, there are no Company stock options outstanding as of the date of this proxy statement or expected to be outstanding at the effective time.

Conditions to Completion of the Merger (page 81)

Each party s obligation to complete the merger is subject to the satisfaction or waiver at or prior to the effective time of the following conditions:

- the adoption of the merger agreement by a majority of the outstanding shares of Ultimate common stock entitled to vote thereon (referred to in this proxy statement as the company stockholder approval);
- the expiration or termination of the waiting period applicable to the completion of the merger under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (referred to in this proxy statement as the HSR Act) and the occurrence or granting of any decisions, orders, consents or expiration of any waiting periods required to consummate the transaction under Chapter VII of the German Act against Restraints of Competition, as amended (referred to in this proxy statement as the GWB); and
- no law or order having been enacted, issued, promulgated, enforced or entered by a court or other governmental entity of competent jurisdiction that is in effect and that restrains, enjoins or otherwise prohibits the completion of the merger.

The respective obligations of Parent and Merger Sub to complete the merger are subject to the satisfaction or waiver by Parent at or prior to the effective time of the following additional conditions:

- the accuracy of the representations and warranties of the Company as of the closing date (except for any representations and warranties made as of a particular date, which representations and warranties must be true and correct only as of that date), generally subject to a company material adverse effect or other qualification provided in the merger agreement;
- the performance by the Company in all material respects of the agreements and covenants required to be performed or complied with by it under the merger agreement at or prior to the effective time;
- the absence of a company material adverse effect occurring after the date of the merger agreement; and
- the receipt by Parent of a certificate signed by an executive officer of the Company, dated the closing date, to the effect that the conditions set forth in the three preceding bullet points have been satisfied.

The obligation of the Company to complete the merger is subject to the satisfaction or waiver by the Company at or prior to the effective time of the following additional conditions:

- the accuracy of the representations and warranties of Parent and Merger Sub as of the closing date (except for any representations and warranties made as of a particular date, which representations and warranties must be true and correct only as of that date), generally subject to a parent material adverse effect or other

qualification provided in the merger agreement;

- the performance by each of Parent and Merger Sub in all material respects of the agreements and covenants required to be performed or complied with by it under the merger agreement at or prior to the effective time; and

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- the receipt by the Company of a certificate signed by an executive officer of Parent, dated the closing date, to the effect that the conditions set forth in the two preceding bullet points have been satisfied.

No party may rely, either as a basis for not completing the merger or any of the other transactions contemplated by the merger agreement or terminating the merger agreement and abandoning the merger, on the failure of a condition to closing set forth in the merger agreement to be satisfied if such failure was caused by such party s failure to act in good faith or to use the efforts to cause the closing of the merger to occur as required by the merger agreement.

Recommendation of the Ultimate Board of Directors (page 41)

After careful consideration, the Ultimate board of directors unanimously determined that the merger is advisable, fair to, and in the best interests of, the Company and its stockholders, and unanimously approved and adopted the merger agreement, the merger and the other transactions contemplated by the merger agreement. **The Ultimate board of directors unanimously recommends that Ultimate stockholders vote FOR the proposal to adopt the merger agreement at the special meeting and FOR the other proposals to be considered at the special meeting.**

Reasons for the Merger (page 41)

For a description of the reasons considered by the Ultimate board of directors in resolving to recommend in favor of the adoption of the merger agreement, see the section of this proxy statement entitled *The Merger — Reasons for the Merger*; *Recommendation of the Ultimate Board of Directors*.

Opinion of Financial Advisor to the Company (page 49)

On February 3, 2019, at a meeting of the Company s board of directors, Goldman Sachs rendered its oral opinion, subsequently confirmed in writing, that, as of February 3, 2019 and based upon and subject to the factors and assumptions set forth therein, the $331.50 in cash per share of the Company s common stock to be paid to the holders of the Company s common stock (other than Parent and its affiliates) pursuant to the merger agreement, was fair from a financial point of view to such holders.

The full text of the written opinion of Goldman Sachs, dated February 3, 2019, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B. **Goldman Sachs provided advisory services and its opinion for the information and assistance of the Company s board of directors in connection with its consideration of the merger. The Goldman Sachs opinion does not constitute a recommendation as to how any holder of the shares of the Company s common stock should vote with respect to the merger or any other matter. Pursuant to an engagement letter between the Company and Goldman Sachs, the Company has agreed to pay Goldman Sachs a transaction fee that, based on information available as of the date of the announcement of the merger, is estimated to be approximately $71.7 million, all of which is contingent upon consummation of the merger.**

Interests of the Company's Directors and Executive Officers in the Merger (page 56)

In considering the recommendations of the Ultimate board of directors with respect to the merger, Ultimate s stockholders should be aware that the directors and executive officers of Ultimate have certain interests, including financial interests, in the merger that may be different from, or in addition to, the interests of Ultimate s stockholders generally, including the continued employment of certain executive officers following the closing of the merger and the right to continued indemnification and insurance coverage. Upon completion of the merger, Ultimate is expected to continue to operate under the leadership of Chief Executive Officer Scott Scherr and the existing senior management team, and Scott Scherr may continue to serve as a director of the Company. The Ultimate board of directors was aware of these interests and considered them, among other matters, in approving the merger agreement,

and in making its recommendation that Ultimate s stockholders vote in favor of the adoption of the merger agreement. These interests are described in more detail below, and certain of them are quantified in the narrative and the tables below. The transactions contemplated by the merger agreement will be a change in control, change of control or term of similar meaning for purposes of the Company s executive compensation and benefit plans and agreements described in this proxy statement. See the section of this proxy statement entitled *Interests of the Company s Directors and Executive Officers in the Merger*.

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Limited Guarantees (page 56)

Concurrently with the execution of the merger agreement, the H&F Entities, the Blackstone Entities, the GIC Entity, CPPIB and the JMI Entities (in such capacity, referred to in this proxy statement collectively as the guarantors) entered into limited guarantees (referred to in this proxy statement collectively as the limited guarantees), pursuant to which the guarantors agreed to guarantee, severally and not jointly or jointly and severally, on the terms and conditions set forth in the limited guarantees, Parent s obligation to pay any termination fee, reimburse and indemnify the Company with respect to certain expenses in connection with the merger and pay certain other amounts, in an amount not to exceed $570 million in the aggregate. See the section of this proxy statement entitled *The Merger — Limited Guarantees*.

Financing (page 56)

In connection with the execution of the merger agreement, the H&F Entities, the Blackstone Entities, the GIC Entity, CPPIB and the JMI Entities (in such capacity, referred to in this proxy statement collectively as the equity financing sources) have committed to capitalize Parent, on the date of the closing of the merger, with an aggregate equity subscription of up to $8.133 billion, subject to the terms and conditions set forth in equity commitment letters, each dated as of February 3, 2019 (each referred to in this proxy statement as an equity commitment letter and, collectively, the equity commitment letters).

In connection with the execution of the merger agreement, Parent entered into a commitment letter, dated February 3, 2019, amended and restated on February 25, 2019 and further amended and restated on March 16, 2019 and on March 25, 2019 (referred to in this proxy statement as the debt commitment letter), with Credit Suisse AG (referred to in this proxy statement as Credit Suisse), Nomura Securities International, Inc. (referred to in this proxy statement as Nomura), Bank of America Merrill Lynch, BNP Paribas Securities Corp. (referred to in this proxy statement as "BNPP"), Ares Capital Management LLC (referred to in this proxy statement as Ares), Blackstone Holdings Finance Co. L.L.C. (referred to in this proxy statement as Blackstone Finance), GSO Capital Partners LP and its affiliates (collectively referred to in this proxy statement as GSO) and PSP Investments Credit USA LLC (referred to in this proxy statement as "PSP") (each of the foregoing, in certain cases, acting through its respective appropriate affiliates or branches) (collectively referred to in this proxy statement as the commitment parties), pursuant to which (x) Credit Suisse, Nomura, Bank of America Merrill Lynch, BNPP, Ares and Blackstone Finance committed, upon certain terms and subject to certain conditions, to (i) lend Merger Sub (and after giving effect to the merger, Ultimate as the surviving corporation) (referred to in this proxy statement as the borrower) $2.3 billion in aggregate principal amount in the form of senior secured first lien term loans in connection with the debt financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby and (ii) make available to the borrower a senior secured first lien revolving credit facility in an aggregate principal amount of up to $275 million and (y) Ares, GSO and PSP (each of the foregoing, in certain cases, acting through its respective appropriate affiliates or branches) have committed, upon certain terms and subject to certain conditions, to lend the borrower $900 million in aggregate principal amount in the form of senior secured second lien term loans in connection with the debt financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby (such debt financing, collectively, is referred to in this proxy statement as the debt financing). We have agreed to use our reasonable best efforts to, and to cause our subsidiaries to use their reasonable best efforts to, and to use our reasonable best efforts to cause our and our subsidiaries representatives to, provide all cooperation reasonably requested by Parent in connection with the arrangement of the debt financing, subject to the terms set forth in the merger agreement.

For more information, see *The Merger Agreement — Debt Financing and Debt Financing Cooperation*.

Material U.S. Federal Income Tax Consequences of the Merger (page 59)

The receipt of cash in exchange for shares of common stock pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. In general, for U.S. federal income tax purposes, a U.S. holder (as defined in the section of this proxy statement entitled *The Merger — Material U.S. Federal Income Tax Consequences of the Merger*) who receives cash in exchange for shares of common stock pursuant to the merger will recognize capital gain or loss in an amount equal to the difference, if any, between (1) the amount of cash received and (2) the U.S. holder s adjusted tax basis in such shares. You should consult your own tax advisor regarding the particular tax consequences to you of the exchange of shares of common stock for cash pursuant to

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the merger in light of your particular circumstances (including the application and effect of any state, local or foreign income and other tax laws). See the section of this proxy statement entitled *The Merger — Material U.S. Federal Income Tax Consequences of the Merger*.

Regulatory Approvals (page 60)

HSR Clearance. Under the HSR Act and related rules and regulations, certain transactions, including the merger, may not be completed until notifications have been given and information furnished to the Antitrust Division of the United States Department of Justice (referred to in this proxy statement as the Antitrust Division) and the United States Federal Trade Commission (referred to in this proxy statement as the FTC) and all statutory waiting period requirements have been satisfied. Completion of the merger is subject to the expiration or termination of the applicable waiting period under the HSR Act. The Company and Parent filed their respective Notification and Report Forms with the Antitrust Division and the FTC on February 8, 2019, and received early termination of the HSR waiting period on February 26, 2019.

Germany Antitrust Clearance. Pursuant to the GWB, certain transactions, including the merger, may not be completed until filings are made with the Federal Cartel Office (referred to in this proxy statement as the FCO) and the transactions are cleared by the FCO or the waiting period has expired under the GWB. German counsel filed with the FCO on behalf of Parent and the Company on February 25, 2019, seeking either (i) confirmation that the transaction does not require clearance or (ii) clearance. On March 15, 2019, the FCO advised that no clearance was required under the GWB.

Commitments to Obtain Approvals. The Company and Parent are each required to use reasonable best efforts to take all actions necessary to complete the merger, including cooperating and doing all things necessary, proper or advisable to obtain regulatory approvals. This includes, if required by regulatory authorities, (1) agreeing to sell, divest or dispose of any assets or businesses of Parent, the Company, or their respective subsidiaries and (2) taking or agreeing to take other actions that after the closing date limit Parent s or its subsidiaries (including the surviving corporation s) freedom of action with respect to, or its ability to retain, one or more businesses, product lines or assets of Parent or its subsidiaries (including the surviving corporation). However, the Company will only be required to take or commit to take such actions if they are binding on the Company only if and when the closing of the merger occurs. See the section of this proxy statement entitled *The Merger Agreement — Efforts to Complete the Merger — Antitrust Matters*.

Appraisal Rights (page 92)

Under Section 262 of the General Corporation Law of the State of Delaware (referred to in this proxy statement as the DGCL), Ultimate stockholders who do not vote for the adoption of the merger agreement will have the right to seek appraisal of the fair value of their shares in cash as determined by the Delaware Court of Chancery, but only if they comply fully with all of the applicable requirements of Section 262 of the DGCL, which are summarized in this proxy statement. Any appraisal amount determined by the court could be more than, the same as, or less than the value of the merger consideration. Any stockholder intending to exercise appraisal rights must, among other things, submit a written demand for appraisal to the Company before the vote on the adoption of the merger agreement and must not vote or otherwise submit a proxy in favor of adoption of the merger agreement. Failure to follow exactly the procedures specified in Section 262 of the DGCL will result in the loss of appraisal rights. Because of the complexity of Section 262 of the DGCL relating to appraisal rights, if you are considering exercising your appraisal rights, we encourage you to seek the advice of your own legal counsel. The discussion of appraisal rights contained in this proxy statement is not a full summary of the law pertaining to appraisal rights under the DGCL and is qualified in its entirety by the full text of Section 262 of the DGCL that is attached to this proxy statement as Annex C.

Litigation Related to the Merger (page 62)

A putative class action lawsuit was filed in the United States District Court for the District of Delaware (referred to in this proxy statement as Delaware Federal Court) on March 14, 2019, purportedly on behalf of an Ultimate stockholder against the Company and each member of the Company s board of directors.

Three putative class action lawsuits were filed in Delaware Federal Court on March 19, 2019, purportedly on behalf of certain Ultimate stockholders. Two of these lawsuits were filed against the Company and each member

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of the Company s board of directors. The third of these lawsuits was filed against the Company, each member of the Company s board of directors, Parent, Merger Sub, Blackstone, GIC, CPPIB, JMI Management, Inc. and Hellman & Friedman (each as defined in this proxy statement).

A putative class action lawsuit was filed in the United States District Court for the Southern District of New York (referred to in this proxy statement as New York Federal Court) on March 26, 2019, purportedly on behalf of an Ultimate stockholder against the Company and each member of the Company s board of directors.

The Company cannot predict the outcome of these lawsuits or any others that might be filed subsequent to the date of this filing, nor can the Company predict the amount of time and expense that will be required to resolve the lawsuits. The Company believes the lawsuits are without merit and the Company and the defendant directors intend to vigorously defend against them. The Company believes that the other defendants named in the third lawsuit filed on March 19, 2019 will also vigorously defend against such lawsuit.

For additional information regarding the pending litigation, please see the section entitled *The Merger — Litigation Related to the Merger* beginning on page 62 of this proxy statement.

Delisting and Deregistration of Company Common Stock (page 63)

If the merger is completed, the Company common stock will be delisted from the NASDAQ Global Select Market (referred to in this proxy statement as the NASDAQ) and deregistered under the U.S. Securities Exchange Act of 1934, as amended (referred to in this proxy statement as the Exchange Act).

Alternative Acquisition Proposals (page 72)

The Go-Shop Period—Solicitation of Other Acquisition Proposals

The merger agreement provides that, from the date of the merger agreement until 11:59 p.m., New York City time, on March 25, 2019 (referred to in this proxy statement as the no-shop period start date), the Company and its representatives have the right to (1) initiate or solicit, or knowingly facilitate or encourage, any inquiry and (2) engage in or otherwise participate in any discussions or negotiations regarding an acquisition proposal or inquiry or that would reasonably be expected to lead to an acquisition proposal, or, subject to the entry into, and in accordance with, an acceptable confidentiality agreement, provide any access to its properties, books or records or any non-public information to any person (and such person s representatives and financing sources) relating to the Company or any of its subsidiaries in connection with the foregoing; provided that (i) the Company must provide to Parent any information relating to the Company or any of its subsidiaries that was not previously provided or made available to Parent substantially concurrently with (and in any event within 24 hours after) the time it is furnished to such person (and such person s representatives and financing sources) and (ii) the Company and its subsidiaries are not permitted to pay, agree to pay or cause to be paid, or reimburse, agree to reimburse or cause to be reimbursed, the expenses of any such person in connection with any acquisition proposals or inquiries.

The No-Shop Period—No Solicitation of Other Acquisition Proposals

Under the merger agreement, from the no-shop period start date until the earlier to occur of (x) the termination of the merger agreement and (y) the effective time, the Company must not, and must cause its subsidiaries not to, and must use its reasonable best efforts to cause its and their directors, officers, employees, other affiliates, investment bankers, attorneys, accountants and other advisors or representatives not to, directly or indirectly:

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initiate or solicit, or knowingly facilitate or encourage, any inquiries, discussions or requests with respect to or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, an acquisition proposal, as described in the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop' Period — No Solicitation of Other Acquisition Proposals*;

- engage in or otherwise participate in any discussions or negotiations regarding an acquisition proposal or inquiry, as described in the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop' Period — No Solicitation of Other Acquisition Proposals* or that would reasonably be expected to lead to an acquisition proposal, or provide any access to its properties, books or records or any non-public information to any person relating to the Company or any of its subsidiaries in connection with the foregoing;

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- enter into any other acquisition agreement, option agreement, joint venture agreement, partnership agreement, letter of intent, term sheet, merger agreement or similar agreement (other than an acceptable confidentiality agreement) with respect to an acquisition proposal;
- approve, endorse, declare advisable or recommend any acquisition proposal;
- take any action to make the provisions of any takeover statute or any restrictive provision of any applicable anti-takeover provision in the certificate of incorporation or bylaws of the Company or any shareholder rights plan or poison pill (including the Amended and Restated Rights Agreement, dated as of October 19, 2018, by and between the Company and Computer Trust Company, N.A., as amended) inapplicable to any transactions contemplated by any acquisition proposal; or
- authorize, commit to, agree or publicly propose to do any of the foregoing.

On the no-shop period start date, the Company must notify Parent in writing of the number of parties with which the Company entered into an acceptable confidentiality agreement and the number of parties that submitted an acquisition proposal after the execution of the merger agreement and prior to the no-shop period start date, which notice must include a summary of any pending acquisition proposals that were made in writing by any excluded party (as defined in this proxy statement) or any other acquisition proposal which the Company s board of directors determined in good faith, after consultation with its financial advisor and outside legal counsel, warranted the Company s board of directors further discussion.

Notwithstanding certain provisions of the merger agreement described above, at any time following the no-shop period start date and prior to the time the company stockholder approval is obtained, if Ultimate receives a written, unsolicited, *bona fide* acquisition proposal that did not result from a breach of the provisions of the merger agreement described above, then Ultimate and its representatives may contact the person or group of persons making the acquisition proposal to clarify the terms and conditions thereof so as to determine whether it constitutes or could reasonably be expected to result in a superior proposal, as described in the sections of this proxy statement entitled *The Merger Agreement — The 'No-Shop Period — No Solicitation of Other Acquisition Proposals— Receipt of Acquisition Proposals* , and, if the Ultimate board of directors determines in good faith after consultation (1) with its financial advisor and outside legal counsel that the acquisition proposal constitutes, or would reasonably be expected to result in, a superior proposal and (2) with its outside legal counsel that failure to take the actions described below would be reasonably likely to be inconsistent with its fiduciary obligations under applicable law, then Ultimate and its representatives may:

- provide information to such person or group of persons (including their respective representatives and prospective equity and debt financing sources) if the Company receives from such person or group of persons (or has received from such person or group of persons) an executed confidentiality agreement containing terms not materially less favorable to Ultimate than those contained in the confidentiality agreement to which Parent is subject, except that it need not contain any standstill or similar provision, provided that Ultimate must substantially concurrently (and in any event, within 24 hours) make available to Parent and Merger Sub any non-public information concerning Ultimate or its subsidiaries that is provided to any such person or group of persons and that was not previously made available to Parent or Merger Sub; and
- engage or participate in any discussions or negotiations with that person or group of persons.

Change in Board Recommendation (page 74)

The Ultimate board of directors has unanimously recommended that Ultimate stockholders vote **FOR** the proposal to adopt the merger agreement. The merger agreement permits the Ultimate board of directors to effect a change of recommendation (as described in the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop Period — No Solicitation of Other Acquisition Proposals — Change in Board Recommendation*) in certain circumstances, as described below.

Before the company stockholder approval is obtained, the Ultimate board of directors may (1) outside the context of an acquisition proposal, make a change of recommendation if, upon the occurrence of an intervening event (as described in the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop Period — No Solicitation of Other Acquisition Proposals*), the Ultimate board of directors determines in good faith, after consultation with its outside legal counsel, that the failure to do so would be reasonably likely to be inconsistent

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with its fiduciary obligations under applicable law; or (2) if the Company receives, directly or indirectly through one or more of its representatives, either (x) after the date of the merger agreement and prior to the no-shop period start date from an excluded party (as defined in this proxy statement) an acquisition proposal or (y) after the no-shop period start date an unsolicited, written, *bona fide* acquisition proposal, in each case of clauses (x) and (y) that the Ultimate board of directors concludes in good faith, after consultation with its financial advisor and outside legal counsel, constitutes a superior proposal and such acquisition proposal did not result from a material breach by the Company of the provisions of the merger agreement described under the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop Period — No Solicitation of Other Acquisition Proposals* effect a change of recommendation and/or terminate the merger agreement in order to enter into an alternative acquisition agreement providing for such superior proposal, provided that in either case:

- Ultimate must have given Parent at least five business days' prior written notice that it intends to make a change of recommendation (referred to in this proxy statement as a notice of change of recommendation) and/or terminate the merger agreement, which notice must specify in reasonable detail the basis for the change of recommendation and/or termination and, in the case of a superior proposal, the identity of the person or group of persons making the superior proposal and the material terms thereof or, in the case of an intervening event, reasonable detail regarding the intervening event;
- after providing such notice and prior to making a change of recommendation and/or terminating the merger agreement, Ultimate must have negotiated, and must have caused its representatives to be available to negotiate, in good faith with Parent and Merger Sub (to the extent Parent and Merger Sub desire to negotiate) during the five-business-day notice period to make adjustments to the terms and conditions of the merger agreement as would obviate the need for the Company to effect a change of recommendation and/or terminate the merger agreement ;and
- at the end of the five-business-day notice period, the Ultimate board of directors must have determined in good faith, after consultation with its outside legal counsel and, with respect to a superior proposal giving rise to the notice of change of recommendation, its financial advisor, taking into account any changes to the merger agreement proposed in writing by Parent in response to the notice of change of recommendation, that (1) the superior proposal giving rise to the notice of change of recommendation continues to be a superior proposal or (2) in the case of an intervening event, the failure of the Ultimate board of directors to make a change of recommendation would continue to be reasonably likely to be inconsistent with its fiduciary obligations under applicable law.

See the sections of this proxy statement entitled *The Merger Agreement — The 'No-Shop Period — No Solicitation of Other Acquisition Proposals* and *The Merger Agreement — Change in Board Recommendation*.

Termination (page 82)

The merger agreement may be terminated and the merger may be abandoned in the following circumstances:

- at any time prior to the effective time by the mutual written consent of Ultimate and Parent;
- at any time prior to the effective time by either Ultimate or Parent:
  - if the merger has not been completed on or before August 3, 2019 (referred to in this proxy statement as the termination date); provided that the right to terminate the merger agreement pursuant to the
  - termination provision referred to in this bullet point will not be available to a party if the failure of the merger to have been completed on or before the termination date was primarily caused by the failure of such party to perform any of its obligations under the merger agreement;
  - if the special meeting has been duly held and completed and the company stockholder approval has not
  - been obtained at the special meeting or any adjournment or postponement thereof at which a vote on the adoption of the merger agreement is taken; or
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if an order by a court or other governmental entity of competent jurisdiction permanently restraining, enjoining or otherwise prohibiting the completion of the merger has become final and non-appealable or any statute, rule or regulation will have been enacted, entered, enforced or deemed applicable to the merger that prohibits, makes illegal or enjoins the consummation of the

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merger; provided that the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point will not be available to a party if the enactment, issuance, promulgation, enforcement or entry of such order, or the order becoming final and non-appealable, was primarily caused by the failure of such party to perform any of its obligations under the merger agreement;

- by Ultimate:
  - at any time prior to the time the company stockholder approval is obtained, in order to substantially concurrently enter into an alternative acquisition agreement providing for a superior proposal in accordance with the merger agreement, subject to complying with the terms of the merger agreement; provided that prior to or substantially concurrently with, and as a condition to, such termination, the Company pays to Parent the company termination fee described below;
  - at any time prior to the effective time, if Parent or Merger Sub has breached any of its representations, warranties, covenants or agreements in the merger agreement, which breach (1) would give rise to the failure of a condition to the obligation of Ultimate to complete the merger related to Parent's or Merger Sub's representations, warranties, covenants and agreements in the merger agreement and (2) is either not capable of being cured before the termination date or is not cured before the earlier of 30 business days following receipt of written notice from Ultimate of such breach or the termination date; provided that Ultimate will not have the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point if it is then in breach of any of its representations, warranties, covenants or agreements in the merger agreement, such that any condition to the obligations of Parent or Merger Sub to complete the merger related to Ultimate's representations, warranties, covenants and agreements in the merger agreement would not be satisfied if the closing date were the date of such termination; or
  - (i) at any time prior to the effective time if the marketing period has ended and all of the conditions to the obligation of Parent to complete the merger have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the closing of the merger, each of which is capable of being satisfied if the closing date were the date of such termination, and, solely with respect to the condition relating to the expiration or termination of the waiting period applicable to the completion of the merger under the HSR Act or the GWB, if the failure of such condition to be satisfied is primarily caused by a material breach by Parent or Merger Sub of any of their respective covenants or agreements set forth in the provisions of the merger agreement described in the section of this proxy statement entitled *The Merger Agreement — Efforts to Complete the Merger*); (ii) Parent and Merger Sub do not complete the merger on or prior to the date the closing is required to occur pursuant to the merger agreement; (iii) Ultimate has irrevocably confirmed in writing to Parent that it is ready, willing and able to complete the merger throughout the three-business-day period following delivery of such confirmation; and (iv) Parent and Merger Sub fail to complete the merger within three business days following delivery of such confirmation; or
- by Parent:
  - at any time prior to the time the company stockholder approval is obtained, if the Ultimate board of directors (or any committee thereof) has made a change of recommendation or allowed Ultimate or any of its subsidiaries to enter into an alternative acquisition agreement (other than an acceptable confidentiality agreement); provided that Parent's right to terminate the merger agreement pursuant to this bullet point will expire at 5:00 p.m., New York City time, on the tenth business day following the date on which such right to terminate first arose; or
  - at any time prior to the effective time if Ultimate has breached any of its representations, warranties, covenants or agreements in the merger agreement, which breach (1) would give rise to the failure of a condition to the obligations of Parent and Merger Sub to complete the merger related to Ultimate's representations, warranties, covenants and agreements in the merger agreement and (2) is either not capable of being cured before the termination date or is not cured before the earlier of 30 business days following receipt of written notice from Parent of such

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breach or the termination date; provided that Parent will not have the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point if it or Merger Sub is then in breach of any of their representations, warranties, covenants or agreements in the merger agreement, such that any condition to the obligation of Ultimate to complete the merger related to Parent s or Merger Sub s representations, warranties, covenants and agreements in the merger agreement would not be satisfied if the closing date were the date of such termination.

Company Termination Fee (page 83)

Ultimate will pay Parent a termination fee in an amount equal to $331 million (referred to in this proxy statement as the company termination fee) in the following circumstances:

- if the merger agreement is terminated by Ultimate at any time prior to the time the company stockholder approval is obtained, in order to substantially concurrently enter into an alternative acquisition agreement providing for a superior proposal, provided that the amount of the company termination fee will be $110 million instead of the greater amount set forth above if (x) the merger agreement is terminated by the Company (i) at any time prior to the time the company stockholder approval is obtained, in order to substantially concurrently enter into an alternative acquisition agreement providing for a superior proposal and (ii) such time of termination is prior to the no-shop period start date, and (y) the Company has entered into a definitive alternative acquisition agreement with an excluded party (as defined in this proxy statement) to consummate an acquisition proposal at the time of such termination; or
- if the merger agreement is terminated by Parent because the Ultimate board of directors (or any committee thereof) has made a change of recommendation or allowed Ultimate or any of its subsidiaries to enter into an alternative acquisition agreement (other than an acceptable confidentiality agreement); or
- if all three of the following conditions are satisfied:
  - (1) the merger agreement is terminated by (i) either Ultimate or Parent because the merger has not been completed on or before the termination date, (ii) either Ultimate or Parent or because the company stockholder approval has not been obtained or (iii) Parent as a result of a breach by Ultimate of any representation, warranty, covenant or agreement in the merger agreement, which breach (x) gives rise to the failure of a condition to the obligations of Parent and Merger Sub to complete the merger related to Ultimate's representations, warranties, covenants and agreements in the merger agreement and (y) is either not capable of being cured before the termination date or is not cured before the earlier of 30 business days following receipt of written notice from Parent of such breach or the termination date, and in case of each of clause (i) and (iii) above, at the time of the termination, the company stockholder approval has not been obtained;
  - (2) any person has publicly proposed, announced or made an acquisition proposal (or in the case of clause (1)(ii), an acquisition proposal has been made to Ultimate's management or the Ultimate board of directors (or any committee thereof)) after the date of the merger agreement and prior to the special meeting and has not been withdrawn at least two business days prior to the special meeting (and in the case of clause (1)(iii), prior to the breach that forms the basis of the termination); and
  - (3) within 12 months after the termination, Ultimate completes an acquisition proposal or enters into a definitive agreement for an acquisition proposal that is subsequently completed (even if after such 12-month period)

(provided that, for purposes of the provision referred to in this bullet point, the references to 20% and 80% in the definition of acquisition proposal set forth in the merger agreement and defined below are deemed to be references to 50%).

Parent Termination Fee (page 84)

Parent will pay Ultimate the parent termination fee in an amount equal to $550 million if the merger agreement is terminated by Ultimate because the marketing period has ended and all of the conditions to the obligation of Parent to complete the merger have been satisfied or waived (other than those conditions that by their nature are

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to be satisfied at the closing of the merger, each of which is capable of being satisfied if the closing date were the date of such termination, and, solely with respect to the condition relating to the expiration or termination of the waiting period applicable to the completion of the merger under the HSR Act or the GWB, if the failure of such condition to be satisfied is primarily caused by a material breach by Parent or Merger Sub of any of their respective covenants or agreements set forth in the provisions of the merger agreement described in the section of this proxy statement entitled *The Merger Agreement — Efforts to Complete the Merger*); Parent and Merger Sub do not complete the merger on or prior to the date the closing is required to occur pursuant to the merger agreement; Ultimate has irrevocably confirmed in writing to Parent that it is ready, willing and able to complete the merger throughout the three-business-day period following delivery of such confirmation; and Parent and Merger Sub fail to complete the merger within three business days following delivery of such confirmation; provided that any purported termination of the merger agreement by either Ultimate or Parent because the merger has not been completed on or before the termination date will be deemed to be a termination on the grounds described in this paragraph if, at the time of such termination, Ultimate would have been entitled to terminate the merger agreement on the grounds described in this paragraph.

Market Price of the Company Common Stock (page 89)

The Company common stock is listed on the NASDAQ under the symbol ULTI. The closing sale price of our common stock on February 1, 2019, the last trading day prior to the execution of the merger agreement, was $277.83 per share. On March 25, 2019, the most recent practicable date before the filing of this proxy statement, the closing price for our common stock was $329.76 per share. You are encouraged to obtain current market quotations for our common stock in connection with voting your shares of common stock.

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QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

The following questions and answers address briefly some questions you may have regarding the special meeting and the proposals to be voted on at the special meeting. These questions and answers may not address all of the questions that may be important to you as a stockholder of the Company. Please refer to the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement and the documents referred to or incorporated by reference in this proxy statement, which you should read carefully and in their entirety. You may obtain the documents incorporated by reference into this proxy statement without charge by following the instructions under the section of this proxy statement entitled Where You Can Find Additional Information.

Q: Why am I receiving this proxy statement?

A: On February 3, 2019 the Company entered into a merger agreement providing for the acquisition of the Company by Parent in a merger for a price of $331.50 per share in cash, without interest and subject to any required withholding taxes. You are receiving this proxy statement in connection with the solicitation of proxies by the Ultimate board of directors in favor of the proposal to adopt the merger agreement and to approve the other related proposal to be voted on at the special meeting.

Q: As a stockholder of Ultimate, what will I receive in the merger?

A: If the merger is completed you will receive $331.50 in cash, without interest and subject to any required withholding taxes, for each outstanding share of common stock that you own immediately prior to the effective time, unless you have properly exercised your appraisal rights in accordance with Section 262 of the DGCL with respect to such shares.

Q: When and where is the special meeting?

A: The special meeting will be held at 2000 Ultimate Way, Weston, Florida 33326, on Tuesday, April 30, 2019, at 10:00 a.m., local time.

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

A: Only holders of record of Ultimate common stock as of the close of business on March 27, 2019, the record date for the special meeting, are entitled to receive these proxy materials and to vote their shares at the special meeting. Each share of Ultimate common stock issued and outstanding as of the record date will be entitled to one vote on each matter submitted to a vote at the special meeting.

Q: What matters will be voted on at the special meeting?

A: At the special meeting, you will be asked to consider and vote on the following proposals:

- to adopt the merger agreement;
- to approve, on an advisory (non-binding) basis, certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger; and
- to approve the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

Q: How do I attend the special meeting?

A: If you plan to attend the special meeting in person, you must provide proof of ownership of Ultimate common stock as of the record date, such as an account statement indicating ownership on that date, and a form of personal identification for admission to the special meeting. If you hold your shares in street name, and you also wish to be able to vote at the special meeting, you must obtain a legal proxy, executed in your favor, from your bank or broker.

Q: How many shares are needed to constitute a quorum?

A: A quorum will be present if holders of a majority of the shares of common stock issued and outstanding and entitled to vote at the special meeting are present in person or represented by proxy at the special meeting. If a quorum is not present at the special meeting, the special meeting may be adjourned or postponed from time to time until a quorum is obtained.

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As of the close of business on March 25, 2019 (two business days prior to the record date for the special meeting), there were 31,680,263 shares of common stock outstanding. If you submit a proxy but fail to provide voting instructions or abstain on any of the proposals listed on the proxy card, your shares will be counted for the purpose of determining whether a quorum is present at the special meeting.

If your shares are held in street name by your broker, bank or other nominee and you do not instruct the nominee how to vote your shares, your broker, bank or other nominee will not vote on your behalf with respect to any of the proposals, and your shares will not be counted as present at the special meeting for purposes of determining whether a quorum is present for the transaction of business at the special meeting.

Q: What vote of Ultimate stockholders is required to adopt the merger agreement?

A: Adoption of the merger agreement requires the affirmative vote of a majority of the shares of common stock outstanding at the close of business on the record date for the special meeting and entitled to vote thereon.

An abstention with respect to the proposal to adopt the merger agreement, or a failure to vote your shares of common stock (including a failure to instruct your broker, bank or other nominee to vote shares held on your behalf), will have the same effect as a vote **AGAINST** this proposal.

Q: What vote of Ultimate stockholders is required to approve the other proposals to be voted upon at the special meeting?

A: Each of (1) the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger and (2) the proposal to adjourn the special meeting, if necessary or appropriate, including to solicit additional proxies, requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon.

An abstention with respect to either proposal will have the same effect as a vote **AGAINST** these proposals. A failure to return your proxy card or otherwise vote your shares of common stock (including a failure of your broker, bank or other nominee to vote shares held on your behalf), will have no effect on these proposals, assuming a quorum is present.

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

A: The Ultimate board of directors unanimously recommends that Ultimate stockholders vote:

- **FOR** the proposal to adopt the merger agreement;
- **FOR** the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger; and
- **FOR** the proposal regarding adjournment of the special meeting.

For a discussion of the factors that the Ultimate board of directors considered in determining to recommend in favor of the adoption of the merger agreement, see the section of this proxy statement entitled *The Merger — Reasons for the Merger; Recommendation of the Ultimate Board of Directors*. In addition, in considering the recommendation of the Ultimate board of directors with respect to the merger agreement, you should be aware that some of our directors and executive officers have interests that may be different from, or in addition to, the interests of Ultimate stockholders generally. For a discussion of these interests, see the section of this proxy statement entitled *The Merger — Interests of the Company's Directors and Executive Officers in the Merger*.

Q: How do Ultimate's directors and officers intend to vote?

A: The Company's directors and executive officers have informed us that they intend to vote their shares of Company common stock in favor of the proposal to adopt the merger agreement and the other proposals to be considered at the special meeting, although they have no obligation to do so. As of March 25, 2019 (two business days prior to the record date for the special meeting), our directors and executive officers owned, in the aggregate, approximately 879,455 shares of Company common stock, or approximately 2.7% of the outstanding shares of Company common stock.

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Q: Am I entitled to rights of appraisal under the DGCL?

A: If the merger is completed, stockholders who do not vote in favor of the adoption of the merger agreement and who properly demand appraisal of their shares will be entitled to appraisal rights in connection with the merger under Section 262 of the DGCL. This means that holders of shares of our common stock are entitled to have their shares appraised by the Delaware Court of Chancery and to receive payment in cash of the fair value of their shares of common stock, exclusive of any elements of value arising from the accomplishment or expectation of the merger, together with interest on the amount determined to be fair value, if any, as determined by the court (or, in certain circumstances described below, on the difference between the amount determined to be the fair value and the amount paid to each stockholder entitled to appraisal prior to the entry of judgment in the appraisal proceeding). Stockholders who wish to seek appraisal of their shares are in any case encouraged to seek the advice of legal counsel with respect to the exercise of appraisal rights due to the complexity of the appraisal process. The requirements under Section 262 of the DGCL for exercising appraisal rights are described in additional detail in this proxy statement, and Section 262 of the DGCL regarding appraisal rights is reproduced in Annex C to this proxy statement. See the section of this proxy statement entitled *Appraisal Rights*.

Q: When is the merger expected to be completed?

A: As of the date of this proxy statement, we expect to complete the merger in the second calendar quarter of 2019. However, completion of the merger is subject to the satisfaction or waiver of the conditions to the completion of the merger, which are described in this proxy statement, and we cannot be certain when or if the conditions to the merger will be satisfied or, to the extent permitted, waived.

Q: What happens if the merger is not completed?

A: If the merger agreement is not adopted by the Company's stockholders, or if the merger is not completed for any other reason, the Company's stockholders will not receive any payment for their shares of common stock in connection with the merger. Instead, the Company will remain a public company, and shares of our common stock will continue to be registered under the Exchange Act, as well as listed and traded on the NASDAQ. In the event that either Ultimate or Parent terminates the merger agreement, then, in certain specified circumstances, Ultimate may be required to pay Parent a company termination fee in an amount equal to $331 million (or alternatively, in other specified circumstances, $110 million) or Parent may be required to pay Ultimate a parent termination fee in an amount equal to $550 million. See the sections of this proxy statement entitled *The Merger Agreement — Company Termination Fee* and *The Merger Agreement — Parent Termination Fee.*

Q: Why am I being asked to consider and cast a vote on the advisory (non-binding) proposal on certain compensation that may be paid or become payable to the Company's named executive officers in connection with the merger? What will happen if stockholders do not approve this proposal?

A: The inclusion of this proposal is required by the rules of the Securities and Exchange Commission (referred to in this proxy statement as the SEC); however, the approval of this proposal is not a condition to the completion of the merger and the vote on this proposal is an advisory vote by the stockholders and will not be binding on the Company or Parent. If the merger agreement is adopted by the Company's stockholders and the merger is completed, the merger-related compensation will be paid to the Company's named executive officers in accordance with the terms of their compensation agreements and arrangements even if stockholders fail to approve this proposal.

Q: How does the merger consideration compare to the market price of the Company common stock?

A: The merger consideration of $331.50 per share represents a premium of approximately 32% over the trailing 30-day volume weighted average price of our common stock for the period ended February 1, 2019, the last trading day prior to the execution of the merger agreement, and represents a premium of approximately 19% over the closing price of our common stock of $277.83 per share on February 1, 2019.

Q: What do I need to do now? How do I vote my shares of common stock?

A: We urge you to, and you should, read this entire proxy statement carefully, including its annexes and the documents incorporated by reference in this proxy statement, and to consider how the merger affects you. Your vote is important, regardless of the number of shares of common stock you own.

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Voting in Person

Stockholders of record will be able to vote in person at the special meeting. If you are not a stockholder of record but instead hold your shares of common stock in street name through a broker, bank or other nominee, you must provide a legal proxy executed in your favor from your broker, bank or other nominee in order to be able to vote in person at the special meeting.

It is not necessary to attend the special meeting in order to vote your shares. To ensure that your shares of common stock are voted at the special meeting, we strongly recommend that you provide voting instructions promptly by proxy, even if you plan to attend the special meeting in person.

Attending the special meeting in person does not itself constitute a vote on any proposal.

Shares of Common Stock Held by Record Holder

You can ensure that your shares are voted at the special meeting by submitting your proxy via:

- mail, by completing, signing and dating the enclosed proxy card and returning it in the enclosed postage-paid envelope;
- telephone, by using the toll-free number 1-800-690-6903; or
- the Internet, at www.proxyvote.com.

The telephone and Internet voting facilities for stockholders of record will close at 11:59 p.m. (ET) on April 29, 2019.

If you sign, date and return your proxy card without indicating how you wish to vote, your proxy will be voted **FOR** (1) the proposal to adopt the merger agreement, (2) the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger and (3) the proposal to adjourn the special meeting, if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

We strongly encourage you to vote by proxy even if you plan on attending the special meeting.

A failure to vote or an abstention will have the same effect as a vote **AGAINST** the adoption of the merger agreement.

Shares of Common Stock Held in Street Name

If you hold your shares in street name through a broker, bank or other nominee, you should follow the directions provided by your broker, bank or other nominee regarding how to instruct your broker, bank or other nominee to vote your shares. Without those instructions, your shares will not be voted, which will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement.

Q: Can I revoke my proxy?

A: Yes. You can revoke your proxy before the vote is taken at the special meeting. If you are a stockholder of record, you may revoke your proxy by notifying the Company in writing, in care of the Secretary, The Ultimate Software Group, Inc., 2000 Ultimate Way, Weston, Florida 33326, or by submitting a new proxy with a later date, by using the telephone or Internet proxy submission procedures described above at any time up to 11:59 p.m. (ET) on April 29, 2019, or by completing, signing, dating and returning a new proxy card by mail to the Company. In addition, you may revoke your proxy by attending the special meeting and voting in person; however, simply attending the special meeting will not cause your proxy to be revoked. Please note that if you want to revoke your proxy by mailing a new proxy card to the Company or by sending a written notice of revocation to the Company, you should ensure that you send your new proxy card or written notice of revocation in sufficient time for it to be received by the Company before the special meeting.

If you hold your shares in street name and you have instructed a broker, bank or other nominee to vote your shares, you should instead follow the instructions received from your broker, bank or other nominee to

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revoke your prior voting instructions. If you hold your shares in street name, you may also revoke a prior proxy by voting in person at the special meeting if you obtain a legal proxy executed in your favor from your broker, bank or other nominee in order to be able to vote in person at the special meeting.

Q: What happens if I do not vote or if I abstain from voting on the proposals?

A: The requisite number of shares to approve the proposal to adopt the merger agreement is based on the total number of shares of Company common stock outstanding on the record date, not just the shares that are voted. If you do not vote, or abstain from voting, on the proposal to adopt the merger agreement, or if you hold your shares in street name and fail to give voting instructions to your broker, bank or other nominee, it will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement.

The requisite number of shares to approve the other two proposals is based on the total number of shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon. If you abstain from voting on (1) the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger and (2) the proposal regarding adjournment of the special meeting, it will have the same effect as a vote **AGAINST** these proposals. If you do not return your proxy card or otherwise fail to vote your shares of common stock (including a failure of your broker, bank or other nominee to vote shares held on your behalf), it will have no effect on these proposals, assuming a quorum is present.

Q: Will my shares of common stock held in street name or held in another form of record ownership be combined for voting purposes with shares I hold of record?

A: No. Because any shares of common stock you may hold in street name will be deemed to be held by a different stockholder (that is, your broker, bank, or other nominee) than any shares of common stock you hold of record, any shares of common stock held in street name will not be combined for voting purposes with shares of common stock held of record. Similarly, if you own shares of common stock in various registered forms, such as jointly with your spouse, as trustee of a trust or as custodian for a minor, you will receive, and will need to sign and return, a separate proxy card for those shares of common stock because they are held in a different form of record ownership. Shares of common stock held by a corporation or business entity must be voted by an authorized officer of the entity. Please indicate title or authority when completing and signing the proxy card.

Q: What does it mean if I get more than one proxy card or voting instruction card?

A: If your shares of common stock are registered differently or are held in more than one account, you will receive more than one proxy card or voting instruction card. Please complete and return all of the proxy cards and voting instruction cards you receive (or submit each of your proxies by telephone or the Internet) to ensure that all of your shares of common stock are voted.

Q: What happens if I sell my shares of common stock before completion of the merger?

A: In order to receive the merger consideration, you must hold your shares of common stock through completion of the merger. Consequently, if you transfer your shares of common stock before completion of the merger, you will have transferred your right to receive the merger consideration.

The record date for stockholders entitled to vote at the special meeting is earlier than the completion of the merger. If you transfer your shares of common stock after the record date but before the closing of the merger, you will have the right to vote at the special meeting but not the right to receive the merger consideration.

Q: If the merger is completed, how do I obtain the merger consideration for my shares of common stock?

A: Following the completion of the merger, your shares of common stock will automatically be converted into the right to receive your portion of the merger consideration, without interest and subject to any required withholding taxes. After the merger is completed, if your shares of common stock are evidenced by stock certificates, you will receive a letter of transmittal and related materials from the paying agent for the merger with detailed written instructions for exchanging your shares of common stock evidenced by stock

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certificates for the merger consideration (without interest and subject to any required withholding taxes). If your shares of common stock are held in street name by your broker, bank or other nominee, you may receive instructions from your broker, bank or other nominee as to what action, if any, you need to take to effect the surrender of your street name shares in exchange for the merger consideration (without interest and subject to any required withholding taxes).

Q: Should I send in my stock certificates or other evidence of ownership now?

A: No. **You should not return your stock certificates or send in other documents evidencing ownership of common stock with the proxy card.** If the merger is completed, if your shares of common stock are evidenced by stock certificates, the paying agent for the merger will send you a letter of transmittal and related materials and instructions for exchanging your shares of common stock for the merger consideration (without interest and subject to any required withholding taxes).

Q: Is the merger expected to be taxable to me?

A: The receipt of cash by U.S. holders in exchange for shares of common stock pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. In general, for U.S. federal income tax purposes, a U.S. holder who receives cash in exchange for shares of common stock pursuant to the merger will recognize capital gain or loss in an amount equal to the difference, if any, between (1) the amount of cash received and (2) the U.S. holder's adjusted tax basis in such shares. See *The Merger — Material U.S. Federal Income Tax Consequences of the Merger* for a more complete discussion of the U.S. federal income tax consequences of the merger. You should consult your own tax advisor regarding the particular tax consequences to you of the exchange of shares of common stock for cash pursuant to the merger in light of your particular circumstances (including the application and effect of any state, local or foreign income and other tax laws).

Q: What is householding and how does it affect me?

A: The SEC permits companies to send a single set of proxy materials to any household at which two or more stockholders reside, unless contrary instructions have been received, but only if the company provides advance notice and follows certain procedures. In such cases, each stockholder continues to receive a separate notice of the meeting and proxy card. Certain brokerage firms may have instituted householding for beneficial owners of common stock held through brokerage firms. If your family has multiple accounts holding common stock, you may have already received a householding notification from your broker. Please contact your broker directly if you have any questions or require additional copies of this proxy statement. The broker will arrange for delivery of a separate copy of this proxy statement promptly upon your written or oral request. You may decide at any time to revoke your decision to household, and thereby receive multiple copies.

Q: Where can I find more information about Ultimate?

A: You can find more information about us from various sources described in the section of this proxy statement entitled *Where You Can Find Additional Information*.

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

A: The Ultimate board of directors is soliciting your proxy, and the Company will bear the costs of this solicitation. We will reimburse brokerage firms and others for their reasonable expenses of forwarding solicitation material to beneficial owners of Ultimate's outstanding common stock. The Company has retained MacKenzie Partners, a proxy solicitation firm, to assist the Ultimate board of directors in the solicitation of proxies for the special meeting, and we expect to pay MacKenzie Partners approximately $17,000, plus reimbursement of out-of-pocket expenses. Proxies may be solicited by mail, personal interview, e-mail, telephone or via the Internet or, without additional compensation, by certain of the Company's directors, officers and employees.

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Q: Who can help answer my other questions?

A: If you have more questions about the merger, or require assistance in submitting your proxy or voting your shares or need additional copies of the proxy statement or the enclosed proxy card, please contact MacKenzie Partners, which is acting as the proxy solicitation agent for the Company in connection with the merger, at the telephone numbers, email address or address below:

MacKenzie Partners, Inc.
1407 Broadway, 27th Floor
New York, NY 10018
Call Toll-free: (800) 322-2885
(212) 929-5500 (Call Collect)
Email: proxy@mackenziepartners.com

If your broker, bank or other nominee holds your shares, you should also call your broker, bank or other nominee for additional information.

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CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This proxy statement, the documents incorporated by reference in this proxy statement and the documents we subsequently file with the SEC and incorporate by reference in this proxy statement may contain certain 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. These forward-looking statements represent our expectations or beliefs, including, but not limited to, our expectations concerning our operations and financial performance and condition, and our expectations regarding our ability to complete the merger and the timing of the merger, as well as our ability to realize the anticipated benefits from the merger. Words such as anticipates, expects, intends, plans, believes, seeks, estimates, and similar expressions are intended to identify such forward-looking statements. These forward-looking statements are not guarantees of future performance and are subject to certain risks and uncertainties that are difficult to predict. Ultimate s actual results could differ materially from those contained in the forward-looking statements due to risks and uncertainties associated with fluctuations in our quarterly operating results, concentration of our product offerings, development risks involved with new products and technologies, competition, our contractual relationships with third parties, contract renewals with business partners, compliance by our customers with the terms of their contracts with us, and other factors disclosed in Ultimate s filings with the Securities and Exchange Commission. Risks and uncertainties related to the merger include, but are not limited to:

- the occurrence of any event, change or other circumstance that could give rise to the termination of the merger agreement;
- the failure of the parties to satisfy conditions to completion of the merger, including the failure of our stockholders to approve the merger or the failure of the parties to obtain required regulatory approvals;
- the risk that regulatory or other approvals are delayed or are subject to terms and conditions that are not anticipated;
- changes in our business or in our or our businesses' operating prospects;
- the impact of the announcement of, or failure to complete, the merger on our relationships with employees, customers, vendors and other business partners;
- potential litigation related to the merger;
- risks associated with the diversion of management's attention or other resources from other critical business operations and strategic priorities due to the merger; and
- changes in domestic and global economic, political and market conditions.

Other factors that may cause such differences include, but are not limited to, those described in the Company s Form 10-K for the year ended December 31, 2018, as filed with the SEC, and in other reports filed by the Company with the SEC from time to time. See the section of this proxy statement entitled *Where You Can Find Additional Information*. Ultimate undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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THE COMPANIES

The Ultimate Software Group, Inc.

With offices in the United States, Canada, France, Germany, England, and Singapore, The Ultimate Software Group, Inc. (referred to as Ultimate, the Company, we, our or us) (NASDAQ: ULTI) is a leading provider of cloud-base human capital management solutions — often referred to as human capital management (HCM) — and employee experience solutions. Ultimate s UltiPro product suite is a comprehensive, engaging solution that has human resources (HR) and payroll at its core and includes benefits management, talent acquisition, talent management, time management, and global people management functionality available in 14 languages with 61 country-specific localizations. Ultimate also offers a-la-carte employee experience solutions, such as HR Service Delivery and Perception, an employee-sentiment analysis solution.

Ultimate s solutions are delivered via software-as-a-service (SaaS), now more commonly known as cloud computing, to organizations with employees in the United States, Canada, Europe, Asia Pacific, and other global locations. At the close of 2018, we had more than 5,600 organizations as customers and more than 48 million people records in our cloud environment. We attained our leadership position, we believe, through our exclusive focus on solutions that help companies manage their employees in an engaging way. Key factors in our success have been our people-centric product design, cloud technology, and strong customer relationships nurtured by our services team and throughout the Ultimate organization.

Ultimate s principal executive offices are located at 2000 Ultimate Way, Weston, Florida 33326, and its telephone number is (954) 331-7000.

Additional information about Ultimate is contained in its public filings, certain of which are incorporated by reference herein. See the section of this proxy statement entitled *Where You Can Find Additional Information*.

Unite Parent Corp.

Parent is a Delaware corporation that was formed on January 28, 2019, solely for the purpose of engaging in the transactions contemplated by the merger agreement, and has not engaged in any business activities other than in connection with its formation, the transactions contemplated by the merger agreement and arranging of the equity financing and debt financing in connection with the merger.

Parent s principal executive offices are located at c/o Hellman & Friedman, 415 Mission Street, Suite 5700, San Francisco, California 94105 and its telephone number is (415) 788-5111.

Unite Merger Sub Corp.

Merger Sub is a Delaware corporation and an indirect wholly owned subsidiary of Parent that was formed on January 28, 2019, solely for the purpose of engaging in the transactions contemplated by the merger agreement, and has not engaged in any business activities other than in connection with its formation, the transactions contemplated by the merger agreement and arranging of the equity financing and debt financing in connection with the merger. Upon completion of the merger, Merger Sub will merge with and into Ultimate and will cease to exist.

Merger Sub s principal executive offices are located at c/o Hellman & Friedman, 415 Mission Street, Suite 5700, San Francisco, California 94105 and its telephone number is (415) 788-5111.

Parent and Merger Sub were formed by (i) Hellman & Friedman Capital Partners VIII, L.P. and its affiliated investment funds (collectively referred to in this proxy statement as the H&F Fund VIII Entities) and (ii) Hellman & Friedman Capital Partners IX, L.P. and its affiliated investment funds (collectively referred to in this proxy statement as the H&F Fund IX Entities and, together with the H&F Fund VIII Entities, referred to in this proxy statement as the H&F Entities).

In connection with the transactions contemplated by the merger agreement, the H&F Entities, Blackstone Capital Partners VII L.P. and its affiliated investment funds (collectively referred to in this proxy statement as the Blackstone Entities), Vencap Holdings (1987) Pte. Ltd. (referred to in this proxy statement as the GIC Entity), Canada Pension Plan Investment Board (referred to in this proxy statement as CPPIB), and JMI Equity Fund IX-A, L.P. and its affiliated investment funds (collectively referred to in this proxy statement as the JMI Entities) have committed to capitalize Parent, on the date of the closing of the merger, with an aggregate

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equity subscription of up to $8.133 billion, subject to the terms and conditions set forth in the equity commitment letters. For more information, please see the section of this proxy statement entitled *The Merger Agreement — Debt Financing and Debt Financing Cooperation*.

The H&F Entities are each affiliated with Hellman & Friedman (alternately referred to in this proxy statement as H&F). Hellman & Friedman is a leading private equity investment firm with offices in San Francisco, New York, and London. Since its founding in 1984, Hellman & Friedman has raised over $50 billion of committed capital. The firm focuses on investing in outstanding business franchises and serving as a value-added partner to management in select industries including software, financial services, business & information services, healthcare, internet & media, retail & consumer, and industrials & energy. For more information, please visit www.hf.com. The Blackstone Entities are each affiliated with The Blackstone Group L.P. (referred to in this proxy statement as Blackstone). Blackstone is an investment firm whose asset management businesses, with $472 billion in assets under management as of December 31, 2018, include investment vehicles focused on private equity, real estate, public debt and equity, non-investment grade credit, real assets and secondary funds, all on a global basis. The GIC Entity is affiliated with GIC Pte. Ltd. (referred to in this proxy statement as GIC). GIC was established in 1981 to manage Singapore s foreign reserves. The JMI Entities are each affiliated with JMI Equity (referred to in this proxy statement as JMI Equity). JMI Equity is a growth equity firm focused on investing in leading software companies. CPPIB is a professional investment management organization that invests funds not needed by the Canada Pension Plan to pay current benefits in the best interests of 20 million contributors and beneficiaries.

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THE SPECIAL MEETING

We are furnishing this proxy statement to the Company s stockholders as part of the solicitation of proxies by the Ultimate board of directors for use at the special meeting or any adjournment or postponement thereof. This proxy statement provides the Company s stockholders with the information they need to know to be able to vote or instruct their vote to be cast at the special meeting or any adjournment or postponement thereof.

Date, Time and Place of the Special Meeting

This proxy statement is being furnished to our stockholders as part of the solicitation of proxies by the Ultimate board of directors for use at the special meeting to be held at 2000 Ultimate Way, Weston, Florida 33326, on Tuesday, April 30, 2019, at 10:00 a.m., local time, or at any adjournment or postponement thereof.

For information regarding attending the special meeting, see *The Special Meeting — Voting; Proxies; Revocation — Attendance*.

Purposes of the Special Meeting

At the special meeting, Ultimate stockholders will be asked to consider and vote on the following proposals:

- to adopt the merger agreement, dated as of February 3, 2019, by and among the Company, Parent and Merger Sub (as it may be amended from time to time);
- to approve, on an advisory (non-binding) basis, certain compensation that may be paid or become payable to the Company's named executive officers in connection with the merger, the value of which is disclosed in the table in the section of this proxy statement entitled *The Merger—Interests of the Company's Directors and Executive Officers in the Merger — Quantification of Potential Payments and Benefits to the Company's Named Executive Officers in Connection with the Merger* ; and
- to approve the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement.

Our stockholders must adopt the merger agreement for the merger to occur. If our stockholders fail to adopt the merger agreement, the merger will not occur. A copy of the merger agreement is attached to this proxy statement as Annex A, and certain provisions of the merger agreement are described in the section of this proxy statement entitled *The Merger Agreement*.

The vote on the named executive officer merger-related compensation proposal is a vote separate and apart from the vote on the proposal to adopt the merger agreement. Accordingly, you may vote to adopt the merger agreement and vote not to approve the named executive officer merger-related compensation proposal and vice versa. Because the vote on the named executive officer merger-related compensation proposal is advisory only, it will not be binding on either Ultimate or Parent. Accordingly, if the merger agreement is adopted and the merger is completed, the compensation will be payable, subject only to the conditions applicable thereto under the applicable compensation agreements and arrangements, regardless of the outcome of the non-binding, advisory vote of Ultimate s stockholders.

The Company does not anticipate calling a vote on the proposal to approve the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies, if the proposal to adopt the merger agreement is approved by the requisite number of shares of Ultimate common stock at the special meeting.

We do not expect that any matters other than the proposals set forth above will be brought before the special meeting. If, however, such a matter is properly presented at the special meeting or any adjournment or postponement thereof,

the persons appointed as proxies will have discretionary authority to vote the shares represented by duly executed proxies.

This proxy statement and the enclosed form of proxy are first being mailed to our stockholders on or about March 28, 2019.

Record Date, Notice and Quorum

The holders of record of Ultimate common stock as of the close of business on March 27, 2019, the record date for the special meeting, are entitled to receive notice of and to vote at the special meeting.

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At the close of business on March 25, 2019 (two business days prior to the record date for the special meeting), 31,680,263 shares of common stock were outstanding.

We are commencing our solicitation of proxies on or about March 26, 2019, which is before the March 27, 2019 record date for the special meeting. We will continue to solicit proxies until the April 30, 2019 stockholders meeting. Each stockholder of record on March 27, 2019 will receive a proxy statement and have the opportunity to vote on the matters described in the proxy statement. Any proxies delivered prior to the record date will be valid and effective so long as the stockholder providing the proxy is a holder of record on the record date. If you are not a holder of record on the record date, any proxy you deliver will be invalid and will not be counted at the special meeting. If you deliver a proxy prior to the record date and remain a holder on the record date, you do not need to deliver another proxy after the record date. If you deliver a proxy prior to the record date and do not revoke that proxy, your proxy will be deemed to cover the number of shares you own on the record date even if that number is different from the number of shares you owned when you executed and delivered your proxy. Proxies received from persons who are not holders of record on the record date will not be effective.

The presence at the special meeting, in person or represented by proxy, of the holders of a majority of the shares of common stock issued and outstanding and entitled to vote at the special meeting at the close of business on the record date will constitute a quorum. Once a share is represented at the special meeting, it will be counted for purposes of determining whether a quorum is present at the special meeting. However, if a new record date is set for an adjourned special meeting, a new quorum will have to be established. Proxies received but marked as abstentions will be included in the calculation of the number of shares considered to be present at the special meeting. If your shares are held in street name by your broker, bank or other nominee and you do not instruct the nominee how to vote your shares, your shares will not be counted as present at the special meeting for purposes of determining whether a quorum is present for the transaction of business at the special meeting.

Required Vote

Each share of common stock outstanding at the close of business on the record date is entitled to one vote on each of the proposals to be considered at the special meeting.

For the Company to complete the merger, Ultimate stockholders holding a majority of the shares of common stock outstanding at the close of business on the record date and entitled to vote on the adoption of the merger agreement must vote **FOR** the proposal to adopt the merger agreement. An abstention with respect to the proposal to adopt the merger agreement, or a failure to vote your shares of common stock (including a failure to instruct your broker, bank or other nominee to vote shares held on your behalf), will have the same effect as a vote **AGAINST** this proposal.

Approval of each of (1) the advisory (non-binding) proposal on certain compensation that may be paid or become payable to the Company s named executive officers in connection with the merger and (2) the adjournment proposal requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon, but is not a condition to the completion of the merger. An abstention with respect to either proposal will have the same effect as a vote **AGAINST** these proposals. A failure to return your proxy card or otherwise vote your shares of common stock (including a failure to instruct your broker, bank or other nominee to vote shares held on your behalf), will have no effect on these proposals, assuming a quorum is present.

Stock Ownership and Interests of Certain Persons

Voting by the Company s Directors and Executive Officers

At the close of business on March 25, 2019 (two business days prior to the record date for the special meeting), directors and executive officers of the Company were entitled to vote approximately 879,455 shares of common stock, or approximately 2.7% of the shares of common stock issued and outstanding on that date. The Company s directors and executive officers have informed us that they intend to vote their shares in favor of the proposal to adopt the merger agreement and the other proposals to be considered at the special meeting, although they have no obligation to do so.

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Voting; Proxies; Revocation

Attendance

All holders of shares of common stock as of the close of business on March 27, 2019, the record date, including stockholders of record and beneficial owners of common stock registered in the street name of a broker, bank or other nominee, are invited to attend the special meeting.

To attend the special meeting in person, you must provide proof of ownership of Ultimate common stock as of the record date, such as an account statement indicating ownership on that date, and a form of personal identification for admission to the meeting. If you hold your shares in street name, and you also wish to be able to vote at the meeting, you must obtain a legal proxy, executed in your favor, from your bank, broker or other nominee.

Voting in Person

Stockholders of record will be able to vote in person at the special meeting. If you are not a stockholder of record, but instead hold your shares of common stock in street name through a broker, bank or other nominee, you must provide a legal proxy executed in your favor from your broker, bank or other nominee in order to be able to vote in person at the special meeting. Attending the special meeting in person does not itself constitute a vote on any proposal.

Providing Voting Instructions by Proxy

To ensure that your shares of common stock are voted at the special meeting, we strongly recommend that you provide voting instructions promptly by proxy, even if you plan to attend the special meeting in person.

Shares of Common Stock Held by Record Holder

If you are a stockholder of record, you may provide voting instructions by proxy using one of the methods described below.

Submit a Proxy by Telephone or via the Internet. This proxy statement is accompanied by a proxy card with instructions for submitting voting instructions. You may vote by telephone by calling the toll-free number or via the Internet by accessing the Internet address specified on the enclosed proxy card. Your shares of common stock will be voted as you direct in the same manner as if you had completed, signed, dated and returned your proxy card, as described below.

Submit a Proxy Card. If you complete, sign, date and return the enclosed proxy card by mail so that it is received in time for the special meeting, your shares of common stock will be voted in the manner directed by you on your proxy card.

If you sign, date and return your proxy card without indicating how you wish to vote, your proxy will be voted in favor of each of the proposal to adopt the merger agreement, the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger, and the proposal to adjourn the special meeting, if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement. If you fail to return your proxy card or vote by telephone or via the Internet, and you are a holder of record on the record date, unless you attend the special meeting and vote in person, your shares of common stock will not be considered present at the special meeting for purposes of determining whether a quorum is present at the special meeting, which will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement and,

assuming a quorum is present, will have no effect on the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger, or the vote regarding the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies.

Shares of Common Stock Held in Street Name

If your shares of common stock are held by a broker, bank or other nominee on your behalf in street name, your broker, bank or other nominee will send you instructions as to how to provide voting instructions for your shares. Many brokerage firms and banks have a process for their customers to provide voting instructions by telephone or via the Internet, in addition to providing voting instructions by a voting instruction form.

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In accordance with applicable stock exchange rules, brokers, banks and other nominees that hold shares of common stock in street name for their customers do not have discretionary authority to vote the shares with respect to (1) the proposal to adopt the merger agreement, (2) the advisory (non-binding) proposal to approve certain compensation that may be paid or become payable to the Company s named executive officers in connection with the merger, or (3) the adjournment of the special meeting, if necessary or appropriate, including to solicit additional proxies. Accordingly, if brokers, banks or other nominees do not receive specific voting instructions from the beneficial owner of such shares, they cannot vote such shares with respect to these proposals. Therefore, unless you attend the special meeting in person with a properly executed legal proxy from your broker, bank or other nominee, your failure to provide instructions to your broker, bank or other nominee will result in your shares of Ultimate common stock not being present at the meeting and not being voted on any of the proposals. As a result, a failure to vote your shares of common stock (including a failure to instruct your broker, bank or other nominee to vote shares held on your behalf) will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement, but it will have no effect on the other proposals, assuming a quorum is present.

Revocation of Proxies

Any person giving a proxy pursuant to this solicitation has the power to revoke and change it before it is voted. If you are a stockholder of record, you may revoke your proxy before the vote is taken at the special meeting by:

- submitting a new proxy with a later date, by using the telephone or Internet proxy submission procedures described above at any time up to 11:59 p.m. (ET) on April 29, 2019, or by completing, signing, dating and returning a new proxy card by mail to the Company;
- attending the special meeting and voting in person; or
- delivering a written notice of revocation by mail to the Company, in care of the Secretary, at The Ultimate Software Group, Inc., 2000 Ultimate Way, Weston, Florida 33326.

Please note, however, that only your last-dated proxy will count. Attending the special meeting without taking one of the actions described above will not in itself revoke your proxy. Please note that if you want to revoke your proxy by mailing a new proxy card to the Company or by sending a written notice of revocation to the Company, you should ensure that you send your new proxy card or written notice of revocation in sufficient time for it to be received by the Company before the special meeting.

If you hold your shares in street name through a broker, bank or other nominee, you will need to follow the instructions provided to you by your broker, bank or other nominee in order to revoke your proxy or submit new voting instructions. If you hold your shares in street name, you may also revoke a prior proxy by voting in person at the special meeting if you obtain a legal proxy executed in your favor from your broker, bank or other nominee in order to be able to vote in person at the special meeting.

Abstentions

An abstention occurs when a stockholder attends the special meeting, either in person or represented by proxy, but abstains from voting. Abstentions will be included in the calculation of the number of shares of common stock present or represented at the special meeting for purposes of determining whether a quorum has been achieved.

Abstaining from voting will have the same effect as a vote **AGAINST** the proposal to adopt the merger agreement, a vote **AGAINST** the advisory (non-binding) proposal on certain compensation that may be paid or become payable to the named executive officers of the Company in connection with the merger and a vote **AGAINST** the proposal regarding the adjournment of the special meeting.

Solicitation of Proxies

The Ultimate board of directors is soliciting your proxy, and the Company will bear the costs of this solicitation. We will reimburse brokerage firms and others for their reasonable expenses of forwarding solicitation material to beneficial owners of Ultimate s outstanding common stock. The Company has retained MacKenzie Partners, a proxy solicitation firm, to assist the Ultimate board of directors in the solicitation of proxies for the special meeting, and we expect to pay MacKenzie Partners approximately $17,000, plus reimbursement of out-of-pocket

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expenses. We will also indemnify MacKenzie Partners against losses arising out of its provisions of the foregoing services on our behalf. Proxies may be solicited by mail, personal interview, e-mail, telephone or via the Internet or, without additional compensation, by certain of the Company s directors, officers and employees.

Adjournments and Postponements

Although it is not currently expected, the special meeting may be adjourned or postponed if necessary or appropriate, including to solicit additional proxies if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement or in the absence of a quorum.

Holders of a majority of shares present in person or represented by proxy at the special meeting, whether or not constituting a quorum, and entitled to vote or, in the absence of a decision by the majority, the officer presiding over the meeting may adjourn the special meeting. Any adjournment may be made without notice (provided the adjournment is not for more than 30 days) by an announcement at the special meeting of the time, date and place of the adjourned meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting must be given to each stockholder of record entitled to vote at the meeting. In addition, at any time prior to convening the special meeting, the Ultimate board of directors may postpone the special meeting. Adjournments and postponements are subject to certain restrictions in the merger agreement, including that the special meeting may not be adjourned or postponed to a date that is more than five business days prior to the termination date (as defined below) without Parent s prior written consent.

Other Information

You should not return your stock certificates or send in other documents evidencing ownership of common stock with the proxy card. If the merger is completed, if your shares of common stock are evidenced by stock certificates, the paying agent for the merger will send you a letter of transmittal and related materials and instructions for exchanging your shares of common stock evidenced by stock certificates for the merger consideration (without interest and subject to any required withholding taxes).

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THE MERGER

The description of the merger in this section and elsewhere in this proxy 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 proxy statement. This summary does not purport to be complete and may not contain all of the information about the merger that is important to you. You are encouraged to read the merger agreement carefully and in its entirety.

Certain Effects of the Merger

Pursuant to the terms of the merger agreement, if the merger agreement is adopted by the Company s stockholders and the other conditions to the closing of the merger are satisfied or waived, Merger Sub will be merged with and into the Company, with the Company surviving the merger as an indirect wholly owned subsidiary of Parent.

Upon the terms and subject to the conditions of the merger agreement, at the effective time, each share of common stock issued and outstanding immediately before the effective time (other than shares owned by the Company, Parent, Merger Sub or any wholly owned subsidiary of the Company or Parent, and shares that are owned by stockholders who have properly demanded and not withdrawn a demand for, or lost their right to, appraisal rights pursuant to Section 262 of the DGCL) will be converted into the right to receive the merger consideration of $331.50 per share in cash, without interest and subject to any required withholding taxes.

The Company common stock is currently registered under the Exchange Act and is listed on the NASDAQ under the symbol ULTI. As a result of the merger, the Company will cease to be a publicly traded company and will be indirectly wholly owned by Parent. Following the completion of the merger, the Company common stock will be delisted from the NASDAQ and deregistered under the Exchange Act, following which the Company will no longer be required to file periodic reports with the SEC with respect to its common stock in accordance with applicable law, rules and regulations.

Background of the Merger

The Ultimate board of directors and senior management regularly evaluate the Company s business strategies, objectives and key initiatives in order to improve Ultimate s core businesses and enhance stockholder value. They have considered numerous strategic options that may be available to the Company at any given time, focusing on, among other things, the business environment facing the Company and its industry as well as the Company s business prospects—including resource requirements, the continuing need to invest in the business, competition and market forces, including those involved in operating as a public company—and have included consideration of capital structure, expansion opportunities through potential investments and business combination transactions and accelerating revenue growth through synergistic partnerships and distributions relationships. For purposes of conducting these reviews, and in the ordinary course of business, senior management of the Company has maintained regular dialogues with representatives of other industry participants, including certain strategic and financial sponsor parties, regarding trends and developments in the industries in which the Company operates. None of those discussions progressed beyond preliminary phases, nor did Ultimate enter into any acquisition-related non-disclosure or standstill agreements with such parties other than as discussed below.

As part of Ultimate s board of directors and senior management keeping informed about industry opportunities, since approximately 2014, at Ultimate s request, representatives of Goldman Sachs & Co. LLC (referred to in this proxy statement as Goldman Sachs) have periodically discussed with certain members of Ultimate s senior management (including Scott Scherr, Ultimate s President, Chief Executive Officer and Chairman of the board of directors, and Marc Scherr, Scott Scherr s brother and Vice Chairman of Ultimate s board of directors, who was previously Ultimate s

Chief Operating Officer) industry and capital markets trends and developments.

Like many participants in the human capital management (referred to in this proxy statement as HCM) sector, Hellman & Friedman, which owns a portfolio company in the HCM sector, maintains a regular dialogue with other industry participants. Prior to February 2018, a representative of Hellman & Friedman had, from time to time, reached out to Scott Scherr in hopes of meeting; however, no such meeting occurred.

In early February 2018, a representative of Hellman & Friedman contacted a representative of Goldman Sachs to request that representatives of Goldman Sachs ask Ultimate whether a representative of Ultimate would be

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willing to meet with a representative of Hellman & Friedman. Representatives of Goldman Sachs informed Mitch Dauerman, currently Ultimate s Executive Vice President in charge of Investor Relations, who at the time was the Company s Chief Financial Officer, of Hellman & Friedman s request.

On February 13, 2018, Mitch Dauerman and a representative of Hellman & Friedman met at an industry conference in San Francisco. At the meeting, the individuals provided high-level introductions to their respective organizations and shared their perspectives on the HCM sector generally. In addition, the representative of Hellman & Friedman explored whether Ultimate had any interest in exploring ways to work together, including through a take-private transaction. Following the discussion, Mitch Dauerman conveyed to the representative of Hellman & Friedman that Ultimate had no interest at the time in such a transaction, but that he was open to staying in touch.

On April 7, 2018, another representative of Hellman & Friedman reached out to Marc Scherr for an introductory meeting, which resulted in a meeting in New York City on April 11, 2018. At that meeting, the representative of Hellman & Friedman and Marc Scherr primarily discussed, among other things, the background, history, culture, values, vision and current and future leadership of their respective organizations as well as their perspectives on the HCM sector. The Hellman & Friedman representative and Marc Scherr discussed generally whether Hellman & Friedman could be helpful to Ultimate in any way, including whether Ultimate might have any interest in evaluating and/or discussing potential opportunities for a commercial or strategic partnership, collaboration, business combination or other strategic transaction between Ultimate and Hellman & Friedman or its portfolio company that is in the same industry as Ultimate. It was Marc Scherr s view that Scott Scherr would not want to pursue any such transaction with Hellman & Friedman or its portfolio company, and the parties had no further conversations about this possibility at that time.

Following the public announcement on May 1, 2018 of Mitch Dauerman transitioning from the position of Chief Financial Officer to Executive Vice President for Investor Relations, the representative of Hellman & Friedman who had met with Mitch Dauerman in February 2018 reached out to Mitch Dauerman to see if they could re-connect. They agreed to meet in San Francisco on May 8, 2018. During their meeting, Mitch Dauerman was asked by the Hellman & Friedman representative to arrange a meeting between Hellman & Friedman and Scott Scherr. Mitch Dauerman suggested that the best way for Hellman & Friedman to connect with Scott Scherr would be to meet at an upcoming industry conference in Boston.

On May 15, 2018, representatives of Hellman & Friedman attended the industry conference in Boston, but they were unable to meet with Scott Scherr aside from a very brief introduction during a broader conversation involving multiple conference participants. That evening, Mitch Dauerman, representatives of Hellman & Friedman and another conference attendee met informally. Given that a third party was in attendance and in light of the informal nature of the gathering, the participants did not engage in any substantive discussions with respect to Ultimate.

On or around May 17, 2018, Marc Scherr contacted a representative of Hellman & Friedman and indicated an openness to having discussions between the parties.

On June 26, 2018, Scott Scherr and a representative of Hellman & Friedman met in Southern California. At the meeting, the participants introduced themselves and their respective organizations and primarily discussed the background, history, culture, values, vision and current and future leadership of their respective organizations and shared their perspectives on the HCM sector. The Hellman & Friedman representative also inquired as to whether there were any potential opportunities in such sector and whether Hellman & Friedman could be helpful or relevant to Ultimate in that regard or otherwise, including whether Ultimate might have any interest in evaluating and/or discussing potential opportunities for a commercial or strategic partnership, collaboration, business combination or other strategic transaction between Ultimate and Hellman & Friedman. Scott Scherr and the Hellman & Friedman representative did not discuss the specifics of any potential transaction at that time, but they agreed to stay in contact

generally.

On June 28, 2018, Marc Scherr contacted a representative of Hellman & Friedman and indicated that Ultimate would be open to meeting again later in the summer and continuing discussions regarding potential opportunities for collaboration.

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Representatives of Hellman & Friedman later invited Scott Scherr and Mitch Dauerman to Hellman & Friedman s New York offices on August 7, 2018, where they met with three representatives of Hellman & Friedman. The purpose of this meeting was to provide Hellman & Friedman with an update on the latest developments with respect to Ultimate s business and to discuss, among other things, areas where Hellman & Friedman could be helpful to Ultimate and whether there was any general interest in exploring a potential transaction between Hellman & Friedman and Ultimate, including a possible equity investment by Hellman & Friedman into Ultimate in the form of a private investment in Ultimate s equity (commonly referred to as a PIPE) or a possible acquisition of Ultimate by Hellman & Friedman. No specific terms of any transaction were discussed. At this meeting, Scott Scherr told representatives of Hellman & Friedman that an important driver of Ultimate s success has been its workplace culture, excellent employee relationships, and its ability to attract, hire and retain highly-qualified people. Scott Scherr conveyed in this meeting his belief that instrumental to the Company s achievement and the fostering of its culture is the opportunity for its employees to share in the Company s financial success as stockholders of the Company. He explained that Ultimate s employees, including members of senior management, receive equity grants at the commencement of employment and at certain other times quarterly or annually, consistent with long-standing Company practice. Scott Scherr noted that equity participation constitutes an integral part of the compensation package of the Company s employees and that if Ultimate were to participate in any transaction with Hellman & Friedman, the parties would need to find a way for Ultimate to continue granting equity to its employees, including members of senior management, after such transaction.

As a follow-up to the August 7, 2018 meeting, on August 22, 2018, a representative of Hellman & Friedman and Scott Scherr met in Florida. At the meeting, the representative of Hellman & Friedman informed Scott Scherr that Hellman & Friedman was not prepared to pursue a potential equity investment into Ultimate and/or other strategic relationship with Ultimate at that time. Towards the end of the meeting, the representative of Hellman & Friedman reiterated his deep respect and admiration for Ultimate and told Scott Scherr that, in the future after he retires from Hellman & Friedman, the Hellman & Friedman representative would seek to partner with great companies, such as Ultimate, by seeking to serve as a lead outside director on their boards of directors, supported by personal investments of up to $100 million to demonstrate his conviction in those companies visions. The representative of Hellman & Friedman indicated that he wished to stay in contact with Scott Scherr because Hellman & Friedman continued to hold Ultimate in very high regard and hoped that an opportunity to collaborate might arise in the future.

The same representative of Hellman & Friedman with whom Scott Scherr met on August 22, 2018 later reached out to Scott Scherr to check in, and met again with Scott Scherr in California on November 3, 2018. At the meeting, the Hellman & Friedman representative and Scott Scherr discussed, among other things, whether there was an interest in further exploring a potential transaction between Ultimate and Hellman & Friedman.

At Scott Scherr s suggestion, on December 4, 2018, a representative of Hellman & Friedman met with Adam Rogers, Chief Technology Officer of Ultimate, who is also Scott Scherr s son-in-law. At that meeting, the two individuals discussed possible methods for financing certain of Ultimate s potential acquisition opportunities. They also discussed, in general terms not specific to Ultimate, the mechanics of PIPEs and take-private transactions.

A few weeks later, on December 17, 2018, a representative of Hellman & Friedman spoke with Scott Scherr to inquire, among other things, about the possibility of a PIPE investment by Hellman & Friedman in Ultimate and/or other potential transaction between Ultimate and Hellman & Friedman.

On December 21, 2018, the same representative of Hellman & Friedman who had spoken with Scott Scherr on December 17, 2018 spoke again with Scott Scherr by telephone. During that conversation, the representative asked how Hellman & Friedman could be helpful to Ultimate, including whether, consistent with their prior discussion, Ultimate would like to explore the possibility of a PIPE investment by Hellman & Friedman in Ultimate and/or other potential strategic transaction involving Hellman & Friedman. In addition, the representative from Hellman &

Friedman discussed Hellman & Friedman s interest in conducting a preliminary due diligence review of Ultimate to determine the potential feasibility of a PIPE investment or an acquisition of Ultimate at a price that would be compelling for Ultimate s stockholders. After discussing with members of Ultimate s senior management team, Scott Scherr declined the PIPE investment offer, but certain members of senior management continued to consider the merits of pursuing a take-private transaction. Scott Scherr

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determined that it was worth pursuing certain preliminary due diligence around the concept of a take-private transaction and having Hellman & Friedman conduct a preliminary due diligence review to determine the feasibility of a take-private transaction involving Hellman & Friedman.

Between December 26 and 31, 2018, Mitch Dauerman and a representative of Hellman & Friedman discussed a process for the parties to enter into a non-disclosure agreement and a process for Hellman & Friedman to begin due diligence of Ultimate in order for Hellman & Friedman to determine the potential feasibility of a take-private transaction. The parties did not discuss any pricing or other deal terms at this stage, but both parties understood that they were exploring the possibility of a take-private transaction.

On December 31, 2018, Ultimate and Hellman & Friedman entered into a non-disclosure agreement containing customary provisions, including a standstill provision that prohibited Hellman & Friedman from, among other things, offering to purchase shares of, or offering to acquire, Ultimate for two years, except when invited to do so by Ultimate s board of directors or any authorized committee thereof.

In early January 2019, the Company s senior management and representatives of Hellman & Friedman continued to discuss Hellman & Friedman s potential interest in acquiring the Company. In early January, representatives of Hellman & Friedman met with senior management of Ultimate in Florida to discuss the due diligence process and materials that Hellman & Friedman would require to conduct its analysis. The Company began to review and make available to Hellman & Friedman certain due diligence materials with respect to the Company. The parties arranged for in-person management presentations and due diligence meetings to be held in Florida between January 9 and 11, 2019.

On January 8, 2019, after a conversation among Scott Scherr, Marc Scherr and Mitch Dauerman, Mitch Dauerman called a representative of Hellman & Friedman, at Scott Scherr s request, to convey Scott Scherr s belief that it was only worthwhile for Hellman & Friedman to continue conducting due diligence if Hellman & Friedman believed that it could potentially offer a purchase price per share equal to at least the amount of Ultimate s all-time high share price.

In preparation for a January 9, 2019 meeting (described below), a representative of Hellman & Friedman communicated with Mitch Dauerman to gain a preliminary understanding of Ultimate s existing equity participation program in order to determine whether the existing equity plan construct could be maintained in the surviving company, in the event a transaction were to occur.

On January 9, 2019, Scott Scherr, Marc Scherr and a representative of Hellman & Friedman met and discussed, among other things, Ultimate s equity participation program so that Hellman & Friedman could understand how it had worked historically, how it had been implemented and how employee equity would be treated in any acquisition of Ultimate. In connection with the meeting, Scott Scherr and Marc Scherr provided a summary of Ultimate s equity participation program and explained that all outstanding equity grants would, in accordance with their terms, vest fully in such a transaction. As part of that discussion, Scott Scherr reiterated his belief that it would be critical to the success of Ultimate following any such transaction that Ultimate continue to maintain its broad-based equity participation program for employees. The representative of Hellman & Friedman acknowledged the importance of such a program to Ultimate s culture and success, and, in turn, explained how an equity program would typically work for a private company, with such equity being granted in the form of stock options to a more concentrated group of employees, with periodic vesting to achieve long-term alignment with the private company s equity holders. The parties discussed various forms that a broad-based equity participation program for employees (including senior management) could take in the event a transaction were to be consummated. Such forms included: granting an aggregate number of restricted stock units (with ratable three-year vesting) consistent with the grants for the 12 months preceding a potential transaction, with aggregate award amounts to be revisited for the years thereafter; awarding a one-time grant of restricted stock units to employees in order to replace the equity that would automatically accelerate in a potential

transaction; and establishing an option pool to be granted to a more concentrated group of employees and executives than the group that could be eligible to receive restricted stock units. In addition, they discussed whether, in the event a transaction were to be consummated, employees could be provided a periodic opportunity to sell their shares of common stock received upon vesting of restricted stock units granted by the surviving company. No other specific terms of the potential equity program or specific allocations to any individuals were discussed, and no specific allocations to any groups of employees were agreed. No agreements with respect to a potential equity program of the surviving company, in the event a transaction were to be consummated, were reached. Later that

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day, Adam Rogers and Mitch Dauerman joined the meeting. Mitch Dauerman shared with representatives of Hellman & Friedman the Company s FY 2018-2022 Management Projections (as defined in the section of this proxy statement entitled —*Certain Financial Projections Prepared by the Management of Ultimate*), as prepared by the senior management of Ultimate.

Between January 10 and 13, 2019, Marc Scherr and a representative of Hellman & Friedman had follow-up conversations to clarify the terms of the January 9 discussion described above. As part of those conversations, the parties discussed whether, in the event a transaction were to be consummated, the surviving company could grant an aggregate dollar value (in lieu of an aggregate number) of restricted stock units and whether, in the event a transaction were to be consummated, the surviving company could establish an option pool of up to 1.5% of the fully diluted stock of the surviving company that could be granted to a more concentrated group of employees and executives than the group that could be eligible to receive restricted stock units. No other specific terms of the potential equity program or specific allocations to any individuals were discussed, and no specific allocations to any groups of employees were agreed. No agreements were reached with respect to a potential equity program of the surviving company, in the event a transaction were to be consummated. No other parties participated in this discussion besides Marc Scherr and the representative of Hellman & Friedman.

On January 11, 2019, Scott Scherr and Marc Scherr made separate telephone calls to each of Ultimate s five non-management directors (*i.e.*, the members of the board of directors other than Scott Scherr and Marc Scherr) to inform them that the Company had recently entered into a non-disclosure agreement with Hellman & Friedman and that senior management of the Company had begun to participate in a due diligence process for Hellman & Friedman s potential take-private of the Company. Scott Scherr and Marc Scherr informed each non-management director that he should anticipate being asked in the near future to participate in discussions regarding a potential transaction with Hellman & Friedman.

On January 12, 2019, a representative of Hellman & Friedman spoke with Marc Scherr by telephone and informed him that, based on Hellman & Friedman s preliminary due diligence, subject to arranging a sufficient amount of equity financing from potential co-investors, Hellman & Friedman was prepared to use good faith efforts to pursue a potential acquisition of Ultimate that would be for a cash purchase price per share that would be compelling to its stockholders.

On January 13, 2019, a special meeting of the non-management directors of the Ultimate board of directors was held, which was attended by representatives of Stroock & Stroock & Lavan LLP (referred to in this proxy statement as Stroock), the Company s outside legal counsel. Due to Scott Scherr s and Marc Scherr s roles as Ultimate executive officers and their involvement in the conversations with Hellman & Friedman regarding a potential equity participation program that would involve grants to employees (including senior management) of equity in a surviving corporation, Scott Scherr and Marc Scherr, as management directors, did not attend the meeting. During the meeting, members of Ultimate s senior management team (not including Scott Scherr or Marc Scherr) described to the five non-management directors Hellman & Friedman s indications of interest and potentially forthcoming formal offer regarding a potential acquisition of the Company in connection with the exploratory conversations and meetings described above. The non-management directors were informed that Blackstone and GIC may be involved in this proposed transaction as well. Representatives of Stroock discussed the fiduciary duties of Ultimate s directors under Delaware law in connection with their evaluation of such interest and a potentially forthcoming offer. The five non-management directors determined at this meeting, after discussion with counsel, that the non-management directors would oversee the potential transaction but not form a formal special committee to do so. The non-management directors based their decision on several considerations, including the fact that they constituted a majority of the board and each of them wanted to participate in the conversations regarding a potential take-private transaction, as well as the additional expense associated with forming a special committee, which would require separate legal and financial advisors. Near the end of this January 13 meeting, the Company s management was asked

to leave the meeting, at which point the non-management directors discussed with representatives of Stroock details regarding potential timing of the proposed transaction, possible decisions that the non-management directors may need to make in connection therewith and their responsibility to consider the proposed transaction without input as to merger consideration or other deal terms from the Company s senior management (including Scott Scherr and Marc Scherr). The non-management directors discussed the importance of minimizing any risk of a market leak concerning a proposed transaction, given the adverse impact that prior rumors of a potential transaction involving the Company have had on the Company and the potential adverse impact that such a leak could have on the

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Company s business, including its relationships with customers. After this discussion, representatives of Stroock were asked to leave the meeting. During an executive session, the five non-management directors discussed and decided, based on their determination that Stroock and Goldman Sachs would be able to provide them with independent expert advice, to engage Stroock as Ultimate s special counsel and to engage Goldman Sachs as Ultimate s financial advisor.

On the evening of January 13, 2019, two members of the Company s senior management (not including Scott Scherr or Marc Scherr), a representative of Stroock and three of the non-management directors participated in a conference call with three representatives of Goldman Sachs. During this call, the representatives of Goldman Sachs described to the other participants certain considerations and process points that could be important during the board of directors consideration of a take-private offer from Hellman & Friedman, such as the preparation of financial projections, the consideration of alternatives to a transaction with Hellman & Friedman, and the board of directors role in the overall process. The representatives of Goldman Sachs informed the other conference call participants that Goldman Sachs had cleared conflicts. The representatives of Goldman Sachs agreed to work with the Company s counsel to provide Goldman Sachs standard disclosure letter to Ultimate s board of directors. On January 13, 2019, after the call concluded, at the direction of the non-management directors, Mitch Dauerman provided representatives of Goldman Sachs with the FY 2018-2022 Management Projections.

Between January 13 and 18, 2019, the following potential equity sources signed joinders to the December 31, 2018 non-disclosure agreement between Ultimate and Hellman & Friedman: Blackstone Management Partners, L.L.C. (an affiliate of Blackstone), GIC Special Investments Pte. Ltd. (an affiliate of GIC), CPPIB and JMI Management, Inc. (an affiliate of JMI Equity). Each potential equity source agreed, pursuant to its joinder agreement, to comply with the terms of the non-disclosure agreement between Ultimate and Hellman & Friedman applicable to a representative (as such term is defined in the non-disclosure agreement).

During the weeks of January 14, 2019, January 21, 2019 and January 28, 2019, representatives of Hellman & Friedman and the Company continued to meet in person in Florida and by telephone as part of Hellman & Friedman s diligence review of the Company. Representatives of Blackstone, GIC, CPPIB and JMI Equity also participated in certain of these diligence meetings. Beginning on January 15, 2019, representatives of Goldman Sachs also attended each diligence meeting and each meeting of the board of directors of Ultimate.

On January 15, 2019, a special meeting of the Ultimate board of directors was held, which was attended by all seven directors and representatives of Stroock and Goldman Sachs, as well as members of Ultimate s senior management team. Representatives of Goldman Sachs and the Company s senior management reported on continuing discussions with Hellman & Friedman regarding its interest in a potential acquisition of Ultimate. Representatives of Goldman Sachs also provided a summary of the FY 2018-2022 Management Projections, which had been prepared by the senior management of Ultimate. With members of senior management of the Company present, the Ultimate board of directors discussed with representatives of Stroock and Goldman Sachs the possible options for performing a market check of a potential transaction with Hellman & Friedman, including the possibility of conducting a pre-signing market check, a post-signing go-shop process or a hybrid of the two. Without coming to any conclusion as to which of the foregoing process options would be preferable and acknowledging the viability of each one, they discussed the opportunities and risks associated with each, as well as the possibility of declining to participate in any transaction and to continue to pursue a standalone path. At the direction of Ultimate s board of directors, representatives of Goldman Sachs presented examples of other recent take-private transactions, including with respect to companies that are comparable in size and/or industry to Ultimate, and the processes that had been employed to conduct a market check or go-shop process in those transactions. Among the information presented were statistics concerning the length of a go-shop period, the size of the termination fee payable by a seller that terminates its merger agreement during a go-shop period, and a seller s reporting obligations to a buyer during a go-shop period. While acknowledging that postponing a decision would shorten the window of time in which any pre-signing market check could be conducted, the directors determined at the January 15 board meeting, following a discussion with representatives of Stroock and

Goldman Sachs, that it would be premature to decide on any process option prior to receiving a written proposal from Hellman & Friedman. The directors did, however, continue to express the importance of minimizing any risk of a market leak of details concerning the proposed transaction. At the end of the meeting, the non-management directors were offered an opportunity to discuss the matters presented with only Stroock and Goldman Sachs representatives present. The non-management directors declined this opportunity to evaluate the

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business issues at hand, determining that it was premature to do so without a firm proposal from Hellman & Friedman providing for a compelling offer price, and expressed a preference to wait until further developments occurred in the meetings between Hellman & Friedman and the Company.

Beginning on January 16, 2019, representatives of Simpson Thacher & Bartlett LLP (referred to in this proxy statement as Simpson), as counsel to Hellman & Friedman, participated telephonically in the diligence meetings. Representatives of Hellman & Friedman attended portions of the enterprise and mid-market annual sales meetings and were introduced to certain members of the Company s senior management team. Topics discussed included legal diligence, product development services, security and privacy, enterprise and mid-market sales and the FY 2018-2022 Management Projections for Ultimate, prepared by the senior management of Ultimate. During this week, Mitch Dauerman and Felicia Alvaro, the Company s Chief Financial Officer, revised the FY 2018-2022 Management Projections to extend the five-year projections into ten-year projections in preparation for review and consideration by the Company s board of directors and Goldman Sachs. In the course of extending the projections at this time, Felicia Alvaro and Mitch Dauerman incorporated the actual financial results reported for the second half of the 2018 fiscal year.

On January 20, 2019, Hellman & Friedman delivered a written proposal to the Ultimate board of directors that included an offer to purchase the Company for $315 per share in cash, which purchase price would, according to the proposal letter, be financed by $3.1 billion in funded debt financing and $7.2 billion in equity capital from a combination of Hellman & Friedman funds and its co-investors, Blackstone, GIC and CPPIB, even though the proposal letter was signed only by Hellman & Friedman. The proposal letter indicated that Hellman & Friedman anticipated that existing senior management would continue to run the business following consummation of a transaction. In the proposal letter, Hellman & Friedman noted its ability to sign a definitive merger agreement by February 3, 2019, prior to Ultimate s scheduled quarterly earnings call on February 5, 2019. The purchase price per share set forth in the January 20 letter was based upon (i) the number of fully diluted outstanding shares of the Company s common stock, as derived from the Company s Quarterly Report on Form 10-Q for the quarter ended September 30, 2018, plus (ii) an additional 500,000 shares underlying restricted stock awards and restricted stock unit awards that were scheduled to be granted in February 2019 to Ultimate s employees, senior management and non-management directors in the ordinary course (referred to in this proxy statement as the February 2019 Ordinary Course Grants). On January 18, 2019, the last trading day before the January 20 offer, the closing market price for the Company s common stock was $268.45 per share.

On January 21, 2019, a special meeting of the non-management directors of the Ultimate board of directors was held, which was attended by the five non-management directors and representatives of Stroock and Goldman Sachs, as well as members of Ultimate s senior management team (not including Scott Scherr or Marc Scherr). A representative of Goldman Sachs described the terms of Hellman & Friedman s January 20 proposal letter and reviewed Goldman Sachs preliminary analysis of Hellman & Friedman s January 20 proposal, which analysis was based upon the FY 2018-2022 Management Projections that had been prepared by Ultimate s senior management. Representatives of Goldman Sachs noted that the $7.2 billion equity contribution was sizeable on its own for a proposal made by financial sponsors, and also particularly as a percentage of the total debt and equity financing for the proposed transaction. Representatives of Goldman Sachs also noted that the proposed consortium of co-investors, with the exception of CPPIB, were already working together in the HCM sector. The non-management directors discussed, with representatives of Stroock and Goldman Sachs present, whether pursuing a pre-signing market check, a post-signing go-shop process, a hybrid of the market check and go-shop process or no transaction would be the preferred course of action to maximize shareholder value. The non-management directors also discussed the fact that any one of the foregoing options could be an effective means by which to satisfy the fiduciary duties owed by them to Ultimate s stockholders. The non-management directors considered at length Hellman & Friedman s proposed signing date of February 3, 2019, and discussed the advantages and disadvantages of that date being less than two weeks away. The advantages included greater certainty of reaching a deal with Hellman & Friedman before its appetite for a transaction or broader market

conditions could change, lower risk of market leaks and the ability to announce the transaction at or prior to the time of the quarterly earnings call already scheduled for February 5, 2019 without concern for how information discussed on the earnings call could affect Ultimate s stock price. The disadvantages included the difficulty of conducting a meaningful pre-signing market check in a short amount of time. The non-management directors continued to consider the circumstances of other recent take-private transactions that employed a market check, a go-shop process or hybrid approach. At this meeting, the directors determined that representatives of Goldman Sachs should communicate to Hellman & Friedman that (i) the $315 cash per share offer was too low,

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(ii) any revised proposal must demonstrate the commitment not only of Hellman & Friedman but also the debt commitment parties and the equity co-investors and (iii) the non-disclosure agreement between Ultimate and Hellman & Friedman must be amended to prevent Hellman & Friedman from approaching any new debt or equity financing sources without Ultimate s prior consent, in order to leave open the possibility of competing bids to acquire the Company. Representatives of Goldman Sachs later communicated these points to a representative of Hellman & Friedman on January 21, 2019. Towards the end of this January 21 meeting, the members of Ultimate s senior management team were asked to leave the meeting, at which time the non-management directors discussed with representatives of Stroock and Goldman Sachs the role of senior management in the potential transaction as well as a plan to exclude senior management (including Scott Scherr and Marc Scherr) from portions of any future meeting of the board of directors at which the directors discuss and make decisions regarding Hellman & Friedman s offer as well as possible alternatives to such offer.

During the week of January 21, 2019, representatives of Ultimate continued to conduct multiple due diligence calls and in-person diligence meetings with representatives of Hellman & Friedman and its equity co-investors. Representatives of Goldman Sachs also attended these meetings. On January 24, 2019, Hellman & Friedman and Ultimate amended their non-disclosure agreement (which amendment also applied to the aforementioned parties that had signed joinders) to limit potential debt and financing sources to those parties that Hellman & Friedman had contacted prior to January 22, 2019.

On January 24, 2019, Mitch Dauerman and Felicia Alvaro delivered the Company s preliminary ten-year projections (which would later be approved by the board of directors as the Management Long-Term Projections) to representatives of Goldman Sachs and all seven members of the Company s board of directors.

Also on January 24, 2019, a special meeting of the Ultimate board of directors was held, which was attended initially by all seven directors and representatives of Stroock and Goldman Sachs, as well as members of Ultimate s senior management team. The Company s senior management reported on the internally-prepared preliminary ten-year projections for Ultimate (which would later be approved by the board of directors as the Management Long-Term Projections) and representatives of Goldman Sachs reviewed its preliminary financial analysis of Ultimate, which was based upon the preliminary ten-year projections for Ultimate that had been prepared by the senior management of Ultimate (which would later be approved by the board of directors as the Management Long-Term Projections). After the two management directors and other members of the Company s senior management left the meeting, the five non-management directors revisited and discussed, with representatives of Stroock and Goldman Sachs, the process options available for pursuing a potential sale of the Company, which included a pre-signing market check, a post-signing go-shop process, a hybrid of a market check and go-shop process or declining to engage in any transaction. At this time, the non-management directors discussed the benefits and risks of postponing by a couple of weeks the proposed February 3, 2019 signing of a definitive merger agreement. The benefits included making time for the board of directors to oversee a fulsome pre-market check. The risks included the increased risk of a market leak as well as potential changes in the capital markets that could affect Ultimate s stock price or threaten the availability of any deal, whether with Hellman & Friedman or another party. The non-management directors determined that, given the importance of avoiding a market leak, they should not, at this time, direct representatives of Goldman Sachs to conduct a pre-signing market check. After a lengthy discussion and in light of the non-management directors determination that Hellman & Friedman s proposed $315 per share price was not acceptable, the non-management directors did not decide during this meeting which of the foregoing process options they would ultimately pursue and expressed a desire to continue weighing their options among the viable process alternatives until they better understood the terms that Hellman & Friedman might accept with respect to any post-signing go-shop process to be memorialized in a definitive merger agreement.

Also on January 24, 2019, representatives of Simpson sent an initial draft of a merger agreement to representatives of Stroock. The initial draft contemplated a 30-day go-shop period with substantial periodic reporting during the go-shop

period, a company termination fee equal to 2.0% of the proposed aggregate merger consideration if occurring during the go-shop period, a company termination fee equal to 3.5% of the proposed aggregate merger consideration if occurring after the go-shop period, and a parent termination fee equal to 3.5% of the proposed aggregate merger consideration. The initial draft also included Company-favorable terms with respect to closing conditions and obligations of Parent to consummate the merger, which terms provided the Company with increased certainty that a closing would occur. See the section of this proxy statement entitled — *Reasons for the Merger; Recommendation of the Ultimate Board of Directors.*

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On January 25, 2019, Marc Scherr and a representative of Hellman & Friedman spoke by telephone about the members of Ultimate s senior management team. The representative of Hellman & Friedman wanted to learn about each member of Ultimate s leadership team in order to assess the role various members might play at Ultimate if a merger were to be completed.

During the week of January 28, 2019, representatives of Ultimate continued to conduct multiple due diligence calls and in-person diligence meetings with representatives from Hellman & Friedman and its equity co-investors. Representatives of Goldman Sachs also attended these meetings.

On January 28, 2019, Hellman & Friedman delivered a revised written proposal to the Ultimate board of directors. The revised proposal included an offer to purchase the Company for $322.50 per share in cash, which purchase price would be financed by $3.2 billion in funded debt financing and $7.6 billion in equity capital from a combination of Hellman & Friedman funds and its co-investors, Blackstone, GIC, CPPIB and JMI Equity. As compared to the proposed purchase price in Hellman & Friedman s January 20 proposal letter, the purchase price per share in the January 28 letter was based upon a larger number of fully diluted outstanding shares of the Company s common stock and a revised number of restricted stock awards and restricted stock unit awards to be included in the February 2019 Ordinary Course Grants, which was greater by approximately 19,000 than the number on which the January 20 proposal was based, each as provided by senior management of Ultimate to Hellman & Friedman on January 24, 2019. The revised proposal letter was accompanied by draft debt commitment letters and signed letters of support from the proposed equity co-investors, and it reaffirmed the parties ability to sign a definitive merger agreement by February 3, 2019. On January 28, 2019, the closing market price for the Company s common stock was $273.41 per share.

Later in the day on January 28, 2019, a special meeting of the Ultimate board of directors was held, which was attended initially by all seven directors and representatives of Stroock and Goldman Sachs, as well as members of Ultimate s senior management team. A representative of Goldman Sachs described the terms of Hellman & Friedman s January 28 revised proposal letter and reviewed Goldman Sachs preliminary financial analysis of the Company and Hellman & Friedman s revised proposal, which analysis was based upon the preliminary ten-year projections that had been prepared by Ultimate s senior management (which would later be approved by the board of directors as the Management Long-Term Projections). Representatives of Goldman Sachs also described a potential go-shop process. A representative of Stroock described the terms of the draft merger agreement. After Scott Scherr, Marc Scherr and other members of the Company s senior management left the meeting at the non-management directors request, the five non-management directors revisited and discussed, with representatives of Stroock and Goldman Sachs, the process alternatives available for pursuing the potential sale of the Company —which included a pre-signing market check, a post-signing go-shop process, a hybrid of the market check and go-shop process or declining to participate in any transaction —as well as a formal response to Hellman & Friedman s revised proposal letter. At this time, the non-management directors did not make a decision with respect to which process alternative to choose because, although they believed a go-shop process might be the best option to address concerns regarding the risk of market leaks, stock market volatility and deal certainty, the terms of the go-shop provision in the draft of the merger agreement had not yet been agreed between the parties, and accordingly, the non-management directors did not know how favorable those go-shop terms would be to Ultimate. The non-management directors determined that they were only prepared to pursue a go-shop process as their means of fulfilling their fiduciary duties if they obtained Company-favorable go-shop terms with respect to the duration of the go-shop period, the size of the termination fee during the go-shop period and the Company s reporting obligations to Parent during the go-shop period. The non-management directors did, however, acknowledge that a pre-signing market check would not be feasible if they agreed to proceed with Hellman & Friedman toward a February 3, 2019 execution of a definitive merger agreement. Also at this time, the non-management directors declined to make a decision with respect to a formal response to Hellman & Friedman s January 28 proposal because the January 28 proposal had been delivered to the non-management directors shortly before this special meeting, and they wanted to give further thought to the proposal

and any potential counter-proposal.

On January 29, 2019, a special meeting of the Ultimate board of directors was held, which was attended initially by all seven directors and representatives of Stroock and Goldman Sachs, as well as members of Ultimate s senior management team. After a brief update by Ultimate s senior management on the status of ongoing due diligence calls between Company representatives and Hellman & Friedman representatives, Scott Scherr, Marc Scherr and other members of the Company s senior management left the meeting at the request of the

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non-management directors. Representatives of Goldman Sachs then reviewed with the non-management directors its preliminary financial analysis of the Company and Hellman & Friedman s revised proposal from January 28, which was based upon the preliminary ten-year projections that had been prepared by Ultimate s senior management (which would later be approved by the board of directors as the Management Long-Term Projections). Representatives of Goldman Sachs also further described a potential go-shop process. The five non-management directors discussed, with representatives of Stroock and Goldman Sachs, a potential response to Hellman & Friedman s revised proposal letter and instructed representatives of Goldman Sachs to deliver to Hellman & Friedman the following counter-proposal: (i) a $350 price per share, based upon the number of fully diluted outstanding shares of the Company s common stock and the number of shares underlying the February 2019 Ordinary Course Grants, each as provided by Ultimate s senior management; (ii) a 60-day go-shop period without periodic reporting to Hellman & Friedman during the go-shop period; (iii) a company termination fee equal to 1.0% of the proposed aggregate merger consideration if occurring during the go-shop period; (iv) a company termination fee equal to 2.5% of the proposed aggregate merger consideration if occurring after the go-shop period; and (v) a parent termination fee equal to 7.0% of the proposed aggregate merger consideration. Taking into account the risks of potential market leaks and stock market volatility, as well as concerns about maintaining Hellman & Friedman s continued interest in pursuing a take-private transaction with Ultimate and the Company-favorable terms in the merger agreement draft provided by Hellman & Friedman s counsel that provided the Company with greater certainty that a closing would occur if the merger agreement were signed, the non-management directors determined that it was in the stockholders best interest to attempt to reach an agreement with Hellman & Friedman by February 3, 2019 and that if Ultimate were to ultimately transact with Hellman & Friedman and enter into a definitive merger agreement by February 3, 2019, they would pursue a pure go-shop process post-signing, rather than a pre-signing market check or hybrid approach.

On January 30, 2019, representatives of Goldman Sachs communicated Ultimate s counter-proposal to representatives of Hellman & Friedman and its financial advisor, Qatalyst Partners LP (referred to in this proxy statement as Qatalyst), and representatives of Stroock reflected this counter-proposal to representatives of Simpson in a revised draft of the merger agreement.

On January 31, 2019, the Company s senior management made available to representatives of Hellman & Friedman in the Company s virtual data room to which Hellman & Friedman had access a copy of the preliminary ten-year projections that had been prepared by Ultimate s senior management (which would later be approved by the board of directors as the Management Long-Term Projections).

On February 1, 2019, a member of Ultimate's senior management, with the approval of the non-management directors, executed an engagement letter formalizing Goldman Sachs' engagement to act as financial advisor to the board of directors in connection with a potential transaction. In addition, representatives of Goldman Sachs provided a letter to the Company that disclosed certain relationships between Goldman Sachs and Parent and its affiliates, Hellman & Friedman, Blackstone, GIC, CPPIB, and JMI Equity and their respective affiliates and portfolio companies and confirmed that nothing (including the matters set forth in such letter) would limit Goldman Sachs' ability to fulfill its responsibilities as financial advisor to the Company in connection with its engagement. The section *—Opinion of Financial Advisor to the Company* beginning on page 49 of this proxy statement, describes certain financial advisory and/or underwriting services Goldman Sachs has provided to Parent and its affiliates, Hellman & Friedman, Blackstone, GIC, CPPIB, and JMI Equity and their respective affiliates and portfolio companies for the two-year period ended February 3, 2019. The Ultimate board of directors considered the engagement letter and concluded that the matters disclosed therein would not impact Goldman Sachs' ability to act effectively as financial advisor to the Company or the Company's decision to continue to retain Goldman Sachs.

On February 1, 2019, Hellman & Friedman delivered a revised written proposal to the Ultimate board of directors in response to the board of directors counter-proposal delivered on January 30, 2019. The revised proposal included: (i) an offer to purchase the Company for $329 per share in cash, which purchase price would be financed by $3.2 billion

in funded debt financing and $7.8 billion in equity capital from a combination of Hellman & Friedman funds and its co-investors, Blackstone, GIC, CPPIB, and JMI Equity; (ii) a 35-day go-shop period; (iii) a company termination fee equal to 1.75% of the proposed aggregate merger consideration if occurring during the go-shop period; (iv) a company termination fee equal to 3.25% of the proposed aggregate merger consideration if occurring after the go-shop period; and (v) a parent termination fee equal to 3.75% of the proposed aggregate merger consideration. The purchase price per share in the February 1 letter was based upon

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the number of fully diluted outstanding shares of the Company s common stock, and the number of restricted stock awards and restricted stock unit awards to be issued as part of the February 2019 Ordinary Course Grants, each as provided by Ultimate s senior management to Hellman & Friedman on January 24, 2019. On February 1, 2019, the closing market price for the Company s common stock was $277.83 per share.

Also on February 1, 2019, the Ultimate board of directors retained Young Conaway Stargatt & Taylor, LLP as Delaware counsel to the board of directors, including both management and non-management directors.

On the evening of February 1, 2019, a special meeting of the non-management directors of the Ultimate board of directors was held, which was attended by the five non-management directors and representatives of Stroock and Goldman Sachs. Representatives of Goldman Sachs described the terms of Hellman & Friedman s February 1 revised proposal letter and reviewed Goldman Sachs preliminary financial analysis of the Company and Hellman & Friedman s February 1 proposal, which analysis was based upon the preliminary ten-year projections that had been prepared by Ultimate s senior management (which would, later during this meeting, be approved by the board of directors as the Management Long-Term Projections). Representatives of Goldman Sachs also informed the board of directors of the potential for an imminent market leak regarding the potential transaction with Hellman & Friedman because Goldman Sachs press office had received a series of calls that day (a Friday) from a reporter who did not name Ultimate but inquired about an upcoming take-private transaction in the software industry. The five non-management directors discussed, with representatives of Stroock and Goldman Sachs, a formal response to Hellman & Friedman s revised proposal letter and instructed representatives of Goldman Sachs to deliver to Hellman & Friedman the following counter-proposal: (i) a $339 price per share, based upon the number of fully diluted outstanding shares of the Company s common stock, as provided by Ultimate s senior management and made available in the Company s virtual data room on February 1, 2019, (ii) a 50-day go-shop period; (iii) a company termination fee equal to 1.0% of the proposed aggregate merger consideration if occurring during the go-shop period; (iv) a company termination fee equal to 3.0% of the proposed aggregate merger consideration if occurring after the go-shop period; and (v) a parent termination fee equal to 6.5% of the proposed aggregate merger consideration. The non-management directors reviewed and discussed with representatives of Goldman Sachs the projections of the future financial and operational performance of Ultimate for the years 2019 through 2028 prepared by Ultimate s senior management, as presented consistently over the course of several meetings of the board of directors dating back to the meeting held on January 24, 2019. At this meeting, the non-management directors approved the ten-year projections as the Management Long-Term Projections (as defined in the section of this proxy statement entitled *—Certain Financial Projections Prepared by the Management of Ultimate*) and representatives of Goldman Sachs and Hellman & Friedman were subsequently informed that the preliminary ten-year projections previously made available to representatives of each of Goldman Sachs and Hellman & Friedman had been approved by the non-management directors as the Management Long-Term Projections.

Representatives of Goldman Sachs communicated Ultimate s counter-proposal to representatives of Hellman & Friedman and its financial advisor, Qatalyst, on the morning of February 2, 2019.

Later in the day on February 2, 2019, Hellman & Friedman contacted representatives of Goldman Sachs to communicate what Hellman & Friedman characterized as its best and final offer.

On the night of February 2, 2019, a special meeting of the non-management directors of the Ultimate board of directors was held, which was attended by the five non-management directors and representatives of Stroock and Goldman Sachs. Representatives of Goldman Sachs informed the non-management directors that Hellman & Friedman had submitted an offer, which Hellman & Friedman had characterized as its best and final offer, as follows: (i) a $331.50 price per share, (ii) a 50-day go-shop period, (iii) a company termination fee equal to 1.0% of the proposed aggregate merger consideration if occurring during the go-shop period, (iv) a company termination fee would equal 3.0% of the proposed aggregate merger consideration if occurring after the go-shop period, and (v) a

parent termination fee equal to $550 million. At the meeting, representatives of Goldman Sachs reviewed its preliminary financial analysis of the Company and Hellman & Friedman s February 2 proposal, which analysis was based upon the Management Long-Term Projections. The purchase price per share in the February 2 proposal was based upon a revised number of fully diluted outstanding shares of the Company s common stock and a revised number of restricted stock awards and restricted stock unit awards to be included in the February 2019 Ordinary Course Grants, which was greater by approximately 5,000 than the number on which the February 1 proposal was based, each as provided by senior management of Ultimate to Hellman & Friedman on February 1, 2019. A representative of Stroock informed the board of directors that, with respect to the terms

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of the proposed merger agreement, Hellman & Friedman would prohibit Ultimate from incurring indebtedness in excess of $52.5 million between signing and closing, without Parent s prior consent, which would prevent Ultimate from obtaining a revolving credit facility that Ultimate had been negotiating without receiving such consent. The five non-management directors discussed the matters presented and reached a decision to recommend to Ultimate s full board of directors (including Scott Scherr and Marc Scherr) to accept Hellman & Friedman s February 2 offer. The non-management directors considered that Hellman & Friedman s proposed $550 million parent termination fee was not as high as the non-management directors February 1 counter-proposal for a parent termination fee equal to 6.5% of the proposed aggregate merger consideration. After discussion with representatives of Goldman Sachs and Stroock, the non-management directors concluded that a parent termination fee of $550 million was sufficiently high to disincentivize Hellman & Friedman and the other co-investors from failing to consummate the proposed transaction. Integral to the non-management directors decision to accept Hellman & Friedman s February 2 offer were the favorable go-shop terms included in the offer, which included a 50-day go-shop period and a 1.0% termination fee during the go-shop period. The go-shop period was among the longest periods and the termination fee during the go-shop period was among the lowest fees (expressed as a percentage of the aggregate merger consideration), in each case, as compared to the examples previously presented to the board of directors, at the board of directors request, by representatives of Goldman Sachs in the course of the non-management directors consideration of the proposed transaction. Later in the meeting, the two management directors and certain other members of the Company s senior management joined the meeting to discuss the aforementioned changes to the number of fully diluted outstanding shares of the Company s common stock and negotiations to obtain a revolving credit facility after signing the merger agreement without obtaining Parent consent.

On February 3, 2019, a special meeting of the Ultimate board of directors was held, which was attended by all seven directors and representatives of Stroock and Goldman Sachs. Representatives of Goldman Sachs and Stroock updated the board of directors on the status of negotiations with Hellman & Friedman. Representatives of Stroock reviewed the final terms of the proposed transaction documents, including the merger agreement, the related equity and debt commitment letters, the limited guarantees and the proposed amendment to Ultimate s shareholder rights plan. At this meeting, representatives of Goldman Sachs reviewed its financial analysis of the $331.50 in cash per share of the Company s common stock to be paid to the holders of the Company s common stock (other than Parent and its affiliates) pursuant to the merger agreement. Representatives of Goldman Sachs then rendered its oral opinion, subsequently confirmed in writing, that, as of February 3, 2019 and based upon and subject to the factors and assumptions set forth therein, the $331.50 in cash per share of the Company s common stock to be paid to the holders of the Company s common stock (other than Parent and its affiliates) pursuant to the merger agreement, was fair from a financial point of view to such holders.

After careful consideration and discussion, and taking into consideration the matters discussed during the February 3, 2019 meeting and the prior meetings of the Ultimate board of directors, including the factors described under the section of this proxy statement entitled *—Reasons for the Merger; Recommendation of the Ultimate Board of Directors*, the Ultimate board of directors unanimously approved and adopted the merger agreement, the merger and the other transactions contemplated by the merger agreement, determined that the merger agreement, the merger and the other transactions contemplated by the merger agreement are advisable, fair to and in the best interests of Ultimate and its stockholders, directed that the adoption of the merger agreement and the approval of the transactions contemplated thereby be submitted to a vote at a meeting of the stockholders of Ultimate, and recommended that the stockholders of Ultimate approve the adoption of the merger agreement and approve the transactions contemplated thereby.

On the evening of February 3, 2019, following the meeting of the Ultimate board of directors, the parties executed and delivered the merger agreement and related transaction documents. On the morning of February 4, 2019, Ultimate and Hellman & Friedman publicly announced their entry into the merger agreement via a joint press release.

On February 4, 2019, at the direction of Ultimate s board of directors, representatives of Goldman Sachs began contacting potential counterparties that might consider entering into an alternative transaction with Ultimate in connection with the go-shop period. During the go-shop period, at the direction of Ultimate s board of directors, representatives of Goldman Sachs contacted seven strategic parties and nine financial sponsors and were contacted by four strategic parties and two financial sponsors.

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During the go-shop period, three of the financial sponsors executed non-disclosure agreements with Ultimate. After execution of the applicable non-disclosure agreement, each such financial sponsor was given access to financial and business information of Ultimate in the Company s virtual data room and each was offered the opportunity to meet with members of Ultimate s senior management. At the request of one of the financial sponsors, representatives of such financial sponsor attended a half day of meetings and presentations with Ultimate s senior management in Florida. At the request of another of the financial sponsors, representatives of such financial sponsor participated in a conference call with a member of Ultimate s senior management to discuss some preliminary due diligence questions. The third financial sponsor declined the offer to speak with Ultimate s senior management.

During the go-shop period, one of the strategic parties approached representatives of Goldman Sachs to request a telephonic meeting with Ultimate s senior management in order to evaluate the possibility of pursuing an alternative transaction. Drafts of a non-disclosure agreement were exchanged between representatives of Ultimate and representatives of the strategic party. However, representatives of the strategic party informed representatives of Goldman Sachs that the strategic party would not pursue an alternative transaction with Ultimate, no non-disclosure agreement was signed and no senior management meetings were held.

Prior to the expiration of the go-shop period, all three of the financial sponsors that executed a non-disclosure agreement with Ultimate and representatives of the strategic party that requested a meeting with senior management each indicated to representatives of Goldman Sachs that they did not intend to pursue an alternative transaction with Ultimate.

In connection with the preparation of this proxy statement, the Company sought, and Parent granted, in each case pursuant to the terms of the merger agreement, a waiver of the 20-business day deadline for filing the preliminary proxy statement with the SEC, which waiver extended the deadline from March 5, 2019 until March 11, 2019.

The go-shop period expired at 11:59 p.m. (Eastern Time) on March 25, 2019. As of the expiration of the go-shop period, no alternative acquisition proposals had been received by Ultimate.

Reasons for the Merger; Recommendation of the Ultimate Board of Directors

In evaluating the merger agreement, the merger and the other transactions contemplated by the merger agreement, the Ultimate board of directors consulted with Ultimate management and its financial advisor. The Ultimate board of directors also consulted with its outside legal counsel regarding its fiduciary duties, the terms and conditions of the merger agreement and other related matters. The Ultimate board of directors unanimously determined that the merger agreement, the merger and the other transactions contemplated by the merger agreement are advisable, fair to and in the best interests of the Company and its stockholders, and unanimously approved and adopted the merger agreement, the merger and the other transactions contemplated by the merger agreement. Accordingly, on February 3, 2019, the Ultimate board of directors unanimously resolved to recommend that the stockholders of Ultimate approve the adoption of the merger agreement and approve the transactions contemplated thereby.

In the course of reaching its recommendation, the Ultimate board of directors considered a number of positive factors relating to the merger agreement and the merger, each of which the Ultimate board of directors believed supported its decision, including the following:

- *Merger Consideration*. The Ultimate board of directors considered that the Ultimate stockholders will be entitled to receive merger consideration of $331.50 per share in cash upon the closing of the merger. The Ultimate board of directors considered the current and historical market prices of Ultimate common stock, including the fact that $331.50 per share in cash represented a premium of approximately 32% over Ultimate’s trailing 30-trading day volume weighted average stock price for the period ended February 1,

2019, the last trading day prior to the execution of the merger agreement, and a premium of approximately 19% over Ultimate's closing share price on February 3, 2019, and a multiple of total enterprise value to Ultimate's Revenue for the 12 months ended December 31, 2018 of 9.6x. The Ultimate board of directors considered that, during the course of the negotiations with Hellman & Friedman (as described under the section titled *Background of the Merger*), Hellman & Friedman increased its initial offer from $315.00 per share on January 20, 2019, to $322.50 per share on January 28, 2019, to $329 per share on February 1, 2019, to $331.50 per share on February 2, 2019.

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The Ultimate board of directors also considered the market price performance of our common stock relative to that of other industry participants over the last twelve months, as well as broader macroeconomic trends affecting the Company s financial results.

- *Best Alternative for Maximizing Stockholder Value*. The Ultimate board of directors considered that the merger consideration was more favorable to Ultimate stockholders than the potential value that would reasonably be expected to result from other alternatives reasonably available to Ultimate, including the continued operation of Ultimate on a standalone basis, taking into account its acquisition opportunities, strategic alternatives and financing plans on an ongoing basis, in light of a number of factors, including:
  - the Ultimate board of directors' assessment of Ultimate's business and prospects; its competitive position and historical and projected financial performance; uncertainty concerning future leadership of the Company; the continued cost to the Company associated with its public reporting obligations, and the belief of the board of directors that stockholder value would be maximized by entering into the merger;
  - current competition in the SaaS industry, some of which comes from larger competitors that possess greater financial resources, larger sales forces, farther-reaching international presence and the ability to bundle services that compete with ours with their other product and service offerings, as well as the potential for increased competition in the future;
  - the anticipated future trading prices of the Company common stock on a standalone basis, and the operational, financial and market risks of continuing on a standalone basis as an independent public company;
  - the fact that, in the ordinary course of the Company's consideration of strategic opportunities in the market, no independent strategic parties had made a proposal or otherwise approached the Company with respect to a strategic business combination transaction;
  - the fact that the merger agreement contains a go-shop provision, which gives Ultimate the opportunity to solicit higher and better offers over the course of a 50-day period (see the section of this proxy statement entitled *The Merger Agreement — The 'Go-Shop' Period — Solicitation of Other Acquisition Proposals*)
  - its belief in the low likelihood that another counterparty with sufficient financial capability and an interest in acquiring Ultimate would emerge, particularly given the unusually large size of the committed equity financing provided by the equity financing sources as compared to the size of the debt financing provided by the commitment parties;
  - the course and history of competitive negotiations between Hellman & Friedman and Ultimate, as described in the section of this proxy statement entitled *— Background of the Merger*, and the Ultimate board of directors' belief that it had obtained Hellman & Friedman's best and final offer and that it was unlikely that any other party would be willing to acquire the Company at a higher price; and
  - the Ultimate board of directors' belief that the terms of the merger agreement, taken as a whole, are reasonable.
- *Greater Certainty of Value*. The Ultimate board of directors considered that the merger consideration is a fixed all-cash amount, thereby providing Ultimate stockholders with certainty of value and liquidity for their shares upon the closing of the merger, while eliminating the uncertainty of long-term business and execution risk to stockholders, especially when viewed in light of a number of factors, including the recent increased volatility in equity markets, particularly with respect to technology and software companies, and the even greater volatility in the Company's stock.
- *Receipt of Fairness Opinion from its Financial Advisor Regarding the Merger*. The Ultimate board of directors considered that on February 3, 2019, at a meeting of the Ultimate board of directors, Goldman Sachs rendered its oral opinion, subsequently confirmed in writing, that, as of February 3, 2019, and based upon and subject to the factors and assumptions set forth therein the $331.50 in cash per share of the Company's stock to be paid to the holders of the Company's stock (other than Parent and its

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affiliates) pursuant to the merger agreement, was fair from a financial point of view to such holders. The full text of the written opinion of Goldman Sachs, dated February 3, 2019, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B to this proxy statement. The opinion of Goldman Sachs is more fully described in the section of this proxy statement entitled — *Opinion of Ultimate s Financial Advisor*.

- *Likelihood of Completion*. The Ultimate board of directors considered the likelihood of completion of the merger to be significant, in light of, among other things:
  - the commitment of Parent in the merger agreement to use its reasonable best efforts to complete the merger as soon as practicable (see the section of this proxy statement entitled *The Merger Agreement — Efforts to Complete the Merger*);
  - the commitment of Parent in the merger agreement to use its reasonable best efforts to cause its equity financing sources and their affiliates to assist and cooperate as necessary and appropriate with the other parties to complete the merger as soon as practicable;
  - the commitment of Parent in the merger agreement to pay the Company a termination fee in an amount equal to $550 million in certain circumstances in the event that the merger is not completed (see the section of this proxy statement entitled *The Merger Agreement — Parent Termination Fee*);
  - the fact that Parent has entered into a debt commitment letter pursuant to which the debt commitment parties have committed, upon certain terms and subject to certain conditions, to lend $3.2 billion in connection with the financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby and to make available to the borrower a revolving credit facility in an aggregate principal amount of up to $200 million (which amount was subsequently increased to $275 million), and the representations and covenants of Parent in the merger agreement as to its financing (see the section of this proxy statement entitled — *Financing*); and
  - the conditions to closing contained in the merger agreement, which the Ultimate board of directors believes are reasonable and customary in number and scope, and which, in the case of the condition related to the accuracy of Ultimate's representations and warranties, are generally subject to a company material adverse effect qualification (see the section of this proxy statement entitled *The Merger Agreement — Conditions to Completion of the Merger*).
  - Ultimate's entitlement, under certain conditions, to seek specific performance of Parent's obligations under the merger agreement, including Parent's and Merger Sub's obligation to close the merger.
  - the positive business reputation of Hellman & Friedman, its history of successful acquisitions, its substantial financial resources and its strong strategic interest in Ultimate and familiarity with Ultimate and Ultimate's products.
- *Opportunity to Actively Solicit Alternative Acquisition Proposals during the Go-Shop Period, to Receive Alternative Acquisition Proposals and to Terminate or Change Recommendation in Response to a Superior Proposal or Intervening Event*. The Ultimate board of directors considered the terms of the merger agreement relating to Ultimate's ability to actively solicit and respond to unsolicited acquisition proposals, and the other terms of the merger agreement, including:
  - Ultimate's right, pursuant to a 50-day go-shop period beginning on February 3, 2019, and continuing until 11:59 p.m., New York City time, on March 25, 2019, to solicit alternative acquisition proposals from, and participate in discussions and negotiations with, third parties regarding any alternative acquisition proposals (see the section of this proxy statement entitled *The Merger Agreement — The 'Go-Shop' Period — Solicitation of Other Acquisition Proposals*);

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- Ultimate's right, subject to certain conditions, to provide information in response to, and to discuss and negotiate, certain unsolicited acquisition proposals made during the no-shop period and before the company stockholder approval is obtained (see the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop' Period — No Solicitation of Other Acquisition Proposals*);
- the provision of the merger agreement allowing the Company to terminate the merger agreement prior to obtaining the company stockholder approval in order to substantially concurrently enter into an alternative acquisition agreement, subject to Parent's right to receive payment of a termination fee of (x) $110 million if terminated during the go-shop period or (y) $331 million if terminated during the no-shop period, both of which amounts the Ultimate board of directors believe to be reasonable under the circumstances given the size of the transaction and taking into account the range of such termination fees in similar transactions and believe not to preclude or substantially impede a possible competing proposal (see the sections of this proxy statement entitled *The Merger Agreement — The 'Go-Shop' Period — Solicitation of Other Acquisition Proposals — The 'No-Shop' Period — No Solicitation of Other Acquisition Proposals — Termination — Company Termination Fee*); and
- the provision of the merger agreement allowing the Ultimate board of directors to make a change of recommendation prior to obtaining the company stockholder approval in specified circumstances relating to a superior proposal or intervening event, subject to Parent's right to terminate the merger agreement and receive payment of a termination fee of $331 million, which amount the Ultimate board of directors believes to be reasonable under the circumstances given the size of the transaction and taking into account the range of such termination fees in similar transactions and believes not to preclude or substantially impede a possible competing proposal (see the sections of this proxy statement entitled *The Merger Agreement — The 'Go-Shop' Period — Solicitation of Other Acquisition Proposals — The 'No-Shop' Period — No Solicitation of Other Acquisition Proposals — Termination — Company Termination Fee*).

Opportunity for Ultimate Stockholders to Vote. The Ultimate board of directors also considered the fact that the merger would be subject to the approval of the Company's stockholders, and the Company's stockholders would be free to evaluate the merger and vote for or against the adoption of the merger agreement at the special meeting. The Ultimate board of directors considered that the stockholder vote would follow a 50-day go-shop period during which a competing proposal could be solicited.

Opportunity for Appraisal of Shares. The Ultimate board of directors also considered the fact that the Company's stockholders who do not vote in favor of the adoption of the merger will have the right to demand appraisal of their fair value of the shares under Delaware law (see the section of this proxy statement entitled *— Appraisal Rights*).

In the course of reaching its recommendation, the Ultimate board of directors also considered certain risks and potentially adverse factors relating to the merger agreement and the merger, including:

- the risks related to the announcement and pendency of the merger, including the potential impact on our employees and our relationships with existing and prospective customers, vendors and business partners;
- that Ultimate stockholders will have no ongoing equity participation in Ultimate following the merger, and that such stockholders will therefore cease to participate in Ultimate's future earnings or growth, if any, or to benefit from increases, if any, in the value of the Company common stock following the merger;
- the provisions of the merger agreement that restrict, after the go-shop period, the Company's ability to solicit or participate in discussions or negotiations regarding alternative acquisition proposals, subject to certain exceptions, and that restrict the Company from entering into alternative acquisition agreements;
- the possibility that the merger is not completed in a timely manner or at all for any reason, as well as the risks and costs to Ultimate if the merger is not completed or if there is uncertainty about the likelihood, timing or effects of completion of the merger, including uncertainty about the effect of the merger on Ultimate's employees, existing and prospective customers, vendors, advertisers, partners and

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other third parties, which could impair Ultimate s ability to attract, retain and motivate key personnel and could cause third parties to seek to terminate, change or not enter into business relationships with Ultimate, as well as the risk of diverting management and employee attention from ongoing business operations as a result of the merger, and the effect on the trading price of the Company common stock if the merger agreement is terminated or the merger is not completed for any reason;

- the merger agreement's customary restrictions on the conduct of Ultimate's business before completion of the merger, generally requiring Ultimate to use commercially reasonable efforts to conduct its business in all material respects in the ordinary course of business and prohibiting Ultimate from taking specified actions, which could delay or prevent Ultimate from undertaking certain business opportunities that arise pending completion of the merger (see the section of this proxy statement entitled *The Merger Agreement — Conduct of Business Pending the Merger*);
- the possibility that Ultimate could be required under the terms of the merger agreement to pay a termination fee of either $110 million or $331 million under certain circumstances (see the section of this proxy statement entitled *The Merger Agreement — Company Termination Fee*), and that such termination fee could discourage other potential bidders from making a competing bid to acquire the Company;
- the potential risk of losing the favorable opportunity with Parent in the event Ultimate continued trying to obtain any additional offers at higher prices, especially in light of the 50-day go-shop provision that Parent was willing to permit pursuant to the terms of the merger agreement;
- the decision not to conduct a formal pre-signing market check prior to the signing of the merger agreement to solicit interest from alternative bidders;
- the significant costs involved in connection with entering into the merger agreement and completing the merger (some of which are payable whether or not the merger is consummated);
- that the receipt of cash by Ultimate stockholders in exchange for their shares of common stock pursuant to the merger will be a taxable transaction to Ultimate stockholders for U.S. federal income tax purposes (see the section of this proxy statement entitled — *Material U.S. Federal Income Tax Consequences of the Merger*); and
- that some of the Company's directors and executive officers have interests that may be different from, or in addition to, the interests of Ultimate stockholders generally (see the section of this proxy statement entitled — *Interests of the Company's Directors and Executive Officers in the Merger*).

The foregoing discussion of the information and factors considered by the Ultimate board of directors includes the material factors considered by the Ultimate board of directors but is not intended to be exhaustive and does not necessarily include all of the factors considered by the Ultimate board of directors. In view of the complexity and variety of factors considered in connection with its evaluation of the merger agreement and the merger, the Ultimate board of directors did not find it practicable to, and did not, quantify or otherwise assign relative weights to the specific factors considered in reaching its determination and recommendation. In addition, individual directors may have given different weights to different factors. The above factors are not presented in any order of priority. The explanation of the factors and reasoning set forth above contain forward-looking statements that should be read in conjunction with the section of this proxy statement entitled *Cautionary Statement Concerning Forward-Looking Statements*.

The Ultimate board of directors unanimously resolved to recommend that the stockholders of Ultimate approve the adoption of the merger agreement and approve the transactions contemplated thereby (including the other proposals set forth in this proxy statement) based upon the totality of information it considered.

Certain Financial Projections Prepared by the Senior Management of Ultimate

FY 2018-2022 Management Projections

Ultimate does not generally publish its business plans and strategies or make external disclosures of its anticipated financial position or results of operations other than for providing, from time to time, estimates of certain expected financial results and operational metrics in its regular quarterly earnings press releases and other investor materials.

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Ultimate is especially wary of making financial projections for extended earnings periods due to the unpredictability of the underlying assumptions and estimates. However, in connection with Ultimate s ordinary course efforts to support certain internally targeted financial metrics for future years, Ultimate s senior management prepared, in mid-2018, internal financial forecasts for fiscal years 2018 through 2022 (referred to in this proxy statement as the FY 2018-2022 Management Projections) that were not intended for public disclosure. The FY 2018-2022 Management Projections were not prepared in connection with or in response to Hellman & Friedman s proposal to acquire Ultimate, and were the projections that members of Ultimate s senior management believed provided a reasonable basis for Ultimate s future performance based on facts known at such time.

Management Long-Term Projections

In January 2019, to assist Ultimate s board of directors in evaluating the proposed merger agreement with Hellman & Friedman, senior management utilized the FY 2018-2022 Management Projections to forecast future years extending through 2028. Senior management refined the internally-used FY 2018-2022 Management Projections based on actual financial results reported for the second half of the 2018 fiscal year and used those projections as a basis for extending the forecasted period through 2028. When determining this longer-term financial outlook for the Company s business, senior management made assumptions concerning anticipated growth in the Company s operating margins and cash flows. Historically, the Company s financial performance was impacted by its growth in recurring revenues, which included increasing sales targets on a year-over-year basis. In senior management s view, such sales growth typically includes upfront customer acquisition costs that are recognized in the beginning of a customer s relationship with Ultimate, which upfront costs could impede expansion of the Company s operating margins. By assuming a slowdown in growth of sales and related revenues in future years, the Company s financial forecasts reflect expansion in its operating margin and cash flows due to expected decreased operating expenses.

These financial projections for the projected period of 2019 through 2028 (referred to in this proxy statement as the Management Long-Term Projections and, for purposes of the section of this proxy statement entitled — *Opinion of Financial Advisor to the Company*, the Forecasts) were developed by Ultimate s senior management on a standalone basis, without giving effect to the merger or the other transactions contemplated by the merger agreement, or any changes to Ultimate s operations or strategy that may be implemented after the consummation of the merger, including any costs incurred in connection with the merger and the other transactions contemplated by the merger agreement. Furthermore, the Management Long-Term Projections do not take into account the effect of any failure of the transactions contemplated by the merger agreement to be completed and should not be viewed as accurate or continuing in that context. In the view of Ultimate s senior management, the Management Long-Term Projections have been reasonably prepared by its senior management on bases reflecting the best currently available estimates and judgments of senior management of the future financial performance of Ultimate and other matters covered thereby.

The Ultimate Projections

The FY 2018-2022 Management Projections and the Management Long-Term Projections (referred to in this proxy statement together as the Ultimate Projections) are included herein because (1) the Ultimate Projections were made available to representatives of Hellman & Friedman by Ultimate s senior management in connection with its due diligence review, as described in the section of this proxy statement entitled — *Background of the Merger*; (2) the FY 2018-2022 Management Projections were made available to representatives of Goldman Sachs by Ultimate senior management, in connection with Goldman Sachs being engaged as the Company s financial advisor, and the Management Long-Term Projections were made available to representatives of Goldman Sachs by Ultimate senior management and were approved by the Company s board of directors for use in connection with its financial analysis, each as described in the sections of this proxy statement entitled — *Opinion of Financial Advisor to the Company* and — *Background of the Merger*; and (3) the Ultimate Projections were made available to the board of directors in connection with its consideration of the merger and other strategic alternatives available to the Company, as described

in the section of this proxy statement entitled — *Background of the Merger*. The inclusion of the Ultimate Projections in this proxy statement should not be regarded as an indication that the Ultimate board of directors, Goldman Sachs, Ultimate or its management, Hellman & Friedman, Parent, Merger Sub or any other recipient of this information considered, or now considers, it to be an assurance of the achievement of future results or an accurate prediction of future results, and the Ultimate Projections should not be relied on as such. For the avoidance of doubt, the FY 2018-2022

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Management Projections do not constitute any part of the Forecasts reviewed by representatives of Goldman Sachs in connection with rendering its fairness opinion and performing its related financial analyses, nor were the FY 2018-2022 Management Projections approved by the Company s board of directors for use in connection with Goldman Sachs financial analysis, in each case as described in the section of this proxy statement entitled — *Opinion of Financial Advisor to the Company*.

The Ultimate Projections and the underlying assumptions upon which the Ultimate Projections were based are subjective in many respects, and subject to multiple interpretations and frequent revisions attributable to the dynamics of Ultimate s industry and based on actual experience and business developments. The Ultimate Projections, while presented with numerical specificity, reflect numerous assumptions with respect to company performance, industry performance, general business, economic, regulatory, market and financial conditions and other matters, many of which are difficult to predict, subject to significant economic and competitive uncertainties and beyond Ultimate s control. Multiple factors, including those described in the section of this proxy statement entitled *Cautionary Statement Concerning Forward-Looking Statements* could cause the Ultimate Projections or the underlying assumptions to be inaccurate. As a result, there can be no assurance that the Ultimate Projections will be realized or that actual results will not be significantly higher or lower than projected. Because the Ultimate Projections cover multiple years, such information by its nature becomes less reliable with each successive year. The Ultimate Projections do not take into account any circumstances or events occurring after the date on which they were prepared, including the merger or, in the case of the FY 2018-2022 Management Projections, the financial results ultimately obtained in fiscal year 2018. Economic and business environments can and do change quickly, which adds an additional significant level of uncertainty as to whether the results portrayed in the Ultimate Projections will be achieved. As a result, the inclusion of the Ultimate Projections in this proxy statement does not constitute an admission or representation by Ultimate, Goldman Sachs or any other person that the information is material. Ultimate made no representation to Parent, Merger Sub or any other person, in the merger agreement or otherwise, concerning the Ultimate Projections. The summary of the Ultimate Projections is not provided to influence Ultimate stockholders decisions regarding whether to vote for the merger or any other proposal. The financial projections should be evaluated, if at all, in conjunction with the historical financial statements and other information contained in Ultimate s public filings with the SEC.

The Ultimate Projections were not prepared with a view toward public disclosure or toward compliance with the published guidelines of the SEC regarding projections or GAAP (as defined below), or the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. Neither KPMG LLP (referred to in this proxy statement as KPMG), Ultimate s independent registered public accounting firm, nor any other accounting firm, has examined, compiled or performed any procedures with respect to the Ultimate Projections. There can be no assurance that the Ultimate Projections will be realized or that actual results will not be significantly higher or lower than forecasted.

The following table presents a summary of the FY 2018-2022 Management Projections:

FY 2018-2022 Management Projections

($ millions)	**2018**	**2019**	**2020**	**2021**	**2022**
Recurring Revenue	$ 997	$ 1,210	$ 1,468	$ 1,775	$ 2,117
Total Revenue	1,140	1,367	1,636	1,956	2,312
Gross Profit[(1)]	740	887	1,072	1,317	1,601
Operating Income[(1)(2)]	243	268	328	427	550
Operating Margin[(1)(2)]	21.3 %	19.6 %	20.1 %	21.8 %	23.8 %

(1) Gross profit, operating income and operating margin are non-GAAP financial measures.

(2) Operating income and operating margin are calculated to exclude stock-based compensation expense, acquisition-related transaction costs, and amortization of acquisition-related intangible assets.

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For the avoidance of doubt, the information presented above in respect of the fiscal years 2018, 2019, 2020, 2021 and 2022 constitutes the FY 2018-2022 Management Projections but does not form any part of the Management Long-Term Projections presented below.

The following table presents a summary of the Management Long-Term Projections:

Management Long-Term Projections

($ millions)	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**
Recurring Revenue	$ 1,210	$ 1,467	$ 1,773	$ 2,113	$ 2,454	$ 2,808	$ 3,177	$ 3,556	$ 3,947	$ 4,346
Total Revenue	1,367	1,635	1,953	2,309	2,649	3,003	3,372	3,751	4,142	4,541
Gross Profit[1]	886	1,070	1,312	1,591	1,856	2,136	2,433	2,736	3,067	3,399
Operating Income[1][2]	267	326	422	542	648	730	828	939	1,082	1,234
Operating Margin[1][2]	19.5 %	19.9 %	21.6 %	23.5 %	24.5 %	24.3 %	24.6 %	25.0 %	26.1 %	27.2 %
Adjusted EBITDA[2][3]	339	423	531	658	781	881	994	1,119	1,257	1,412
Unlevered Free Cash Flow[4]	140	242	316	425	483	565	644	718	798	912

(1) Gross profit, operating income and operating margin are non-GAAP financial measures.

(2) Operating income, operating margin and adjusted EBITDA are calculated to exclude stock-based compensation expense and amortization of acquisition-related intangible assets.

(3) Adjusted EBITDA is calculated as operating income plus depreciation and amortization.

(4) Unlevered free cash flow is calculated as adjusted EBITDA less capital expenditures, capitalized software costs, changes in working capital, and cash taxes.

Gross profit, operating income and operating margin contained in the Ultimate Projections are non-GAAP financial measures, which are financial performance measures that are not calculated in accordance with accounting principles generally accepted in the United States (referred to in this proxy statement as GAAP). These non-GAAP financial measures should not be viewed as a substitute for GAAP financial measures, and may be different from non-GAAP financial measures used by other companies. Furthermore, there are limitations inherent in non-GAAP financial measures, because they exclude charges and credits that are required to be included in a GAAP presentation. Accordingly, these non-GAAP financial measures should be considered together with, and not as an alternative to, financial measures prepared in accordance with GAAP. The summary of the information above is included solely to give stockholders access to the information that was made available to representatives of Hellman & Friedman, representatives of Goldman Sachs and Ultimate s board of directors, and is not included in this proxy statement in order to influence any stockholder to make any investment decision with respect to the merger, including whether or not to seek appraisal rights with respect to the shares of Ultimate common stock.

The Ultimate Projections do not take into account the possible financial and other effects on Ultimate of the merger and do not attempt to predict or suggest future results following the merger. The Ultimate Projections do not give effect to the merger, including the impact of negotiating or executing the merger agreement, the expenses that may be incurred in connection with completing the merger, the effect on Ultimate of any business or strategic decision or action that has been or will be taken as a result of the merger agreement having been executed, or the effect of any

business or strategic decisions or actions that would likely have been taken if the merger agreement had not been executed, but that were instead altered, accelerated, postponed or not taken in anticipation of the merger. Further, the Ultimate Projections do not take into account the effect on Ultimate of any possible failure of the merger to occur.

For the foregoing reasons, and considering that the special meeting will be held several months after the Ultimate Projections were prepared, as well as the uncertainties inherent in any forecasting information, readers of this proxy statement are cautioned not to place unwarranted reliance on the Ultimate Projections set forth above. No one has made or makes any representation to any investor or stockholder regarding the information included in the Ultimate Projections. Ultimate urges all Ultimate stockholders to review its most recent SEC filings for a description of its reported financial results. See the section of this proxy statement entitled —*Where You Can Find Additional Information*.

In addition, the Ultimate Projections have not been updated or revised to reflect information or results after the date they were prepared or as of the date of this proxy statement; no part of the FY 2018-2022 Management Projections constitutes any part of the Forecasts reviewed by representatives of Goldman Sachs in connection

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with rendering its fairness opinion and performing its related financial analyses; the FY 2018-2022 Management Projections were not approved by the Company s board of directors for use in connection with Goldman Sachs financial analysis; and except as required by applicable securities laws, Ultimate does not intend to update or otherwise revise the Ultimate Projections or the specific portions presented to reflect circumstances existing after the date when made or to reflect the occurrence of future events, even in the event that any or all of the underlying assumptions are shown to be in error.

Opinion of Financial Advisor to the Company

On February 3, 2019, at a meeting of the Company s board of directors, Goldman Sachs rendered its oral opinion, subsequently confirmed in writing, that, as of February 3, 2019 and based upon and subject to the factors and assumptions set forth therein, the $331.50 in cash per share of the Company s common stock to be paid to the holders of the Company s common stock (other than Parent and its affiliates) pursuant to the merger agreement, was fair from a financial point of view to such holders.

The full text of the written opinion of Goldman Sachs, dated February 3, 2019, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B. **Goldman Sachs provided advisory services and its opinion for the information and assistance of the Company s board of directors in connection with its consideration of the merger. The Goldman Sachs opinion does not constitute a recommendation as to how any holder of the shares of the Company s common stock should vote with respect to the merger or any other matter.**

In connection with rendering the opinion described above and performing its related financial analyses, Goldman Sachs reviewed, among other things:

- the merger agreement;
- annual reports to stockholders and Annual Reports on Form 10-K of the Company for the five years ended December 31, 2017;
- certain interim reports to stockholders and Quarterly Reports on Form 10-Q of the Company;
- certain other communications from the Company to its stockholders;
- certain publicly available research analyst reports for the Company; and
- certain internal financial analyses and forecasts for the Company prepared by its management as approved for Goldman Sachs' use by the Company, which are referred to collectively in this proxy statement as the Forecasts .

For information regarding preparation of the Forecasts, see the section of this proxy statement entitled — *Certain Financial Projections Prepared by the Senior Management of Ultimate*.

Goldman Sachs also held discussions with members of the senior management of the Company regarding their assessment of the past and current business operations, financial condition, and future prospects of the Company; reviewed the reported price and trading activity for the Company s common stock; compared certain financial and stock market information for the Company with similar information for certain other companies the securities of which are publicly traded; reviewed the financial terms of certain recent business combinations in the software industry and in other industries; and performed such other studies and analyses, and considered such other factors, as it deemed appropriate.

For purposes of rendering its opinion, Goldman Sachs, with the consent of the Company, relied upon and assumed the accuracy and completeness of all of the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by, it, without assuming any responsibility for independent verification thereof. In that regard, Goldman Sachs assumed with the consent of the Company that the Forecasts were reasonably prepared on a

basis reflecting the best currently available estimates and judgments of the management of the Company. Goldman Sachs did not make an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or other off-balance-sheet assets and liabilities) of the Company or any of its subsidiaries and it was not furnished with any such evaluation or appraisal. Goldman Sachs assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the transaction contemplated by the merger agreement will be obtained without any adverse effect on the expected benefits of the transaction contemplated by the merger agreement in any way meaningful to its analysis.

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Goldman Sachs has also assumed that the transaction contemplated by the merger agreement will be consummated on the terms set forth in the merger agreement, without the waiver or modification of any term or condition the effect of which would be in any way meaningful to its analysis.

Goldman Sachs opinion does not address the underlying business decision of the Company to engage in, or the relative merits of, the transaction contemplated by the merger agreement as compared to any strategic alternatives that may be available to the Company; nor does it address any legal, regulatory, tax or accounting matters. Prior to the execution of the merger agreement, Goldman Sachs was not requested to solicit, and did not solicit, interest from other parties with respect to an acquisition of, or other business combination with, the Company or any other alternative transaction. Subsequent to the delivery of Goldman Sachs' opinion, dated February 3, 2019, and the execution of the merger agreement, at the direction of the Company s board of directors and pursuant to the go shop provision in the merger agreement, representatives of Goldman Sachs commenced contacting specified potential counterparties to an alternative transaction with the Company, as described in the section of this proxy statement entitled *—Background of the Merger* . Goldman Sachs opinion addresses only the fairness from a financial point of view, as of the date of the opinion, of the $331.50 in cash per share of the Company s common stock to be paid to the holders (other than Parent and its affiliates) of the Company s common stock pursuant to the merger agreement. Goldman Sachs opinion does not express any view on, and does not address, any other term or aspect of the merger agreement or the transactions contemplated by the merger agreement or any term or aspect of any other agreement or instrument contemplated by the merger agreement or entered into or amended in connection with the transaction contemplated by the merger agreement, the fairness of the transaction contemplated by the merger agreement to, or any consideration received in connection therewith by, the holders of any other class of securities, creditors, or other constituencies of the Company; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of the Company, or class of such persons, in connection with the transaction contemplated by the merger agreement, whether relative to the $331.50 per share of the Company s common stock in cash to be paid to the holders (other than Parent and its affiliates) of the Company s common stock pursuant to the merger agreement or otherwise. Goldman Sachs opinion does not express any opinion as to the solvency or viability of the Company or Parent to pay their respective obligations when they come due. Goldman Sachs opinion was necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to it as of, the date of the opinion and Goldman Sachs assumed no responsibility for updating, revising or reaffirming its opinion based on circumstances, developments or events occurring after the date of its opinion. Goldman Sachs opinion was approved by a fairness committee of Goldman Sachs.

The following is a summary of the material financial analyses delivered by Goldman Sachs to the Company in connection with rendering the opinion described above. The following summary, however, does not purport to be a complete description of the financial analyses performed by Goldman Sachs, nor does the order of analyses described represent relative importance or weight given to those analyses by Goldman Sachs. Some of the summaries of the financial analyses include information presented in tabular format. The tables must be read together with the full text of each summary and are alone not a complete description of Goldman Sachs financial analyses. Except as otherwise noted, the following quantitative information, to the extent that it is based on market data, is based on market data as it existed on or before February 1, 2019, the last trading day before the public announcement of the transaction contemplated by the merger agreement and is not necessarily indicative of current market conditions.

Financial Analyses of the Company

Illustrative Discounted Cash Flow Analysis

Using the Forecasts, Goldman Sachs performed an illustrative discounted cash flow analysis on the Company. Using discount rates ranging from 8.00% to 9.00%, reflecting estimates of the Company s weighted average cost of capital, Goldman Sachs discounted to present value as of December 31, 2018: (i) estimates of unlevered free cash flow for the

Company for the years 2019 to 2028 as reflected in the Forecasts and (ii) a range of illustrative terminal values for the Company, which were calculated by applying perpetuity growth rates ranging from 3.5% to 4.5%, to a terminal year estimate of the free cash flow to be generated by the Company, as reflected in the Forecasts (which analysis implied exit terminal year unlevered free cash flow multiples ranging from 14.3x to 22.6x). Goldman Sachs derived such range of discount rates by application of the Capital Asset Pricing Model (CAPM), which requires certain company-specific inputs, including the company s target capital structure weightings, the cost of long-term debt, after-tax yield on permanent excess cash, if any, future applicable

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marginal cash tax rate and a beta for the company, as well as certain financial metrics for the United States financial markets generally. The range of perpetuity growth rates was estimated by Goldman Sachs using its professional judgment and expertise and taking into account the Forecasts and market expectations regarding long-term real growth of gross domestic product and inflation. Goldman Sachs derived ranges of illustrative enterprise values for the Company by adding the ranges of present values it derived above. Goldman Sachs then subtracted from the range of illustrative enterprise values it derived for the Company the net debt of the Company as of December, 31, 2018, as provided by the management of the Company to derive a range of illustrative equity values for the Company. Goldman Sachs then divided the range of illustrative equity values it derived by the number of fully diluted outstanding shares of the Company s common stock, as provided by the management of the Company, to derive a range of illustrative values per share of the Company s common stock ranging from $232 to $365, rounded to the nearest dollar.

Illustrative Present Value of Future Share Price Analysis

Goldman Sachs performed an illustrative analysis of the implied present value of an illustrative future value per share of the Company s common stock, which is designed to provide an indication of the present value of a theoretical future value of a company s equity as a function of such company s financial multiples. For this analysis, Goldman Sachs used the Forecasts for each of the fiscal years 2019 to 2023. Goldman Sachs first calculated the implied enterprise values for the Company as of December 31 for each of the fiscal years 2019 to 2021, by applying enterprise value to two-year forward unlevered free cash flow multiples, which are referred to in this section entitled *—Opinion of Financial Advisor to the Company* as EV/UFCF , of 25.0x to 30.0x to two-year forward unlevered free cash flow estimates for the Company for each of the fiscal years 2019 to 2021. These illustrative multiple estimates were derived by Goldman Sachs utilizing its professional judgment and experience, taking into account current EV/UFCF multiples for the Company and growth-adjusted EV/UFCF multiples for the Company and selected publicly traded companies in the software industry with operations that, for the purpose of analysis, may be considered similar to certain operations of the Company. Goldman Sachs then subtracted the amount of the Company s forecasted net debt for each of the fiscal years 2019 to 2021, as provided by the management of the Company, as of the relevant year-end per the Forecasts, from the respective implied enterprise values in order to derive a range of illustrative equity values for the Company for each of the fiscal years 2019 to 2021. Goldman Sachs then divided the results by the projected year-end fully diluted outstanding shares of the Company s common stock, as reflected in the Forecasts to derive a range of implied future share prices.

Goldman Sachs then discounted the December 31, 2019 to December 31, 2021 implied future share price values back to December 31, 2018 using an illustrative discount rate of 8.3%, reflecting an estimate of the Company s cost of equity. Goldman Sachs derived such discount rate by application of the CAPM, which requires certain company-specific inputs, including a beta for the company, as well as certain financial metrics for the United States financial markets generally. This analysis resulted in a range of implied present values of $226 to $350 per share of the Company s common stock, rounded to the nearest dollar.

Goldman Sachs also performed an illustrative present value of future share price analysis, by calculating the implied enterprise values for the Company as of December 31 for each of the fiscal years 2019 to 2021, by applying enterprise value to next twelve month (NTM) revenue multiples, which are referred to in this section entitled *—Opinion of Financial Advisor to the Company* as EV/NTM revenue , of 5.75x to 6.75x to NTM revenue estimates for the Company for each of the fiscal years 2019 to 2021. For this analysis, Goldman Sachs used the Forecasts for each of the fiscal years 2019 to 2023. These illustrative multiple estimates were derived by Goldman Sachs utilizing its professional judgment and experience, taking into account historical EV/NTM revenue multiples for the Company. Goldman Sachs then subtracted the amount of the Company s forecasted net debt for each of the fiscal years 2019 to 2021, as provided by the management of the Company, as of the relevant year-end per the Forecasts, from the respective implied enterprise values in order to derive a range of illustrative equity values for the Company for each of

the fiscal years 2019 to 2021. Goldman Sachs then divided the results by the projected year-end fully diluted outstanding shares of the Company s common stock, as reflected in the Forecasts to derive a range of implied future share prices.

Goldman Sachs then discounted the December 31, 2019 to December 31, 2021 implied future share price values back to December 31, 2018 using an illustrative discount rate of 8.3%, reflecting an estimate of the Company s cost of equity. This analysis resulted in a range of implied present values of $267 to $375 per share of the Company s common stock, rounded to the nearest dollar.

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Premia Analysis

Goldman Sachs reviewed and analyzed, using publicly available information, the acquisition premia for all-cash acquisition transactions announced during the time period from January 2016 through December 2018 involving a public company based in the United States as the target where the disclosed enterprise values for the transaction were greater than $500 million. This analysis excluded transactions with premia greater than 100% or less than 0%, using information obtained from Factset. For the entire period, using publicly available information, Goldman Sachs calculated the median, 25th percentile and 75th percentile premiums of the price paid in the transactions relative to the target s closing stock price 30 days prior to announcement of the transaction. This analysis indicated a median premium of 32.0% across the period. This analysis also indicated a 25th percentile premium of 20.5% and 75th percentile premium of 47.2% across the period. Using this analysis, Goldman Sachs applied a reference range of illustrative premiums of 20.5% to 47.2% to the undisturbed closing price per share of the Company s common stock of $235.50 as of January 3, 2019 and calculated a range of implied equity values per share of the Company s common stock of $284 to $347, rounded to the nearest dollar.

Historical Stock Trading Analysis

Goldman Sachs reviewed the historical trading prices and volumes for the Company s common stock for the 52-week period ended February 1, 2019, the last trading day prior to public announcement of the transaction. In addition, Goldman Sachs analyzed the $331.50 in cash per share of the Company s common stock to be paid to the holders of the Company s common stock pursuant to the merger agreement in relation to (i) the closing price of the Company s common stock on February 1, 2019, (ii) the high closing price of the Company s common stock for the 52-week period ended on February 1, 2019, and (iii) the volume weighted average prices (the VWAP) of the Company s common stock during the 30 trading day period ended on February 1, 2019.

This analysis indicated that the price per share to be paid to the holders of the Company s common stock pursuant to the merger agreement represented:

- a premium of approximately 19% to the closing price of $277.83 per share of the Company’s common stock on February 1, 2019;
- a premium of approximately 0% to the high closing price of $330.73 per share of the Company’s common stock for the 52-week period ended on February 1, 2019; and
- a premium of approximately 32% to the VWAP of $251.84 per share of the Company’s common stock during the 30 trading day period ended on February 1, 2019.

Selected Transactions Analysis

Goldman Sachs analyzed certain publicly available information relating to selected transactions in the software industry since October 2011.

For each of the selected transactions, Goldman Sachs calculated and compared the implied EV/NTM revenue multiple of the applicable target company based on the total consideration paid in the transaction as a multiple of the target company s NTM revenue based on Institutional Brokers Estimate System (IBES) estimates at the time each such selected transaction was announced. While none of the companies that participated in the selected transactions are directly comparable to the Company, the companies that participated in the selected transactions are companies with operations that, for the purpose of analysis, may be considered similar to certain of the Company s results, market size and product profile.

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The following table presents the results of this analysis:

Selected Precedent Transactions

Announcement Date	Acquiror	Target	Enterprise Value $ in millions	EV/NTM Revenue
December 2018	Vista Equity Partners (Vista)	MINDBODY, Inc.	$ 1,807	6.4x
November 2018	Vista	Apptio, Inc.	$ 1,837	7.4x
January 2018	SAP SE (SAP)	Callidus Software, Inc.	$ 2,429	8.5x
July 2016	Oracle Corp. (Oracle)	NetSuite Inc.	$ 9,389	9.1x
June 2016	Microsoft Corp.	LinkedIn Corp.	$ 26,292	6.8x
June 2016	salesforce.com, inc. (Salesforce)	Demandware, Inc.	$ 2,840	8.9x
May 2016	Vista	Marketo, Inc.	$ 1,702	5.9x
April 2016	Oracle	Textura Corp.	$ 668	6.1x
September 2014	SAP	Concur Technologies, Inc.	$ 7,771	9.6x
December 2013	Oracle	Responsys, Inc.	$ 1,577	6.9x
June 2013	Salesforce	ExactTarget, Inc.	$ 2,608	6.3x
December 2012	Oracle	Eloqua, Inc.	$ 884	8.2x
May 2012	SAP	Ariba, Inc.	$ 4,393	7.7x
February 2012	Oracle	Taleo Corp.	$ 1,947	5.3x
December 2011	SAP	SuccessFactors, Inc.	$ 3,512	8.7x
October 2011	Oracle	Rightnow Technologies, Inc.	$ 1,376	5.6x
Median				7.4x

Based on the results of the foregoing calculations and Goldman Sachs analyses of the various transactions and its professional judgment, Goldman Sachs applied a reference range of EV/NTM revenue multiples of 5.3x (reflecting the minimum EV/NTM revenue multiple referenced above) to 9.6x (reflecting the maximum EV/NTM revenue multiple referenced above) to the Company s NTM revenue as of December 31, 2018, as reflected in the Forecasts, to derive a range of implied enterprise values for the Company. Goldman Sachs then subtracted from the range of implied enterprise values the net debt of the Company as of December 31, 2018, as provided by the management of the Company, to derive a range of illustrative equity values for the Company. Goldman Sachs divided the results by the number of fully diluted outstanding shares of the Company s common stock, as provided by the management of the Company, to derive a range of implied values per share of the Company s common stock of $222 to $396, rounded to the nearest dollar.

General

The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. Selecting portions of the analyses or of the summary set forth above, without considering the analyses as a whole, could create an incomplete view of the processes underlying Goldman Sachs opinion. In arriving at its fairness determination, Goldman Sachs considered the results of all of its analyses and did not attribute any particular weight to any factor or analysis considered by it. Rather, Goldman Sachs made its determination as to fairness on the basis of its experience and professional judgment after considering the results of all of its analyses. No company or transaction used in the above analyses as a comparison is directly comparable to the Company or the

merger.

Goldman Sachs prepared these analyses for purposes of Goldman Sachs providing its opinion to the Company s board of directors that, as of February 3, 2019 and based upon and subject to the factors and assumptions therein, the $331.50 in cash per share of the Company s common stock to be paid to the holders (other than Parent and its affiliates) of the Company s common stock pursuant to the merger agreement was fair from a financial point of view to such holders. These analyses do not purport to be appraisals nor do they necessarily reflect the prices at which businesses or securities actually may be sold. Analyses based upon forecasts of future results are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by these analyses. Because these analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of the parties or their respective advisors, none of the Company, Parent, Goldman Sachs or any other person assumes responsibility if future results are materially different from those forecast.

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The consideration to be paid to holders of the Company s common stock was determined through arm s-length negotiations between the Company and Parent and was approved by the Company s board of directors. Goldman Sachs provided advice to the Company during these negotiations. Goldman Sachs did not, however, recommend any specific amount of consideration to the Company or the Company s board of directors or that any specific amount of consideration constituted the only appropriate consideration for the transaction contemplated by the merger agreement.

As described above, Goldman Sachs opinion to the Company s board of directors was one of many factors taken into consideration by the Company s board of directors in making its determination to approve the transaction contemplated by the merger agreement. The foregoing summary does not purport to be a complete description of the analyses performed by Goldman Sachs in connection with the fairness opinion and is qualified in its entirety by reference to the written opinion of Goldman Sachs attached as Annex B.

Goldman Sachs and its affiliates are engaged in advisory, underwriting and financing, principal investing, sales and trading, research, investment management and other financial and non-financial activities and services for various persons and entities. Goldman Sachs and its affiliates and employees, and funds or other entities they manage or in which they invest or have other economic interests, or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments of the Company, Parent, and any of their respective affiliates and third parties, including H&F, Blackstone, GIC, CPPIB and JMI Equity, each an affiliate of Parent, and their respective affiliates and portfolio companies, or any currency or commodity that may be involved in the transaction contemplated by the merger agreement. Goldman Sachs acted as financial advisor to the Company in connection with, and participated in certain of the negotiations leading to, the transaction contemplated by the merger agreement. During the two year period ended February 3, 2019, the Investment Banking Division of Goldman Sachs has not been engaged by the Company or its affiliates to provide financial advisory or underwriting services for which Goldman Sachs has recognized compensation. Goldman Sachs has provided certain financial advisory and/or underwriting services to H&F and/or its affiliates and portfolio companies from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation, including having acted as joint bookrunner with respect to the public offering by Change Healthcare Holdings Inc., a portfolio company of funds affiliated with H&F, of its 5.750% Senior Unsecured Notes due 2025 (aggregate principal amount $1,000,000,000) in February 2017; as joint lead arranger with respect to a bank loan (aggregate principal amount $3,186,000,000) for Pharmaceutical Product Development, Inc., a portfolio company of funds affiliated with H&F, in May 2017; as financial advisor to Verisure Holdings AB (Verisure), a portfolio company of funds affiliated with H&F, with respect to its divestiture in August 2017; as joint bookrunner with respect to the public offering by Multiplan, Inc. (Multiplan), a portfolio company of funds affiliated with H&F, of its 8.500% Senior PIK Notes due 2022 (aggregate principal amount $1,300,000,000) in November 2017; as joint bookrunner with respect to the public offering by Hellman & Friedman (UK), an affiliate of H&F, of its Floating Notes due 2025 and Floating Notes due 2023 (aggregate principal amount $1,847,000,000) in March 2018; and as joint lead agent with respect to a bank loan (aggregate principal amount $800,000,000) for Verisure in November 2018. During the two year period ended February 3, 2019, based solely on Goldman Sachs books and records, Goldman Sachs has recognized compensation for financial advisory and/or underwriting services provided by its Investment Banking Division directly to H&F and/or to its affiliates and portfolio companies (which may include companies that are not controlled by H&F) of approximately $86,300,000. Goldman Sachs also has provided certain financial advisory and/or underwriting services to Blackstone and/or its affiliates and portfolio companies from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation, including having acted as joint lead arranger with respect to a bank loan (aggregate principal amount $2,270,000,000) for Michaels Stores, Inc., a portfolio company of funds affiliated with Blackstone, in March 2017; as joint lead agent with respect to a bank loan (aggregate principal amount $2,925,000,000) for Avaya Inc., a portfolio company of funds affiliated with Blackstone, in December 2017; as lender with respect to the collateralized mortgage back securities (aggregate principal amount $1,400,000,000) for Blackstone Real Estate Advisors LP, an

affiliate of Blackstone, in February 2018; as joint bookrunner with respect to the public offering by Hilton Domestic Operating Company Inc., a portfolio company of funds affiliated with Blackstone, of its 5.125% Senior Notes due 2026 (aggregate principal amount $1,500,000,000) in April 2018; as financial advisor to Ipreo Holdings LLC, a portfolio company of funds affiliated with Blackstone, with respect to its sale in August 2018; and as financial advisor to Gianni Versace SpA, a portfolio company of funds affiliated with

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Blackstone, with respect to its sale in December 2018. During the two year period ended February 3, 2019, based solely on Goldman Sachs books and records, Goldman Sachs has recognized compensation for financial advisory and/or underwriting services provided by its Investment Banking Division directly to Blackstone and/or to its affiliates and portfolio companies (which may include companies that are not controlled by Blackstone) of approximately $278,300,000. Goldman Sachs also has also provided certain financial advisory and/or underwriting services to GIC and/or its affiliates and portfolio companies from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation, including having acted as lead agent/arranger with respect to a bank loan (aggregate principal amount $1,709,000,000) for eircom Group plc (Eircom), a portfolio company of funds affiliated with GIC, in March 2017; as lead agent/arranger with respect to a bank loan (aggregate principal amount $3,165,000,000) for Multiplan, a portfolio company of funds affiliated with GIC, in June 2017; as book manager with respect to the public offering by Multiplan of its 8.500% Senior PIK Notes (aggregate principal amount $1,300,000,000) in November 2017; as financial advisor to Eircom with respect to its sale in December 2017; as book manager with respect to the public offering by FirstEnergy Corporation, a portfolio company of funds affiliated with GIC, of its 4.100% Senior Unsecured Notes (aggregate principal amount $1,709,000,000) in May 2018; and as lead agent/arranger with respect to a bank loan (aggregate principal amount $275,000,000) for U.S. Anesthesia Partners, Inc., a portfolio company of funds affiliated with GIC, in November 2018. During the two year period ended February 3, 2019, based solely on Goldman Sachs books and records, Goldman Sachs has recognized compensation for financial advisory and/or underwriting services provided by its Investment Banking Division directly to GIC and/or to its affiliates and portfolio companies (which may include companies that are not controlled by GIC) of approximately $22,600,000. During the two year period ended February 3, 2019, the Investment Banking Division of Goldman Sachs has not been engaged by JMI Equity and/or its affiliates and portfolio companies to provide financial advisory or underwriting services for which Goldman Sachs has recognized compensation. Goldman Sachs has also provided certain financial advisory and/or underwriting services to the Republic of Singapore, the parent of GIC, and/or its agencies, and instrumentalities and their respective affiliates from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation. Goldman Sachs also has provided certain financial advisory and/or underwriting services to CPPIB and/or its affiliates and portfolio companies from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation, including having acted as joint bookrunner with respect to the public offering by Quintiles IMS Holdings, Inc., a portfolio company of funds affiliated with CPPIB, of its 2.875% Notes due 2025 (aggregate principal amount $500,000,000) in September 2017; as co-manager with respect to the public offering by CPPIB of its 2.750% Notes due 2027 (aggregate principal amount $1,000,000,000) in October 2017; as joint bookrunner with respect to the public offering by Cablevision Systems Corporation, an affiliate of Altice USA, Inc. (Altice), a portfolio company of funds affiliated with CPPIB, of its 5.375% Notes due 2028 (aggregate principal amount $1,000,000,000) in January 2018; as joint lead agent with respect to a bank loan (aggregate principal amount $9,250,000,000) for Refinitiv, a portfolio company of funds affiliated with CPPIB, in September 2018; as joint lead agent with respect to a bank loan (aggregate principal amount $1,275,000,000) for Altice in October 2018; and as financial advisor to Altamira Asset Management Holdings, a portfolio company of funds affiliated with CPPIB, with respect to the sale of a stake in Altamira in December 2018. During the two year period ended February 3, 2019, based solely on Goldman Sachs books and records, Goldman Sachs has recognized compensation for financial advisory and/or underwriting services provided by its Investment Banking Division directly to CPPIB and/or to its affiliates and portfolio companies (which may include companies that are not controlled by CPPIB) of approximately $92,000,000. Goldman Sachs may also in the future provide financial advisory and/or underwriting services to the Company, Parent and their respective affiliates, H&F, Blackstone, GIC, the Republic of Singapore and its agencies and instrumentalities, CPPIB and JMI Equity and their respective affiliates and portfolio companies for which the Investment Banking Division of Goldman Sachs may receive compensation. Affiliates of Goldman Sachs also may have co-invested with H&F, Blackstone, GIC, CPPIB or JMI Equity or their respective affiliates from time to time and may have invested in limited partnership units of affiliates of H&F, Blackstone or JMI Equity from time to time and may do so in the future.

The Company s board of directors selected Goldman Sachs as its financial advisor because it is an internationally recognized investment banking firm that has substantial experience in transactions similar to the transactions contemplated by the merger agreement. Pursuant to a letter agreement, dated February 1, 2019, the Company engaged Goldman Sachs to act as its financial advisor in connection with the transaction contemplated by the merger agreement. The engagement letter between the Company and Goldman Sachs provides for a transaction fee that is

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estimated, based on the information available as of the date of announcement, at approximately $71.7 million, all of which is contingent upon consummation of the merger. In addition, the Company has agreed to reimburse Goldman Sachs for certain of its expenses, including attorneys fees and disbursements, and to indemnify Goldman Sachs and related persons against various liabilities, including certain liabilities under the federal securities laws.

Limited Guarantees

Concurrently with the execution of the merger agreement, the guarantors entered into limited guarantees, pursuant to which they agreed to guarantee, severally and not jointly or jointly and severally, on the terms and conditions set forth in the limited guarantees, Parent s obligation to pay any termination fee, reimburse and indemnify the Company with respect to certain expenses in connection with the merger and pay certain other amounts, in an amount not to exceed $570 million in the aggregate.

Subject to certain terms and conditions, each of the limited guarantees will terminate upon the earliest to occur of (1) the closing of the merger and payment of the merger consideration in accordance with the merger agreement, (2) receipt in full in cash by the Company of the payment obligations of Parent that are the subject of the limited guarantee, or (3) the earlier of (a) the valid termination of the merger agreement in any circumstance other than one in which Parent is or may be obligated to pay any of the obligations that are the subject of the limited guarantee and (b) the date that is the three-month anniversary of the date of the termination of the merger agreement in any circumstance in which Parent is or may be obligated to pay any of the obligations that are the subject of the limited guarantee (unless a claim for payment of any of such obligations is presented by the Company to Parent, Merger Sub or the guarantor on or prior to such three-month anniversary).

Financing

In connection with the execution of the merger agreement, the equity financing sources have committed to capitalize Parent, on the date of the closing of the merger, with an aggregate equity subscription of up to $8.133 billion, subject to the terms and conditions set forth in the equity commitment letters.

In connection with the execution of the merger agreement, Parent entered into and subsequently on three occasions amended and restated the debt commitment letter with the commitment parties, pursuant to which (x) Credit Suisse, Nomura, Bank of America Merrill Lynch, BNPP, Ares and Blackstone Finance (each of the foregoing, in certain cases, acting through its respective appropriate affiliates or branches) have committed, upon certain terms and subject to certain conditions, to (i) lend the borrower $2.3 billion in aggregate principal amount of senior secured first lien term loans in connection with the debt financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby and (ii) make available to the borrower a senior secured first lien revolving credit facility in an aggregate principal amount of up to $275 million and (y) Ares, GSO and PSP (each of the foregoing, in certain cases, acting through its respective appropriate affiliates or branches) have committed, upon certain terms and subject to certain conditions, to lend the borrower $900 million in aggregate principal amount of senior secured second lien term loans in connection with the debt financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby. We have agreed to use our reasonable best efforts to, and to cause our subsidiaries to use their reasonable best efforts to, and to use our reasonable best efforts to cause our and our subsidiaries representatives to, provide all cooperation reasonably requested by Parent in connection with the arrangement of the debt financing, subject to the terms set forth in the merger agreement. For more information, see *The Merger Agreement — Debt Financing and Debt Financing Cooperation*.

Interests of the Company s Directors and Executive Officers in the Merger

In considering the recommendations of the Ultimate board of directors with respect to the merger, Ultimate s stockholders should be aware that the directors and executive officers of Ultimate have certain interests, including financial interests, in the merger that may be different from, or in addition to, the interests of Ultimate s stockholders generally, including the continued employment of certain executive officers following the closing of the merger and the right to continued indemnification and insurance coverage. Upon completion of the merger, Ultimate is expected to continue to operate under the leadership of Chief Executive Officer Scott Scherr and the existing senior management team, and Scott Scherr may continue to serve as a director of the Company. The Ultimate board of directors was aware of these interests and considered them, among other matters, in approving the merger agreement, and in making its recommendation that Ultimate s stockholders vote in favor of the adoption of the merger agreement. These interests are described in more detail below, and certain of them are

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quantified in the narrative and the tables below. The transactions contemplated by the merger agreement will be a change in control, change of control or term of similar meaning for purposes of the Company s executive compensation and benefit plans and agreements described below.

Certain Assumptions

Except as otherwise specifically noted, for purposes of quantifying the potential payments and benefits described in this section, the following assumptions were used:

- The relevant price per share of the Company common stock is $331.50, which is the amount of the merger consideration;
- The effective time is March 25, 2019, which is the assumed date of the closing of the merger solely for purposes of the disclosure in this section;
- The Company experiences a change in control , as such term is defined in the relevant Company plans and agreements, immediately following the assumed effective time of March 25, 2019.

Outstanding Equity Compensation

Each Company restricted stock award and each Company restricted stock unit award that is outstanding immediately prior to the effective time, whether granted prior to the date of the merger agreement or granted after the date of the merger agreement as permitted by the merger agreement, will, as of the effective time, become fully vested and nonforfeitable, and will be cancelled and converted automatically into the right to receive an amount in cash equal to the merger consideration in respect of each vested share of Company common stock subject to such restricted stock award or restricted stock unit award, subject to applicable tax withholding. While the merger agreement also provides for treatment of each Company stock option that is outstanding immediately prior to the effective time, there are no Company stock options outstanding as of the date of this proxy statement or expected to be outstanding at the effective time.

The Company requested, and Parent approved, the scheduled grant of up to 532,069 restricted stock awards and restricted stock unit awards to be made consistent with past practice following the signing of the merger agreement to Ultimate s employees, senior management and non-management directors. The Company also requested, and Parent approved, the communication of grants of up to 25,000 restricted stock awards and restricted stock unit awards per calendar quarter to potential new hires of the Company, which grants (if any) would be made at or shortly after the closing of the merger.

If the merger is consummated, the awards granted consistent with past practice on or after the date of the merger agreement, like all other outstanding awards, will, as of the effective time, become fully vested and nonforfeitable, and will be cancelled and converted automatically into the right to receive an amount in cash equal to the merger consideration in respect of each vested share of Company common stock subject to such restricted stock award or restricted stock unit award, subject to applicable tax withholding. The estimated aggregate value of the unvested equity awards granted as part of the February 2019 Ordinary Course Grants (as such term is defined in the section of this proxy statement entitled *—Background of the Merger*) that will become vested at the effective time is approximately $173.8 million. If the merger is not consummated, the awards granted as part of the February 2019 Ordinary Course Grants will continue to be subject to the terms and vesting periods set forth in the Company s equity and incentive plan (as defined below).

Quantification of Equity Compensation

See the section entitled *— Quantification of Potential Payments and Benefits to the Company s Named Executive Officers in Connection with the Merger* for an estimate of the value of the unvested equity awards held by each of the

Company s named executive officers that will become vested at the effective time. Based on the assumptions described above under — *Certain Assumptions*, (i) the estimated aggregate value of the unvested equity awards held by the Company s six executive officers who are not named executive officers that will become vested at the effective time is $65,999,992.50, which includes restricted stock awards that the Company requested, and Parent approved, to be granted consistent with past practice on or after the date of the merger agreement, as described in the section of this proxy statement entitled —*Outstanding Equity Compensation*, with an estimated aggregate value of $24,862,500 and (ii) the estimated aggregate value of the unvested equity awards held by the Company s five non-employee directors that will become vested at the

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effective time is $10,410,757.50, which includes restricted stock unit awards that the Company requested, and Parent approved, to be granted consistent with past practice on or after the date of the merger agreement, as described in the section of this proxy statement entitled *—Outstanding Equity Compensation*, with an estimated aggregate value of $757,477.50. For more information on equity holdings of the Company s non-employee directors and named executive officers, see the table entitled *Security Ownership of Certain Beneficial Owners and Management*.

Change in Control Equity and Incentive Plan

Pursuant to the Company s Amended and Restated 2005 Equity and Incentive Plan, dated May 16, 2016 (referred to in this proxy as the equity and incentive plan), the Company has entered into several restricted stock award agreements and restricted stock unit award agreements (referred to in this proxy statement collectively as EIP Agreements) with twelve executive officers, including each named executive officer.

Under each EIP Agreement, upon the occurrence of a qualifying change in control (as such term is defined in the equity and incentive plan and which includes the merger) of the Company while the applicable officer is employed by the Company or any subsidiary, the officer is entitled to the acceleration of the equity awards discussed above.

Agreements with Parent

Communications between representatives of the Company and representatives of Hellman & Friedman relating to Hellman & Friedman s expectations regarding the continued operation of the Company by senior management and potential equity arrangements and the Company s equity program for employees (including members of the Company s senior management) are described in the section of this proxy statement entitled *— Background of the Merger* .

Upon completion of the merger, Ultimate is expected to continue to operate under the leadership of Chief Executive Officer Scott Scherr and the existing senior management team, and Scott Scherr may continue to serve as a director of the Company. Other than as described herein, as of the date of this proxy statement, none of our executive officers has entered into any agreement, arrangement or understanding with Parent or any of its affiliates regarding post-closing employment or compensation arrangements, or the opportunity to purchase or otherwise participate in the equity of Parent or any of its affiliates. Hellman & Friedman expects to engage in further discussions between Parent and members of our senior management with respect to such matters, including post-close employment of senior management and the structure and mechanics of potential equity plans (which may include RSUs, RSAs and/or options) and liquidity opportunities for employees, including senior management, and that agreements, arrangements or understandings with respect to such matters may be reached prior to or following the closing of the merger.

Indemnification and Insurance

Pursuant to the terms of the merger agreement, the Company directors and executive officers will be entitled to certain ongoing indemnification and coverage under directors and officers liability insurance policies following the merger. Such indemnification and insurance coverage is further described in the section entitled *The Merger Agreement — Indemnification and Insurance.*

Quantification of Potential Payments and Benefits to the Company s Named Executive Officers in Connection with the Merger

The information set forth in the table below is intended to comply with Item 402(t) of the SEC s Regulation S-K, which requires disclosure of information about certain compensation for each named executive officer of the Company that is based on, or otherwise relates to, the merger. The amounts shown in the table below are estimates based on multiple assumptions that may or may not actually occur or be accurate on the relevant date, including the

assumptions described below and in the footnotes to the table, and do not reflect certain compensation actions that may occur before completion of the merger. For purposes of calculating such amounts, the following assumptions were used:

- the relevant price per share of the Company common stock is $331.50, which is the amount of the merger consideration;

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- the effective time is March 25, 2019, which is the assumed date of the closing of the merger solely for purposes of the disclosure in this section; and
- The Company experiences a change in control, as such term is defined in the relevant Company plans and agreements, immediately following the assumed effective time of March 25, 2019.

Named Executive Officer	Cash ($)	Equity($)[1]	Perquisites / Benefits($)	Total ($)[1]
Scott Scherr	—	36,716,277.00	—	36,716,277.00
Felicia Alvaro	—	13,923,331.50	—	13,923,331.50
Mitch Dauerman	—	13,184,749.50	—	13,184,749.50
Adam Rogers	—	16,022,721.00	—	16,022,721.00
Julie Dodd	—	12,707,721.00	—	12,707,721.00
Greg Swick	—	9,668,860.50	—	9,668,860.50

(1) *Equity*. Includes estimated value of unvested restricted stock awards and unvested restricted stock unit awards, in each case that are outstanding as of the assumed closing date of March 25, 2019. All such awards are single trigger and will become vested in full at the effective time. With respect to any of such awards that were granted after February 3, 2019, the Company requested, and Parent approved, such awards to be granted on or after the date of the merger agreement. For further details regarding the treatment of the Company equity awards in connection with the merger, see — *Equity Compensation*. The estimated value of the single trigger awards is shown in the following table:

Named Executive Officer	Unvested Restricted Stock Awards ($)	Unvested Restricted Stock Units ($)	Total ($)[2]
Scott Scherr	36,716,277.00	—	36,716,277.00
Felicia Alvaro	13,260,000.00	663,331.50	13,923,331.50
Mitch Dauerman	13,184,749.50	—	13,184,749.50
Adam Rogers	16,022,721.00	—	16,022,721.00
Julie Dodd	12,707,721.00	—	12,707,721.00
Greg Swick	9,668,860.50	—	9,668,860.50

(2) The estimated aggregate value of the unvested equity awards held by the Company's named executive officers that the Company requested, and Parent approved, to be granted in the ordinary course on or after the date of the merger agreement as described in the section of this proxy statement entitled —*Outstanding Equity Compensation* and that will become vested at the effective time is $39,780,000.

Material U.S. Federal Income Tax Consequences of the Merger

The following is a discussion of the material U.S. federal income tax consequences of the merger to U.S. holders (as defined below) of common stock whose shares are exchanged for cash pursuant to the merger. This discussion is based on the provisions of the Internal Revenue Code of 1986, as amended (referred to in this proxy statement as the Code), applicable U.S. Treasury Regulations, judicial opinions and administrative rulings and published positions of the Internal Revenue Service (referred to in this proxy statement as the IRS), each as in effect as of the date hereof. These authorities are subject to change or differing interpretations, possibly with a retroactive basis, and any such change or interpretation could affect the accuracy of the statements and conclusions set forth in this discussion. This discussion does not address any tax consequences arising under the unearned income Medicare contribution tax pursuant to the Health Care and Education Reconciliation Act of 2010, nor does it address any tax considerations under state, local or foreign laws or U.S. federal laws other than those pertaining to the U.S. federal income tax.

For purposes of this discussion, the term U.S. holder means a beneficial owner of common stock that is for U.S.

federal income tax purposes:

- a citizen or individual resident of the United States;
- a corporation, or other entity classified as a corporation for U.S. federal income tax purposes, created or organized in or under the laws of the United States, any state thereof, or the District of Columbia;
- a trust if (1) a court within the United States is able to exercise primary supervision over the trust's administration, and one or more U.S. persons are authorized to control all substantial decisions of the trust or (2) such trust has a valid election in effect under applicable U.S. Treasury Regulations to be treated as a U.S. person; or
- an estate the income of which is subject to U.S. federal income tax regardless of its source.

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This discussion applies only to U.S. holders of shares of common stock who hold such shares as a capital asset under the Code (generally, property held for investment). Further, this discussion does not purport to address all aspects of U.S. federal income taxation that may be relevant to a U.S. holder in light of its particular circumstances, or that may apply to U.S. holders subject to special treatment under U.S. federal income tax laws (including, for example, insurance companies, dealers or brokers in securities or foreign currencies, traders in securities who elect to apply the mark-to-market method of accounting, holders subject to the alternative minimum tax, U.S. holders that have a functional currency other than the U.S. dollar, tax-exempt organizations, tax-qualified retirement plans, banks and other financial institutions, mutual funds, certain former citizens or former long-term residents of the United States, partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes or other flow-through entities (and investors therein), S corporations, real estate investment trusts, regulated investment companies, U.S. holders who hold shares of common stock as part of a hedge, straddle, constructive sale, conversion or other integrated transaction, a holder required to accelerate the recognition of any item of gross income with respect to our common stock as a result of such income being recognized on an applicable financial statement, and U.S. holders who acquired their shares of common stock through the exercise of employee stock options or other compensation arrangements). This discussion also does not address the U.S. federal income tax consequences to holders of shares of common stock who exercise appraisal rights in connection with the merger under the DGCL.

If a partnership (including for this purpose any entity or arrangement treated as a partnership for U.S. federal income tax purposes) holds shares of common stock, the tax treatment of a partner in such partnership will generally depend on the status of the partners and the activities of the partnership. If you are, for U.S. federal income tax purposes, a partner in a partnership holding shares of common stock, you should consult your tax advisor.

Holders of common stock are urged to consult their own tax advisors to determine the particular tax consequences to them of the merger, including the applicability and effect of the alternative minimum tax, the unearned income Medicare contribution tax and any other U.S. federal, or state, local, foreign or other tax laws.

The receipt of cash by U.S. holders in exchange for shares of common stock pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. In general, for U.S. federal income tax purposes, a U.S. holder who receives cash in exchange for shares of common stock pursuant to the merger will recognize capital gain or loss in an amount equal to the difference, if any, between (1) the amount of cash received and (2) the U.S. holder s adjusted tax basis in such shares (which generally will equal the price the U.S. holder paid for such shares).

Any such gain or loss will be long-term capital gain or loss if a U.S. holder s holding period in the shares of common stock surrendered in the merger is greater than one year as of the date of the merger. Long-term capital gains of certain non-corporate holders, including individuals, are generally subject to U.S. federal income tax at preferential rates. The deductibility of capital losses is subject to limitations. If a U.S. holder acquired different blocks of common stock at different times and different prices, such U.S. holder must determine its adjusted tax basis, gain or loss and holding period separately with respect to each block of common stock.

Information Reporting and Backup Withholding

Payments made in exchange for shares of common stock pursuant to the merger may be subject, under certain circumstances, to information reporting and backup withholding (currently at a rate of 24% for payments made before January 1, 2026). To avoid backup withholding, a U.S. holder that does not otherwise establish an exemption should complete and return to the applicable withholding agent a properly completed and executed IRS Form W-9, certifying that such U.S. holder is a U.S. person, that the taxpayer identification number provided is correct, and that such U.S. holder is not subject to backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be refunded or credited against a holder s U.S. federal income tax liability, if any, provided that such holder furnishes the required information to the IRS in a timely manner.

Regulatory Approvals

HSR Act and U.S. Antitrust Matters

Under the HSR Act and related rules and regulations, certain transactions, including the merger, may not be completed until notifications have been given and information furnished to the Antitrust Division and the FTC and all statutory waiting period requirements have been satisfied. Completion of the merger is subject to the

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expiration or termination of the applicable waiting period under the HSR Act. The Company and Parent filed their respective Notification and Report Forms with the Antitrust Division and the FTC on February 8, 2019 and received early termination of the HSR waiting period on February 26, 2019.

At any time before or after the expiration of the statutory waiting periods under the HSR Act, the Antitrust Division or the FTC may take action under the antitrust laws, including seeking to enjoin the completion of the merger, to rescind the merger or to conditionally permit completion of the merger subject to regulatory conditions or other remedies.

GWB and Germany Antitrust Matters

Pursuant to the GWB, certain transactions, including the merger, may not be completed until filings are made with the FCO and the transactions are cleared by the FCO or the waiting period has expired under the GWB. German counsel filed with the FCO on behalf of Parent and the Company on February 25, 2019, seeking either (i) confirmation that the transaction does not require clearance or (ii) clearance. On March 15, 2019, the FCO advised that no clearance was required under the GWB.

Foreign Antitrust Matters

In addition, non-U.S. regulatory bodies and U.S. state attorneys general could take action under the antitrust laws as they deem necessary or desirable in the public interest, including, without limitation, seeking to enjoin the completion of the merger or permitting completion subject to regulatory conditions. Private parties may also seek to take legal action under the antitrust laws under some circumstances. There can be no assurance that a challenge to the merger on antitrust grounds will not be made or, if such a challenge is made, that it would not be successful.

Commitments to Obtain Approvals

The Company and Parent are each required to use reasonable best efforts to take all actions necessary to complete the merger, including cooperating and doing all things necessary, proper or advisable to obtain regulatory approvals. This includes, if required by regulatory authorities, (1) agreeing to sell, divest or dispose of any assets or businesses of Parent, the Company, or their respective subsidiaries and (2) taking or agreeing to take other actions that after the closing date limit Parent s or its subsidiaries (including the surviving corporation s) freedom of action with respect to, or its ability to retain, one or more businesses, product lines or assets of Parent s or its subsidiaries (including the surviving corporation). However, the Company will only be required to take or commit to take such actions if they are binding on the Company only if and when the closing of the merger occurs. See the section of this proxy statement entitled *The Merger Agreement — Efforts to Complete the Merger — Antitrust Matters*.

There can be no assurance that regulatory authorities will not impose conditions on the completion of the merger or require changes to the terms of the transaction.

Rights Plan Amendment

On February 3, 2019, prior to execution and delivery of the merger agreement, in connection with the transactions contemplated by the merger agreement, Ultimate entered into an amendment (referred to in this proxy statement as the rights agreement amendment) to the Amended and Restated Rights Agreement (referred to in this proxy statement as the rights agreement), dated as of October 19, 2018, by and between Ultimate and Computershare Trust Company, N.A., a federally chartered trust company, as rights agent. The rights agreement amendment provides, among other things, that the rights agreement will not apply to the merger or any of the other transactions contemplated by the merger agreement and, subject to the occurrence of the effective time of the merger, will terminate immediately prior to the effective time of the merger.

The foregoing summary of the rights agreement amendment and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the rights agreement amendment attached hereto as Annex D and incorporated herein by reference.

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Litigation Related to the Merger

***Weinstein* action**

A putative class action lawsuit captioned *Weinstein v. The Ultimate Software Group, Inc., et al.,* Case No. 1:19-cv-00505-UNA (referred to in this proxy statement as the *Weinstein* action) was filed in Delaware Federal Court on March 14, 2019.

The *Weinstein* action names as defendants the Company and each member of our board of directors. The action was brought as a putative class action on behalf of the Company s stockholders, and alleges that the preliminary proxy statement filed by the Company with the SEC on March 11, 2019 in connection with the merger (referred to in this proxy statement as the Preliminary Proxy Materials) fails to disclose allegedly material information concerning certain financial projections relied upon by the board of directors and the Company s financial advisor in violation of Section 14(a) and Section 20(a) of the Exchange Act, as well as Rule 14a-9 and Regulation G promulgated thereunder. The *Weinstein* action seeks equitable relief, including among other things, to enjoin and/or delay the holding of the special meeting until certain additional information is disclosed to the stockholders, or in the event the merger is consummated, to recover damages, together with costs of the action, reasonable attorneys and experts fees, and any other relief the courts may deem just and proper.

The Company cannot predict the outcome of the *Weinstein* action, nor can the Company predict the amount of time and expense that will be required to resolve the lawsuit. The Company believes the lawsuit is without merit and the Company and the director defendants intend to vigorously defend against it.

***Stein* action**

A putative class action lawsuit captioned *Stein v. The Ultimate Software Group, Inc., et al.*, Case No. 1:19-cv-00538-UNA (referred to in this proxy statement as the *Stein* action) was filed in Delaware Federal Court on March 19, 2019.

The *Stein* action names as defendants the Company and each member of our board of directors. The action was brought as a putative class action on behalf of the Company s stockholders, and alleges that the Preliminary Proxy Materials fail to disclose allegedly material information concerning certain financial projections relied upon by the board of directors and the Company s financial advisor in violation of Section 14(a) and Section 20(a) of the Exchange Act, as well as Rule 14a-9 and Regulation G promulgated thereunder. The *Stein* action seeks equitable relief, including among other things, to enjoin the consummation of the merger until certain additional information is disclosed to the stockholders or to rescind all or a portion of the terms of the merger agreement, together with costs of the action, reasonable attorneys and experts fees, and any other relief the courts may deem just and proper resulting from the alleged violations of the Exchange Act.

The Company cannot predict the outcome of the *Stein* action, nor can the Company predict the amount of time and expense that will be required to resolve the lawsuit. The Company believes the lawsuit is without merit and the Company and the director defendants intend to vigorously defend against it.

***Murray* action**

A putative class action lawsuit captioned *Murray v. The Ultimate Software Group, Inc., et al.*, Case No. 1:19-cv-00539-UNA (referred to in this proxy statement as the Murray action) was filed in Delaware Federal Court on March 19, 2019.

The *Murray* action names as defendants the Company, each member of our board of directors, Parent, Merger Sub, Blackstone, GIC, CPPIB, JMI Management, Inc. and Hellman & Friedman. The action was brought individually and on behalf of a putative class of the Company s stockholders, and alleges that the Preliminary Proxy Materials fail to disclose allegedly material information concerning certain financial projections relied upon by the board of directors and the Company s financial advisor in violation of Section 14(a) and Section 20(a) of the Exchange Act, as well as Rule 14a-9 and Regulation G promulgated thereunder. The Murray action also makes general allegations about the sale process, certain deal-protection provisions in the Merger Agreement and the vesting of certain stock grants. The *Murray* action seeks equitable relief, including among other things, to enjoin the filing of a definitive proxy statement and the consummation of the merger until certain additional information is disclosed to the stockholders, or in the event the merger is consummated, to recover damages, together with costs of the action, reasonable attorneys and experts fees, and any other relief the courts may deem just and proper resulting from the alleged violations of the Exchange Act.

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The Company cannot predict the outcome of the *Murray* action, nor can the Company predict the amount of time and expense that will be required to resolve the lawsuit. The Company believes the lawsuit is without merit and the Company and the director defendants intend to vigorously defend against it. The Company believes the other defendants named in the lawsuit also intend to vigorously defend against it.

***Kent* action**

A putative class action lawsuit captioned *Kent v. The Ultimate Software Group, Inc., et al.*, Case No. 1:19-cv-00540-UNA (referred to in this proxy statement as the Kent action) was filed in Delaware Federal Court on March 19, 2019.

The *Kent* action names as defendants the Company and each member of our board of directors. The action was brought on behalf of a putative class of the Company s stockholders, and alleges that the Preliminary Proxy Materials fail to disclose allegedly material information concerning certain financial projections relied upon by the board of directors and the Company s financial advisor in violation of Section 14(a) and Section 20(a) of the Exchange Act, as well as Rule 14a-9 and Regulation G promulgated thereunder. The *Kent* action seeks equitable relief, including among other things, to enjoin the consummation of the merger, to direct the defendants to file a proxy statement including corrective disclosure, and to recover damages in the event the merger is consummated, together with costs of the action, reasonable attorneys and experts fees, and any other relief the courts may deem just and proper resulting from the alleged violations of the Exchange Act.

The Company cannot predict the outcome of the *Kent* action or any others that might be filed subsequent to the date of this proxy statement, nor can the Company predict the amount of time and expense that will be required to resolve the lawsuit or any such other lawsuit. The Company believes the Kent action is without merit and the Company and the director defendants intend to vigorously defend against it.

***Kessler* action**

A putative class action lawsuit captioned *Kessler v. The Ultimate Software Group, Inc., et al.,* Case No. 1:19-cv-02677 (referred to in this proxy statement as the *Kessler* action) was filed in New York Federal Court on March 26, 2019.

The *Kessler* action names as defendants the Company and each member of our board of directors. The action was brought as a putative class action on behalf of the Company s stockholders, and alleges that the Preliminary Proxy Materials fail to disclose allegedly material information concerning certain financial projections relied upon by the board of directors and the Company s financial advisor in violation of Section 14(a) and Section 20(a) of the Exchange Act, as well as Rule 14a-9 and Regulation G promulgated thereunder. The *Kessler* action also makes general allegations about the sale process, certain deal-protection provisions in the merger agreement and the vesting of certain stock grants. The *Kessler* action seeks equitable relief, including among other things, to enjoin the consummation of the merger until certain additional information is disclosed to the shareholders, together with costs of the action, reasonable attorneys and experts fees, and any other relief the courts may deem just and proper.

The Company cannot predict the outcome of the *Kessler* action or any others that might be filed subsequent to the date of this filing, nor can the Company predict the amount of time and expense that will be required to resolve the lawsuit. The Company believes the lawsuit is without merit and the Company and the director defendants intend to vigorously defend against it.

Delisting and Deregistration of Company Common Stock

If the merger is completed, the Company common stock will be delisted from the NASDAQ and deregistered under the Exchange Act.

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THE MERGER AGREEMENT

The following is a summary of the material provisions of the merger agreement, a copy of which is attached to this proxy statement as Annex A and which is incorporated by reference into this proxy statement. This summary does not purport to be complete and may not contain all of the information about the merger agreement that is important to you. We encourage you to read carefully the merger agreement in its entirety, as the rights and obligations of the parties thereto are governed by the express terms of the merger agreement and not by this summary or any other information contained in this proxy statement.

Explanatory Note Regarding the Merger Agreement

The following summary of the merger agreement, and the copy of the merger agreement attached as Annex A to this proxy statement, are intended to provide information regarding the terms of the merger agreement and are not intended to provide any factual information about Ultimate or modify or supplement any factual disclosures about Ultimate in its public reports filed with the SEC. In particular, the merger agreement and the related summary are not intended to be, and should not be relied upon as, disclosures regarding the actual state of any facts and circumstances relating to Ultimate. The merger agreement contains representations and warranties by and covenants of Ultimate, Parent and Merger Sub, and they were made only for purposes of the merger agreement and as of specified dates. The representations, warranties and covenants in the merger agreement were made solely for the benefit of the parties to the merger agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the merger agreement instead of establishing these matters as facts, and may be subject to contractual standards of materiality or material adverse effect applicable to the contracting parties that generally differ from those applicable to investors. In addition, information concerning the subject matter of the representations, warranties and covenants may change after the date of the merger agreement, which subsequent information may or may not be fully reflected in Ultimate s public disclosures. The representations, warranties and covenants in the merger agreement and any descriptions thereof should be read in conjunction with the disclosures in Ultimate s periodic and current reports, proxy statements and other documents filed with the SEC. See the section of this proxy statement entitled *Where You Can Find Additional Information*. Moreover, the description of the merger agreement below does not purport to describe all of the terms of such agreement and is qualified in its entirety by reference to the full text of such agreement, a copy of which is attached hereto as Annex A and is incorporated herein by reference.

Additional information about Ultimate may be found elsewhere in this proxy statement and Ultimate s other public filings. See the section of this proxy statement entitled *Where You Can Find Additional Information*.

Structure of the Merger; Certificate of Incorporation; Bylaws; Directors and Officers

At the effective time of the merger, Merger Sub will merge with and into Ultimate, and the separate corporate existence of Merger Sub will cease. The Company will be the surviving corporation in the merger and will continue its corporate existence as a Delaware corporation and an indirect wholly owned subsidiary of Parent. At the effective time, the certificate of incorporation of the Company, as the surviving corporation, will be amended and restated in its entirety to be in the form of the certificate of incorporation of Merger Sub, except that the name of the surviving corporation will be The Ultimate Software Group, Inc. At the effective time, the bylaws of the surviving corporation will be amended and restated in their entirety to be in the form of the bylaws of Merger Sub, except that the name of the surviving corporation will be The Ultimate Software Group, Inc.

The individuals holding positions as directors of Merger Sub immediately prior to the effective time will become the directors of the Company, as the surviving corporation, and the current directors of the Company will cease to be directors of the Company as of the effective time. The individuals holding positions as officers of the Company

immediately prior to the effective time will become the officers of the surviving corporation.

When the Merger Becomes Effective

The closing of the merger will take place (1) at 9:00 a.m., New York City time, no later than the third business day following the satisfaction or waiver of all of the conditions set forth in the merger agreement (other than those conditions that by their nature are to be satisfied at the closing of the merger, but subject to the satisfaction or waiver of those conditions at the closing), unless the marketing period (as defined below) has not ended on or prior to the time the closing would have otherwise been required to occur, in which case the closing will not take

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place until the earlier of (i) a business day during the marketing period specified by Parent on at least three business days written notice to the Company and (ii) the first business day following the final day of the marketing period (subject in each case to the satisfaction or (to the extent permitted by applicable law) waiver of all of the conditions set forth in the merger agreement (other than those conditions that by their nature are to be satisfied at the closing of the merger, but subject to the satisfaction or waiver of those conditions at the closing) as of the date determined pursuant to this clause (i) or (ii)), or (2) at another date and time mutually agreed upon in writing between the Company and Parent. For purposes of the merger agreement, business day refers to any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York.

On the closing date, the Company and Parent will file a certificate of merger with the Secretary of State of the State of Delaware. The merger will become effective at the time when the certificate of merger has been duly filed with the Secretary of State of the State of Delaware, or at such later time as may be agreed by the parties in writing and specified in the certificate of merger.

For purposes of the merger agreement, marketing period means the first period of 15 consecutive business days commencing on or after the no-shop period start date (as defined below) throughout which (1) Parent must have the required financial information (as defined below) (which must be the same information throughout the period), (2) the conditions to Parent s obligation to effect the merger (set forth in sections 6.1 and 6.2 of the merger agreement) must have been satisfied (other than the conditions relating to stockholder approval and those conditions that by their nature are to be satisfied at the closing of the merger), assuming that the closing date were to be scheduled for any time during such 15 consecutive business-day period, or (to the extent permitted by applicable law) waived, and (3) during the last three business days of such 15 consecutive business-day period, the conditions relating to stockholder approval must have been satisfied; provided, however, that (i) July 5, 2019, will not constitute a business day for purposes of the 15 consecutive business-day period (although such exclusion will not restart such period), and (ii) the marketing period will be deemed not to have commenced if, after the date of the merger agreement and prior to the completion of such 15 consecutive business-day period, (A) the independent auditors of the Company will have withdrawn their audit opinion with respect to any year-end audited financial statements of the Company and its subsidiaries included in the required financial information, in which case the marketing period will be deemed not to commence unless and until such independent auditors or another nationally recognized independent accounting firm reasonably acceptable to Parent have issued an unqualified audit opinion with respect to such financial statements or (B) any of the financial statements of the Company and its subsidiaries included in the required financial information will have been restated or the Company will have determined or publicly announced that a restatement of any financial statements of the Company and its subsidiaries included in the required financial information is required, in which case the marketing period will be deemed not to commence unless and until such restatement has been completed and the required financial information has subsequently been amended and delivered to Parent or the Company has determined in writing or publicly announced, as applicable, that no such restatement will be required. However, that if the Company in good faith reasonably believes that it has provided the required financial information, it may deliver to Parent a written notice to that effect (stating the date upon which it believes it completed such delivery or provided such access to required financial information), in which case (subject to satisfaction of any other conditions, and compliance with the terms of each other provision, of this definition (including the requirement that required financial information be the same information throughout the period)) such 15 consecutive business-day period referred to above will be deemed to have commenced on the date such notice is delivered to Parent unless Parent in good faith reasonably believes the Company has not provided the required financial information or that clauses (2) or (3) of this definition have not been satisfied and, within three business days after the Company s giving of such notice, gives a written notice to the Company to that effect (stating with specificity any elements of noncompliance and/or nonsatisfaction). Notwithstanding anything in this definition to the contrary, the marketing period will end on any date earlier than the date indicated in the definition above if the debt financing is consummated and the full proceeds thereof received on such earlier date.

For purposes of the merger agreement, required financial information means certain financial statements of the Company and its consolidated subsidiaries required by the debt commitment letter.

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Effect of the Merger on the Common Stock

At the effective time, each share of Company common stock issued and outstanding immediately before the effective time (other than (1) shares held by the Company in treasury or by Parent or Merger Sub (referred to in this proxy statement as cancelled shares), (2) shares held by any wholly owned subsidiary of the Company or any wholly owned subsidiary of Parent (other than Merger Sub) (referred to in this proxy statement as converted shares) and (3) shares held by stockholders of the Company who have not voted in favor of, or consented in writing to, the adoption of the merger agreement and who have properly exercised appraisal rights with respect to their shares in compliance with Section 262 of the DGCL (referred to in this proxy statement as dissenting shares, and the shares referred to in clauses (1), (2) and (3), excluded shares)) will automatically be cancelled and converted into the right to receive the merger consideration, upon surrender of certificates or book-entry shares. The merger consideration will be $331.50 per share in cash, without interest and subject to any required withholding taxes.

At the effective time, each of the cancelled shares will automatically be cancelled without payment of any consideration and will cease to exist. In addition, at the effective time, each of the converted shares held by a wholly owned subsidiary of the Company or Parent (other than Merger Sub) will automatically be converted into shares of common stock, par value $0.01 per share, of the surviving corporation, such that each such subsidiary s ownership percentage of the surviving corporation immediately after the effective time will equal its ownership percentage in the Company immediately prior to the effective time.

At the effective time, each share of common stock, par value $0.01 per share, of Merger Sub issued and outstanding immediately prior to the effective time will be converted into one fully paid and nonassessable share of common stock, par value $0.01 per share, of the surviving corporation.

Treatment of Company Equity Awards

Treatment of Company Restricted Stock Awards and Company Restricted Stock Unit Awards. Each Company restricted stock award and each Company restricted stock unit award that is outstanding immediately prior to the effective time, whether granted prior to the date of the merger agreement or granted after the date of the merger agreement as permitted by the merger agreement, will, as of the effective time, become fully vested and nonforfeitable, and will be cancelled and converted automatically into the right to receive an amount in cash equal to the merger consideration in respect of each vested share of Company common stock subject to such restricted stock award or restricted stock unit award, subject to applicable tax withholding.

Treatment of Stock Options. The merger agreement provides that each Company stock option, whether vested or unvested, that is outstanding and unexercised immediately prior to the effective time will, as of the effective time, become fully vested (to the extent unvested) and be converted into the right to receive an amount in cash equal to the product of (i) the excess, if any, of the merger consideration over the exercise price per share of such option, *multiplied by* (ii) the total number of shares of Company common stock subject to such Company stock option, subject to applicable tax withholding. The merger agreement provides that any Company stock option that has an exercise price per share of Company common stock that is greater than or equal to the merger consideration will be cancelled for no consideration. While the merger agreement provides for the foregoing treatment of each Company stock option that is outstanding immediately prior to the effective time, there are no Company stock options outstanding as of the date of this proxy statement or expected to be outstanding at the effective time.

Payment for Common Stock in the Merger

At or prior to the effective time, Parent will deposit, or cause to be deposited, with a paying agent in trust for the benefit of holders of shares cash sufficient to pay the aggregate merger consideration.

As soon as reasonably practicable (and no later than three business days) after the effective time, Parent will cause the paying agent to mail to each holder of record of a certificate or certificates that immediately prior to the effective time represented outstanding shares of Company common stock (other than excluded shares) (1) a letter of transmittal and (2) instructions for effecting the surrender of such certificates to the paying agent in exchange for payment of the merger consideration (without interest and subject to any required withholding taxes). Upon surrender to the paying agent of certificates, together with the letter of transmittal, duly completed and validly executed, and such other customary documents as may be reasonably required, the holder of such

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certificates will be entitled to receive payment of the merger consideration which the holder is entitled to pursuant to the merger agreement in respect of each share formerly represented by such certificate (without interest and after giving effect to any required tax withholding).

No holder of book-entry shares of Company common stock will be required to deliver a certificate or letter of transmittal to the paying agent to receive the merger consideration in the merger (without interest and subject to any required withholding taxes). In lieu thereof, the registered holder of each book-entry share of Company common stock will automatically upon the effective time be entitled to receive, and, upon receipt by the paying agent of an agent s message in customary form (or such other evidence, if any, as the paying agent may reasonably request), Parent will or will cause the surviving corporation to cause the paying agent to pay and deliver in exchange therefor as soon as reasonably practicable after the effective time, the merger consideration (without interest and after giving effect to any required tax withholding).

Representations and Warranties

The merger agreement contains representations and warranties of the Company, subject to certain exceptions in the merger agreement, in the company disclosure schedule delivered in connection with the merger agreement and in the Company s public filings, as to, among other things:

- organization and power to do business;
- subsidiaries;
- capitalization;
- corporate power and authority relating to the execution, delivery and performance of the merger agreement;
- consents and approvals relating to the execution, delivery and performance of the merger agreement and the absence of certain violations;
- the forms, reports, statements, certifications, schedules and other documents required to be filed or furnished with the SEC, compliance of the consolidated financial statements of the Company included in such documents, the establishment and maintenance of certain disclosure controls and procedures and internal control over financial reporting, the absence of known material complaints, allegations, assertions or claims regarding the Company's accounting practices and compliance in all material respects with applicable listing and corporate governance rules and regulations of the NASDAQ;
- the absence of certain changes or events;
- the accuracy of the information supplied for the purposes of this proxy statement;
- compliance with applicable laws and the provisions of anti-bribery and anti-corruption laws and export and sanctions regulations;
- tax returns and other tax matters;
- the absence of certain liabilities;
- the absence of certain actions, proceedings or orders;
- employee benefit plans and other agreements, plans and policies with or concerning employees;
- intellectual property, privacy and information technology;
- material contracts;
- real and personal property matters;
- the absence of certain liabilities relating to, and violations of, environmental laws;
- insurance policies;
- the opinion of the Company's financial advisor;
- broker's fees;

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- takeover statutes and inapplicability of the Company's anti-takeover plan to the transactions contemplated by the merger agreement; and
- related party transactions.

The merger agreement also contains representations and warranties of Parent and Merger Sub, subject to certain exceptions in the merger agreement and the parent disclosure schedule delivered in connection with the merger agreement, as to, among other things:

- organization and power to do business;
- capitalization and activities of Merger Sub;
- corporate power and authority relating to the execution, delivery and performance of the merger agreement;
- consents and approvals relating to the execution, delivery and performance of the merger agreement and the absence of certain violations;
- the accuracy of the information supplied for the purposes of this proxy statement;
- the absence of certain actions, proceedings or orders;
- the executed equity commitment letters and debt commitment letter providing for commitments to provide equity financing and debt financing, respectively, to Parent, and the sufficiency of the proceeds to be disbursed under the commitment letters, together with other sources of financing available to Parent, to pay the aggregate merger consideration and the other amounts payable under the merger agreement, and the enforceability of the commitment letters;
- the limited guarantees delivered by the guarantors guaranteeing certain obligations of Parent in connection with the merger agreement;
- the absence of beneficial ownership of Company shares by Parent and its subsidiaries;
- broker's fees; and
- solvency.

Some of the representations and warranties in the merger agreement are qualified by materiality qualifications or a company material adverse effect or parent material adverse effect qualification, as discussed below.

For purposes of the merger agreement, a company material adverse effect means any fact, circumstance, change, event, occurrence or effect that (1) has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the financial condition, business or results of operations of the Company and its subsidiaries, taken as a whole, or (2) materially impairs, materially delays or prevents, or would reasonably be expected to materially impair, materially delay or prevent, the Company from completing the merger. However, for the purposes of clause (1), none of the following, and no effect arising out of, relating to or resulting from the following, will constitute or be taken into account in determining whether a company material adverse effect has occurred or would reasonably be expected to occur:

- any facts, circumstances, changes, events, occurrences or effects generally affecting (a) the industries in which the Company and its subsidiaries operate or (b) the economy, credit, debt, securities or financial or capital markets in the United States or elsewhere in the world, including changes in interest or exchange rates or deterioration of the credit markets generally;
- any facts, circumstances, changes, events, occurrences or effects, to the extent arising out of, resulting from or attributable to (a) changes or prospective changes in law, in GAAP or other accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, (b) entry into, consummation and performance of the merger agreement and the transactions contemplated thereby and the public announcement thereof, including the impact thereof on relationships with customers, suppliers, distributors, partners, employees, regulators or third parties (except with respect to the Company's representations and warranties and the related closing condition relating to consents and approvals relating to the execution, delivery and performance of the merger agreement and the absence of certain violations), (c) acts of war (whether or not declared) or any

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outbreaks of hostilities, sabotage or terrorism, or escalations or worsening thereof, (d) weather, pandemics, earthquakes, hurricanes, tornados, natural disasters, climatic conditions or other force majeure events, whether or not weather-related, (e) regulatory and political conditions or developments, (f) any change resulting or arising from the identity of, or any facts or circumstances relating to, Parent, Merger Sub or their respective affiliates, (g) any legal proceedings made or brought by any current or former stockholders of the Company (on their own behalf or on behalf of the Company), but in any event only in their capacities as current or former stockholders, or otherwise under the DGCL or other applicable law, or other litigation (except, solely with respect to such other litigation, with respect to the Company s representations and warranties and the related losing condition relating to consents and approvals relating to the execution, delivery and performance of the merger agreement and the absence of certain violations), arising out of or related to the merger agreement or the transactions contemplated thereby, (h) actions or omissions of the Company or any of its subsidiaries requested or consented to in writing by Parent or expressly required by the merger agreement, (i) any decline in the market price, or change in trading volume of the common stock of the Company (or the volatility thereof) or (j) any failure to meet any internal or public projections, forecasts or estimates of revenue, earnings, cash flow or cash position or other metrics; or

- any item or matter disclosed in the company disclosure schedule.

However, with respect to the matters described in the first bullet point above and in clauses (a), (c), (d) and (e) of the second bullet point above, such facts, circumstances, changes, events occurrences or effects may be taken into account to the extent that they have a disproportionate adverse effect on the Company and its subsidiaries, taken as a whole, in relation to others in the industries of the Company and its subsidiaries, but only to the extent of the incremental disproportionate impact on the Company and its subsidiaries. In addition, the underlying cause of any decline, change or failure referred to in clauses (i) and (j) of the second bullet point above may be taken into account unless the underlying clause is otherwise excluded by the merger agreement. For purposes of the merger agreement, a parent material adverse effect means any fact, circumstance, change, event occurrence or effect that, individually or in the aggregate, materially impairs, materially delays or prevents, or would reasonably be expected to materially impair, materially delay or prevent, Parent or Merger Sub from completing the merger.

Conduct of Business Pending the Merger

The merger agreement provides that, from and after the date of the merger agreement and prior to the effective time or termination of the merger agreement, except with Parent s prior written consent (which may not be unreasonably withheld, delayed or conditioned), as required by applicable law, as expressly contemplated by the merger agreement or as set forth in the company disclosure schedule to the merger agreement, the Company will, and will cause its subsidiaries to, carry on its business in all material respects in the ordinary course of business and use commercially reasonable efforts to preserve its business organization intact and maintain existing relations with key customers, suppliers and other third parties with whom the Company and its subsidiaries have significant business relationships, and will not and will cause its subsidiaries not to, take any of the following actions:

- declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock or equity interests, except for dividends or distributions by a subsidiary of the Company to the Company or to another wholly owned subsidiary of the Company;
- other than in the case of wholly owned subsidiaries, split, combine, subdivide, adjust amend the terms of or reclassify any of its capital stock or equity interests;
- issue, deliver, sell, pledge, grant, transfer or otherwise encumber any shares of its capital stock or other equity securities or any option, warrant or other right to acquire or receive shares of its capital stock or other equity securities, or redeem, purchase or otherwise acquire any shares of its capital stock or other equity securities, other than (1) in connection with the exercise, vesting or settlement, as applicable, of Company equity awards outstanding as of the date of the merger agreement or granted in accordance with the merger agreement, including with respect to the satisfaction of tax withholding and, with respect to Company stock

options outstanding as of the date of the merger agreement or granted in accordance with the merger agreement, the payment of the exercise price, (2) the issuance of any

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shares of capital stock or equity interests to the Company or any of its wholly owned subsidiaries and (3) the grant of any liens to secure obligations of the Company or any of its subsidiaries in respect of any indebtedness permitted under the eighth bullet point in this section;

- amend the certificate of incorporation or bylaws of the Company or amend other similar organizational documents of any subsidiary of the Company, except, in the case of subsidiaries, for amendments that would not be materially adverse to the Company or adversely impact the transactions contemplated by the merger agreement;
- other than (1) acquisitions of inventory, raw materials and other property in the ordinary course of business consistent with past practice, (2) pursuant to transactions that would be permissible under the seventh bullet point in this section or (3) in transactions among wholly owned subsidiaries of the Company, acquire (by merger, consolidation, purchase of stock or assets or otherwise) any entity, business or assets that constitute a business or division of any person or make any investments in or loans or capital contributions to any other person (other than the Company or any of its wholly owned subsidiaries), in each case for an amount in excess of $21 million individually or $52.5 million in the aggregate;
- other than capital expenditures contemplated by the Company's capital budget, made available to Parent before execution of the merger agreement, make any capital expenditures that exceed $15 million in the aggregate;
- other than in the ordinary course of business consistent with past practice or in transactions among wholly owned subsidiaries of the Company, sell, lease, license, allow the expiration or lapse of (with respect to intellectual property registration or applications material to the business of the Company or its subsidiaries as currently conducted), encumber (other than liens securing indebtedness permitted under the eighth bullet point of this section or permitted liens (as defined in the merger agreement)), or otherwise dispose of (by merger, consolidation, sale of stock or assets or otherwise) any entity, business or assets for a purchase price or, if no purchase price is received, with a value in excess of $21 million individually or $52.5 million in the aggregate;
- create, incur, assume or otherwise be liable with respect to, or modify the terms of, any indebtedness for borrowed money in an amount in excess of $21 million individually or $52.5 million in the aggregate, excluding (1) indebtedness solely among the Company and its wholly owned subsidiaries or among its wholly owned subsidiaries, (2) pursuant to the terms of certain contracts set forth in the company disclosure schedule to the merger agreement or (3) to finance acquisitions or investments permitted under the fifth bullet point of this section, provided that any indebtedness incurred or modified in accordance with this bullet point is not reasonably expected to adversely affect the ability of Parent or Merger Sub to consummate the debt financing;
- other than in the ordinary course of business consistent with past practice, enter into, renew or extend, materially amend, or terminate or waive any material right, remedy or default under certain material contracts, other than entering into any contract solely to the extent effecting a capital expenditure, acquisition, disposition or other transaction permitted by this section;
- merge, combine or consolidate the Company or any of its subsidiaries with and into any other person, other than, in the case of any subsidiary of the Company, to effect any acquisition permitted by the fifth bullet point of this section or any disposition permitted by the seventh bullet point of this section and other than transactions solely among wholly owned subsidiaries of the Company;
- adopt or enter into a plan of complete or partial liquidation, restructuring, capitalization, reorganization or dissolution (other than with respect to or among wholly owned subsidiaries of the Company);
- waive, settle or compromise any pending or threatened action against the Company or any of its subsidiaries, other than waivers, settlements or agreements (1) for an amount not in excess of $15 million in the aggregate (excluding amounts to be paid under existing insurance policies or renewals thereof) and (2) that do not impose any material restrictions on the operations or businesses of the Company or its subsidiaries, taken as a whole, or any equitable relief on, or the admission of wrongdoing by, the Company or any of its subsidiaries;

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- except as required by any Company benefit plan or applicable law, (1) increase the compensation or severance benefits of any director, officer, employee or individual independent contractor of the Company or any of its subsidiaries, except for (a) increases in base salary and payments of cash incentive compensation to non-executive officers, in each case, in the ordinary course of business consistent with past practice, (2) adopt any material new employee benefit plan or arrangement or materially amend, modify or terminate any existing Company benefit plan, in each case other than (a) as would not materially increase the cost to the Company or its subsidiaries, or (b) offer letters that are entered into in the ordinary course of business consistent with past practice with newly hired employees who are not executive officers and that do not provide for any severance benefits (3) take any action to accelerate the vesting or payment, or the funding of any payment or benefit under, any Company benefit plan, (4) recognize any union, works council or other labor organization as the representative of any of the employees of the Company or any of its subsidiaries or enter into any collective bargaining agreements or (5) hire or terminate the employment or services of any executive officer of the Company, other than because such executive officer committed an act or omission constituting cause or due to permanent disability;
- make any change in financial accounting methods, principles, policies or practices of the Company or any of its subsidiaries, except insofar as may be required by GAAP (or any interpretation or enforcement thereof) or applicable law;
- (1) make, change or revoke any material tax election, (2) enter into any settlement or compromise of any material tax liability, (3) file any amended material tax return that would result in a change in tax liability, taxable income or loss, (4) adopt or change any method of tax accounting or annual tax accounting period, (5) enter into any closing agreement relating to any material tax liability, (6) agree to extend the statute of limitation in respect of any material amount of taxes or (7) surrender any right to claim a material tax refund;
- guarantee any indebtedness or enter into any keep well or other agreement maintaining the financial condition of another person (other than the Company or any of its subsidiaries) or enter into any agreement having the economic effect of any of the foregoing;
- enter into any new line of business outside of the Company's and its subsidiaries' existing businesses as of the date of the merger agreement;
- adopt or amend a shareholder rights plan or poison pill , other than such amendments to the Company's anti-takeover plan as are set forth in the representations and warranties in the merger agreement described above; or
- agree to take, make any commitment to take, or adopt any resolutions of the Company's board of directors in support of, any of the foregoing.

In addition, the Company, Parent and Merger Sub have agreed that, except as contemplated by the merger agreement, they will not, and will not permit their respective subsidiaries to, take any action that could reasonably be expected to prevent or to impede, interfere with, hinder or delay in any material respect the completion of the merger and the other transactions contemplated by the merger agreement.

Access

Subject to certain exceptions and limitations, from and after the date of the merger agreement and prior to the effective time or earlier termination of the merger agreement, upon reasonable prior written notice, the Company is required to, and required to cause its subsidiaries to, afford to Parent, Merger Sub and each of their representatives (including, to the extent requested by Parent, the debt commitment parties) reasonable access, during normal business hours, to the Company s officers, employees, properties, offices and other facilities, books, contracts and records, provided that (1) the foregoing will not require the Company or its subsidiaries to permit access to (a) any inspection or information that would violate any of its confidentiality obligations in effect as of the date of the merger agreement, (b) any information subject to attorney-client privilege or other privilege or trade secret protection or the work product doctrine, (c) information that, in the Company s reasonable opinion, would result in a breach of a contract to which the Company or any of its subsidiaries were bound as of February 3, 2019, or (d) information related to the Company s

sale process, including any information related to the negotiation and execution of the merger agreement or to transactions potentially

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competing with or alternative to the transactions contemplated by the merger agreement or proposals from other third parties relating to any competing or alternative transactions (including acquisition proposals (as defined below)) and the actions of the Company s board of directors (or any committee thereof) with respect to any of the foregoing; (2) any such investigation must be conducted in a manner so as not to unreasonably interfere with the normal business operations of the Company or its subsidiaries or otherwise result in any undue burden with respect to the prompt and timely discharge of their respective employees normal duties; and (3) no investigation pursuant to this section will affect or be deemed to modify any representation or warranty made by the Company in the merger agreement; provided that the Company will use its reasonable best efforts to allow for any access or disclosure in a manner that does not result in the effects in the foregoing clauses (1)(a)-(c), including by making appropriate substitute arrangements.

In addition, the Company and Parent are required to promptly notify the other (1) of any notice or communication received from any governmental entity in connection with the transactions contemplated by the merger agreement or from any person alleging that such person s consent is or may be required in connection with the transactions contemplated by the merger agreement, if such communication or failure to obtain such consent would reasonably be expected to be material to the Company, the surviving corporation or Parent, (2) of any actions commenced against the Company, Parent or any of their affiliates in connection with, arising from or relating to the merger agreement or the transactions contemplated by the merger agreement or (3) if the Company or Parent becomes aware of the occurrence or non-occurrence of any event that, individually or in the aggregate, would reasonably be expected to cause any condition to the merger or the transactions contemplated by the merger agreement not to be satisfied.

The Go-Shop Period — Solicitation of Other Acquisition Proposals

The merger agreement provides that, from the date of the merger agreement until the no-shop period start date, the Company and its representatives have the right to (1) initiate or solicit, or knowingly facilitate or encourage, any inquiry and (2) engage in or otherwise participate in any discussions or negotiations regarding an acquisition proposal or inquiry or that would reasonably be expected to lead to an acquisition proposal, or, subject to the entry into, and in accordance with, an acceptable confidentiality agreement, provide any access to its properties, books or records or any non-public information to any person (and such person s representatives and financing sources) relating to the Company or any of its subsidiaries in connection with the foregoing; provided that (i) the Company must provide to Parent any information relating to the Company or any of its subsidiaries that was not previously provided or made available to Parent substantially concurrently with (and in any event within 24 hours after) the time it is furnished to such person (and such person s representatives and financing sources) and (ii) the Company and its subsidiaries are not permitted to pay, agree to pay or cause to be paid, or reimburse, agree to reimburse or cause to be reimbursed, the expenses of any such person in connection with any acquisition proposals or inquiries.

The No-Shop Period — No Solicitation of Other Acquisition Proposals

Under the merger agreement, from the no-shop period start date until the earlier to occur of the termination of the merger agreement and the effective time, the Company must not, and must cause its subsidiaries, and must use its reasonable best efforts to cause its and their directors, officers, employees, other affiliates, investment bankers, attorneys, accountants and other advisors or representatives not to, directly or indirectly:

- initiate or solicit, or knowingly facilitate or encourage, any inquiries, discussions or requests with respect to or the making of any proposal or offer that constitutes, or would reasonably be expected to lead to, an acquisition proposal (as defined below) (referred to in this proxy statement as an inquiry);
- engage in or otherwise participate in any discussions or negotiations regarding an acquisition proposal or inquiry or that would reasonably be expected to lead to an acquisition proposal, or provide any access to its properties, books or records or any non-public information to any person relating to the Company or any of

its subsidiaries in connection with the foregoing;

- enter into any other acquisition agreement, option agreement, joint venture agreement, partnership agreement, letter of intent, term sheet, merger agreement or similar agreement (other than an acceptable confidentiality agreement) with respect to an acquisition proposal (referred to in this proxy statement as an alternative acquisition agreement);

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- approve, endorse, declare advisable or recommend any acquisition proposal;
- take any action to make the provisions of any takeover statute or any restrictive provision of any applicable anti-takeover provision in the certificate of incorporation or bylaws of the Company or any shareholder rights
- plan or poison pill (including the Amended and Restated Rights Agreement, dated as of October 19, 2018, by and between the Company and Computer Trust Company, N.A., as amended) inapplicable to any transactions contemplated by any acquisition proposal; or
- authorize, commit to, agree or publicly propose to do any of the foregoing.

Pursuant to the merger agreement, an acquisition proposal means any inquiry, proposal or offer from any person (other than Parent and its subsidiaries) relating to, in a single transaction or series of transactions:

- a merger, consolidation, dissolution, liquidation, recapitalization, share exchange, business combination or similar transaction involving the Company as a result of which the stockholders of the Company immediately prior to the transaction would cease to own at least 80% of the total voting power of the Company or any surviving entity (or any direct or indirect parent thereof) immediately following the transaction;
- the acquisition by any person or group of persons of more than 20% of the total voting power represented by the outstanding voting securities of the Company or of any of its subsidiaries if such voting power represents assets that constitute over 20% of the fair market value of the consolidated assets of the Company and its subsidiaries;
- a tender offer or exchange offer or other transaction which, if consummated, would result in a direct or indirect acquisition by any person or group of persons of more than 20% of the total voting power represented by the outstanding voting securities of the Company or any of its subsidiaries if such voting power represents assets that constitute over 20% of the fair market value of the consolidated assets of the Company and its subsidiaries; or
- the acquisition in any manner, directly or indirectly, of over 20% of the fair market value of the consolidated assets of the Company and its subsidiaries, in each case other than the transactions contemplated by the merger agreement.

On the no-shop period start date, the Company must notify Parent in writing of the number of parties with which the Company entered into an acceptable confidentiality agreement and the number of parties that submitted an acquisition proposal after the execution of the merger agreement and prior to the no-shop period start date, which notice must include a summary of any pending acquisition proposals that were made in writing by any excluded party (as defined below) or any other acquisition proposal which the Company s board of directors determined in good faith, after consultation with its financial advisor and outside legal counsel, warranted the Company s board of directors further discussion.

Pursuant to the merger agreement, an excluded party means any person from whom the Company or any of its representatives has received a written *bona fide* acquisition proposal after the execution of the merger agreement and prior to the no-shop period start date, which written acquisition proposal the Company s board of directors has determined in good faith prior to the start of the no-shop period start date (after consultation with its outside counsel and its financial advisor) is or would reasonably be expected to lead to a superior proposal (as defined below); provided, however, that a person will immediately cease to be an excluded party (and the provisions of the merger agreement applicable to excluded parties will cease to apply with respect to such person) if (A) such acquisition proposal made by such person prior to the start of the no-shop period start date is withdrawn or (B) such acquisition proposal, in the good faith determination of the Company s board of directors (after consultation with its outside counsel and its financial advisor), no longer is or would no longer be reasonably expected to lead to a superior proposal.

Existing Discussions or Negotiations

Pursuant to the merger agreement, the Company has agreed to, and to cause its subsidiaries and its and its subsidiaries directors, officers and employees to, and to instruct its affiliates and other representatives to, (1) on the no-shop period start date, immediately cease all solicitations, discussions and negotiations with any other persons (other than Parent and its representatives and any excluded party and its representatives) that may be ongoing with respect to an acquisition proposal and request that each such person (other than Parent and its

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representatives and any excluded party and its representatives) promptly return or destroy all confidential information furnished to such person by or on behalf of the Company in connection with any acquisition proposal and (2) not terminate, amend, release or modify any provision of any standstill agreement, except that the Company will not be required to enforce, and will be permitted to waive, any provision of any standstill or confidentiality agreement solely to the extent that such provision prohibits or purports to prohibit a confidential acquisition proposal being made to the Company or the Company s board of directors (or any committee thereof).

Receipt of Acquisition Proposals

At any time following the no-shop period start date and prior to the time the company stockholder approval is obtained, if the Company, directly or indirectly through one or more of its representatives, receives a written, unsolicited, *bona fide* acquisition proposal that did not result from a breach of the provisions of the merger agreement described above, then the Company and its representatives may contact the person or group of persons making the acquisition proposal to clarify the terms and conditions thereof so as to determine whether it constitutes or could reasonably be expected to result in a superior proposal and, if the Company s board of directors determines in good faith after consultation (1) with its financial advisor and outside legal counsel that the acquisition proposal constitutes, or would reasonably be expected to result in, a superior proposal and (2) with its outside legal counsel that failure to take the actions described below would be reasonably likely to be inconsistent with its fiduciary obligations under applicable law, then the Company and its representatives may:

- provide information to such person or group of persons (including their respective representatives and prospective equity and debt financing sources) if the Company receives from such person or group of persons (or has received from such person or group of persons an executed confidentiality agreement containing terms not materially less favorable to the Company than those contained in the confidentiality agreement to which Parent is subject, except that it need not contain any standstill or similar provision, provided that the Company must substantially concurrently (and in any event, within 24 hours) make available to Parent and Merger Sub any non-public information concerning the Company or its subsidiaries that is provided to any such person or group of persons and that was not previously made available to Parent or Merger Sub; and
- engage or participate in any discussions or negotiations with that person or group of persons.

Pursuant to the merger agreement, a superior proposal means a *bona fide* written acquisition proposal that the Company s board of directors has determined in its good faith judgment, after consultation with its financial advisor and outside legal counsel, and taking into consideration, among other things, all legal, financial, regulatory, timing and other aspects and risks of the proposal (including required conditions) and the person making the proposal and all of the other terms, conditions and other aspects of such acquisition proposal and the merger agreement that the Company s board of directors deems relevant, to be more favorable to the Company s stockholders from a financial point of view than the transactions contemplated by the merger agreement (including, if applicable, any revisions to the merger agreement made or proposed in writing by Parent pursuant to the merger agreement); provided, that for purposes of the definition of superior proposal, the references to 20% and 80% in the definition of acquisition proposal will be deemed to be references to 50%.

Change in Board Recommendation

The Company s board of directors has unanimously recommended that the Company s stockholders vote **FOR** the proposal to adopt the merger agreement and the transactions contemplated thereby.

Except as expressly permitted by the merger agreement, neither the Company s board of directors (nor any committee thereof) may:

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withhold, withdraw, qualify or modify (or publicly propose to withhold, withdraw, qualify or modify), in each case in a manner adverse to Parent, the recommendation of the Company's board of directors that the Company's stockholders adopt the merger agreement (referred to in this proxy statement as the company recommendation);

- fail to include the company recommendation in this proxy statement;
- adopt, approve, recommend, endorse or otherwise declare advisable, or publicly propose to adopt, approve or recommend, any acquisition proposal;

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- fail to publicly reaffirm the company recommendation within 10 business days after Parent so requests in writing following any public disclosure of an acquisition proposal (other than of the type described below) from any person other than Parent or Merger Sub (provided that if the special meeting is scheduled to be held within 10 business days of such written request, promptly and in any event prior to two business days before the date the special meeting is scheduled to be held); or
- fail to recommend, in a Solicitation/Recommendation Statement on Schedule 14D-9 under the Exchange Act, against any acquisition proposal that is a tender offer or exchange offer subject to Regulation 14D promulgated under the Exchange Act within 10 business days after the commencement of the tender offer or exchange offer (or, if the special meeting is scheduled to be held within 10 business days from the date of the commencement, promptly and in any event prior to two business days before the date the special meeting is scheduled to be held).

The actions described in the bullet points above are referred to in this proxy statement as a change of recommendation, except that any stop-look-and-listen or similar communication described below or the failure by the Company s board of directors to take a position with respect to an acquisition proposal referred to in the fourth bullet point above or a tender offer or exchange offer referred to in the fifth bullet point above will not be deemed a change of recommendation if the communication is made or the position is taken prior to the tenth business day after the commencement of the tender offer or exchange offer or Parent s written request following the public disclosure of the acquisition proposal, as applicable (or such earlier time as referenced above).

However, before the company stockholder approval is obtained, the Company s board of directors may (1) make a change of recommendation contemplated by the first and second bullet points above if, upon the occurrence of an intervening event (as defined below), the Company s board of directors determines in good faith, after consultation with its outside legal counsel, that the failure to do so would be reasonably likely to be inconsistent with its fiduciary obligations under applicable law or (2) if the Company receives, directly or indirectly through one or more of its representatives, either (x) after the date of the merger agreement and prior to the no-shop period start date from an excluded party an acquisition proposal or (y) after the no-shop period start date an unsolicited, written, *bona fide* acquisition proposal, in each of the case of clauses (x) and (y), that the Company s board of directors concludes in good faith, after consultation with its financial advisor and outside legal counsel, constitutes a superior proposal and such acquisition proposal did not result from a material breach by the Company of the provisions of the merger agreement described under the section of this proxy statement entitled *The Merger Agreement — The 'No-Shop Period — No Solicitation of Other Acquisition Proposals* , effect a change of recommendation and/or terminate the merger agreement in order to enter into an alternative acquisition agreement providing for such superior proposal, provided that in either case:

- The Company must have given Parent at least five business days' prior written notice that it intends to make a change of recommendation (referred to in this proxy statement as a notice of change of recommendation) and/or terminate the merger agreement, which notice must specify in reasonable detail the basis for the change of recommendation and/or termination and, in the case of a superior proposal, the identity of the person or group of persons making the superior proposal and the material terms thereof along with a copy of any proposed agreement in respect of such superior proposal or, in the case of an intervening event, reasonable detail regarding the intervening event;
- after providing such notice and prior to making a change of recommendation and/or terminating the merger agreement, the Company must have negotiated, and must have caused its representatives to be available to negotiate, in good faith with Parent and Merger Sub (to the extent Parent and Merger Sub desire to negotiate) during the five-business day notice period to make adjustments to the terms and conditions of the merger agreement as would obviate the need for the Company to effect a change of recommendation and/or terminate the merger agreement; and
- at the end of the five-business day notice period, the Company's board of directors must have determined in good faith, after consultation with its outside legal counsel and, with respect to a superior proposal giving

rise to the notice of change of recommendation, its financial advisor, taking into account any changes to the merger agreement proposed in writing by Parent in response to the notice of change of recommendation, that (1) the superior proposal giving rise to the notice of change

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of recommendation continues to be a superior proposal or (2) in the case of an intervening event, the failure of the Company s board of directors to make a change of recommendation would continue to be reasonably likely to be inconsistent with its fiduciary obligations under applicable law.

Any amendment to the financial terms or any other material change to the terms of a superior proposal requires the Company to deliver a new notice of change of recommendation and to comply with the requirements in the bullets above, provided that the subsequent notice period will only be three business days instead of five business days.

Under the merger agreement, an intervening event means a material event, occurrence, development or change in circumstances with respect to the Company and its subsidiaries, taken as a whole, that occurred or arose after the date of the merger agreement, which was unknown to, nor reasonably foreseeable by, the Company s board of directors as of the date of the merger agreement and becomes known to or by the Company s board of directors before the time stockholder approval is obtained, provided that the following do not constitute, and will not be considered in determining whether there has been, an intervening event: (1) the receipt, existence of or terms of an inquiry or acquisition proposal or any matter relating thereto or consequence thereof and (2) changes in the market price or trading volume of the shares of the Company or the fact that the Company meets or exceeds internal or published projections, budgets, forecasts or estimates of revenues, earnings or other financial results for any period (provided that the underlying causes of such change or fact will not be excluded by clause (2)).

The merger agreement does not prohibit the Company or the Company s board of directors (or any committee thereof) from (1) complying with its disclosure obligations under applicable law or the NASDAQ, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) under the Exchange Act (or any similar communication to stockholders) or (2) making any stop-look-and-listen communication to stockholders of the Company pursuant to Rule 14d-9(f) under the Exchange Act (or any similar communications to stockholders, including any similar communication in response to an acquisition proposal that is not a tender offer or exchange offer), provided that (i) except as provided in the next sentence, any disclosure made as permitted under clause (1) (other than any stop-look-and-listen or similar communication) that relates to an acquisition proposal will be deemed a change of recommendation unless the Company s board of directors expressly publicly reaffirms the company recommendation in connection with such disclosure and (ii) neither the Company nor the Company s board of directors (nor any committee thereof) will be permitted to recommend any acquisition proposal (including that the Company s stockholders tender any securities in connection with any tender offer or exchange offer that is an acquisition proposal) or otherwise make a change of recommendation with respect thereto, except as permitted as described above. Any stop-look-and-listen or similar communication permitted under clause (2) above made prior to the tenth business day after the commencement of such tender offer or exchange offer (or, if earlier, no fewer than two business days prior to the date on which the special meeting is scheduled to be held) will not constitute a change of recommendation or otherwise constitute a basis for Parent to terminate the merger agreement.

The Company must promptly (and in any event within 24 hours) notify Parent in writing if any acquisition proposal or inquiry (including any request for non-public information in connection therewith) is received by the Company, any of its subsidiaries or any of its representatives, indicating (except to the extent prohibited by any applicable law or contract in effect as of the date of the merger agreement) the identity of the person or group of persons making the acquisition proposal, inquiry or request and the material terms and conditions of any such acquisition proposal (including, if applicable, copies of any written inquiries and any proposed agreements related thereto). The Company must (1) promptly (and in any event within 24 hours) notify Parent in writing (a) if the Company determines to begin providing non-public information or to engage in negotiations or discussions concerning an acquisition proposal and (b) thereafter of any change to the financial and other material terms and conditions of any acquisition proposal, and (2) otherwise keep Parent reasonably informed of the status and material terms of any such inquiry, acquisition proposal, discussions or negotiations on a reasonably current basis, including by providing a copy of all proposals, offers or drafts of proposed agreements. The Company and its subsidiaries may not enter into any confidentiality or

similar agreement that would prohibit them from providing such information to Parent.

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The Special Meeting

The Company has agreed to take all action necessary to convene a meeting of the holders of the Company s common stock (which meeting, together with any adjournment or postponement, is referred to in this proxy statement as the special meeting) as promptly as reasonably practicable after the SEC confirms that it has no further comments on the proxy statement or after the SEC fails to provide to the Company or its outside counsel any comments, objections or requests with respect to the proxy statement, to consider and vote upon the adoption of the merger agreement; provided that the Company may postpone or adjourn the special meeting with Parent s written consent (which may not be unreasonably withheld, conditioned or delayed), for the absence of a quorum, to allow reasonable additional time to solicit additional proxies if the Company has not received proxies representing a sufficient number of shares of common stock to adopt the merger agreement, whether or not a quorum is present, if required by applicable law, or to allow reasonable time additional for the filing and dissemination of any supplemental or amended disclosure if, in the good faith judgment of the Company s board of directors (after consultation with outside legal counsel), the failure to do so would be reasonably likely to be inconsistent with its fiduciary obligations under applicable law. However, unless agreed by Parent, the special meeting will not be postponed or adjourned to a date that is more than five business days prior to the termination date (as defined below).

Subject to the Company s board of directors right to make a change of recommendation, as described in the section of this proxy statement entitled — *Change in Board Recommendation*, the Company s board of directors must include the company recommendation in this proxy statement and must use its reasonable best efforts to lawfully obtain the company stockholder approval, including actively soliciting proxies in favor of the adoption of the merger agreement at the special meeting.

In the event that the Company s board of directors makes a change of recommendation, the Company will be required to submit the merger agreement to holders of the Company s common stock to obtain the company stockholder approval at the special meeting unless the merger agreement is terminated in accordance with its terms. In addition, the Company is not permitted to submit to the vote of its stockholders any other acquisition proposal unless the merger agreement is terminated in accordance with its terms.

Debt Financing and Debt Financing Cooperation

In connection with the execution of the merger agreement, Parent entered into, delivered and subsequently on three occasions amended and restated and re-delivered the debt commitment letter with the commitment parties, pursuant to which (x) Credit Suisse, Nomura, Bank of America Merrill Lynch, BNPP, Ares and Blackstone Finance (each of the foregoing, in certain cases, acting through its respective appropriate affiliates or branches) have committed, upon certain terms and subject to certain conditions, to (i) lend the borrower $2.3 billion in aggregate principal amount of senior secured first lien term loans in connection with the debt financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby and (ii) make available to the borrower a senior secured first lien revolving credit facility in an aggregate principal amount of up to $275 million and (y) Ares, GSO and PSP (each of the foregoing, in certain cases, acting through its respective appropriate affiliates or branches) have committed, upon certain terms and subject to certain conditions, to lend the borrower $900 million in aggregate principal amount of senior secured second lien term loans in connection with the debt financing of the amounts payable pursuant to the merger agreement and the transactions contemplated thereby (such financing, collectively, is referred to in this proxy statement as the debt financing) and (2) redacted copies of the related fee letters.

Parent and Merger Sub have agreed to use reasonable best efforts to take, or cause to be taken, all actions and to use reasonable best efforts to do, or cause to be done, all things necessary, proper or advisable to obtain the proceeds of the debt financing and any replacement debt financing on the terms and conditions described in the debt commitment letter or replacement debt financing documents, as applicable, as promptly as possible, taking into account the

expected timing of the marketing period but in any event prior to the date upon which the merger is required to be completed pursuant to the terms of the merger agreement. The Company is required to use reasonable best efforts to, and to cause its subsidiaries to use their reasonable best efforts to, and to use its reasonable best efforts to cause its and its subsidiaries representatives to, provide all cooperation reasonably requested by Parent necessary and customary for the arrangement of the debt financing, subject to certain limitations.

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Employee Matters

During the period commencing on the closing date and ending on the first anniversary thereof, Parent has agreed to, or cause its applicable subsidiary to, provide each continuing employee of the Company and its subsidiaries with (i) a base salary or regular hourly wage (whichever is applicable) and a short-term cash incentive compensation opportunity, that, in each case, is not less than the base salary or regular hourly wage and short-term cash incentive compensation opportunity in effect for, or available to, the applicable continuing employee as of immediately prior to the effective time, and (ii) other compensation opportunities (excluding any equity award or other long-term compensation opportunities) and employee benefits (excluding any severance-related benefits) that are, in each case, substantially similar in the aggregate to the other compensation (excluding any equity award or other long-term compensation opportunities) and employee benefits (excluding any severance-related benefits), respectively, provided or available to the applicable continuing employee as of immediately prior to the effective time.

During the period commencing on the closing date and ending on the first anniversary thereof, the surviving corporation will provide each continuing employee whose employment is terminated by Parent or one of its subsidiaries with severance benefits and on terms and conditions, in each case, that are no less favorable than the severance benefits and protections provided to each such continuing employee as of immediately prior to the effective time as set forth in the company disclosure schedule to the merger agreement.

Parent has agreed to cause any employee benefit plans of Parent and its subsidiaries in which the continuing employees are entitled to participate after the closing date to take into account for purposes of eligibility, vesting and benefit accruals (other than benefit accruals under any defined benefit pension plan or as would result in a duplication of benefits), service prior to the effective time by such employees to the Company and its subsidiaries (and any predecessors) as if such service were with Parent or its subsidiaries.

In addition, with respect to any employee benefit plans maintained by Parent and its subsidiaries for the benefit of the continuing employees following the closing date Parent has agreed to, and to cause the surviving corporation and its subsidiaries to, (i) waive any eligibility requirements or pre-existing condition limitations or waiting period requirements with respect to any such plan providing medical, dental, pharmaceutical or vision benefits to any continuing employee to the same extent waived under the analogous Company benefit plan prior to the closing date, and (ii) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, to any eligible expenses paid by such employees during the calendar year in which the effective time occurs (or such later date on which a continuing employee commences participation in any new plan of the surviving corporation and its subsidiaries) under analogous Company benefit plans.

Efforts to Complete the Merger

The Company, Parent and Merger have agreed to, and to cause their respective subsidiaries to, each use its reasonable best efforts to promptly take, or cause to be taken, all actions, and to do, or to cause to be done, and to assist and cooperate with the other in doing (and, in the case of Parent, to use reasonable best efforts to cause its equity financing sources for the merger and their affiliates to assist and cooperate as necessary or appropriate with the other parties), all things necessary, proper or advisable under the merger agreement or applicable law or otherwise complete and make effective the transactions contemplated by the merger agreement as soon as practicable, including to (1) obtain from any governmental entities and any third parties any actions, non-actions, clearances, waivers, consents, approvals, expirations or terminations of waiting periods, permits or orders required to be obtained by the Company, Parent, or any of their respective affiliates in connection with the authorization, execution, delivery and performance of the merger agreement and the completion of the transactions contemplated by the merger agreement, (2) make all registrations, filings, notifications or submissions which are necessary or advisable with respect to the merger agreement and transactions contemplated thereby under (i) any applicable federal or state securities law, (ii) the HSR

Act, the GWB and any other applicable regulatory law and (iii) any other applicable law, (3) defend against any lawsuits or other legal proceedings, whether judicial or administrative, challenging the merger agreement or the transactions contemplated thereby and (4) execute and deliver any additional instruments necessary to complete the transactions contemplated by the merger agreement. However, the Company and its subsidiaries will not be required to pay prior to the effective time any fee, penalty or other consideration to any third party to obtain consent or approval required for the completion of the merger under any contract. Further, without Parent s prior written consent, neither the Company nor its subsidiaries may pay or commit to pay any third party whose

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consent or approval is being solicited any amount of cash or other consideration, or make any commitment or incur any liability or other obligation in connection therewith, in each case other than fees for the filings described in clause (2) above and certain other agreed costs and expenses.

The Company, Parent and Merger Sub must (1) subject to any restrictions under any regulatory law, promptly notify each other of any communication to that party from any governmental entity with respect to the merger agreement and the transactions and other agreements contemplated by the merger agreement and permit the other parties to review in advance any proposed material communication to any governmental entity, (2) unless required by applicable law, not agree to participate in any meeting or teleconference with any governmental entity in respect of any filing, investigation or other inquiry with respect to the merger agreement and the transactions and other agreements contemplated by the merger agreement unless it consults with the other parties in advance and, to the extent permitted by such governmental entity, gives the other parties the opportunity to attend and participate thereat, (3) subject to any restrictions under any regulatory law, furnish the other parties with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its subsidiaries and their respective representatives on the one hand, and any governmental entity or members of its staff on the other hand, with respect to the merger agreement and the transactions and other agreements contemplated by the merger agreement (excluding documents and communications subject to the attorney client privilege or other privilege or trade secret protection or the work product doctrine), and (4) furnish the other parties with such necessary information and reasonable assistance as such other parties may reasonably request in connection with their preparation of necessary filings, registrations or submissions of information to any governmental entity in connection with the merger agreement and the transactions and other agreements contemplated by the merger agreement, including any filings necessary or appropriate under the provisions of any regulatory law; provided that the Company, Parent and Merger Sub may each reasonably designate competitively sensitive material as outside counsel only material. Materials provided to the other party or its counsel pursuant to the foregoing may be redacted to remove references concerning the valuation of the Company, privileged communications or other competitively sensitive material.

Antitrust Matters

The Company, Parent and Merger Sub have agreed to make, or to cause to be made, an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by the merger agreement as promptly as practicable after the date of the merger agreement (and in any event, within five business days), and to make, or cause to be made, all filings and authorizations, if any, required under the GWB or any other applicable regulatory law as promptly as reasonably practicable and supply as promptly as reasonably practicable any additional information and material that may be requested by a governmental entity pursuant to any regulatory law. In furtherance of the foregoing, the Company, Parent and Merger Sub must request and use reasonable best efforts to obtain early termination of the waiting period under the HSR Act, and no party may agree to extend any waiting period under any regulatory law applicable to, or commit not to complete any of the transactions contemplated by, the merger agreement without the prior written consent of all other parties to the merger agreement.

The Company will (and will cause its subsidiaries to), Parent will (and will cause its subsidiaries to) and Merger Sub will use its reasonable best efforts to resolve any objections that may be asserted with respect to the transactions contemplated under the merger agreement under any regulatory law. If any action, including any action by a private party, is instituted (or threatened to be instituted) challenging the transactions contemplated by the merger agreement as violative of any regulatory law, the Company will (and will cause its subsidiaries to), Parent will (and will cause its subsidiaries to) and Merger Sub will cooperate in all respects and use its reasonable best efforts to contest and resist any such action and have vacated, lifted, reversed or overturned any order (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits completion of the transactions contemplated by the merger agreement, including by pursuing all reasonable avenues of administrative and judicial appeal. The Company, Parent and Merger Sub must, and the Company and Parent must cause their respective subsidiaries to, (1) negotiate,

commit to and effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of any assets or businesses of Parent or any of its subsidiaries, or of the Company or any of its subsidiaries, and (2) otherwise take or commit to take any actions that after the closing date limit Parent s or its subsidiaries (including the surviving corporation s) freedom of action with respect to, or its ability to retain, one or more businesses, product lines or assets of Parent or any of its subsidiaries (including the surviving corporation), in each case as may be required in order to avoid the entry

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of, or to effect the dissolution of, any order which would otherwise have the effect of preventing the closing of the merger, materially delaying the closing or delaying the closing beyond the termination date. However, the Company will only be required to take or commit to take any such action, or agree to any such condition or restriction, if such action, commitment, agreement, condition or restriction is binding on the Company only if and when the closing of the merger occurs.

Indemnification and Insurance

From and after the effective time, Parent and the surviving corporation must, jointly and severally, indemnify and hold harmless, to the fullest extent permitted under applicable law, each present and former director and officer of the Company and its subsidiaries and each fiduciary of a company benefit plan (collectively referred to in this proxy statement, together with such person s heirs, executors or administrators, as the indemnified parties), against any costs or expenses (including reasonable attorneys fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement incurred in connection with any actual or threatened action, whether civil, criminal, administrative or investigative, arising out of, related to or in connection with any action or omission occurring or alleged to have occurred whether prior to or at the effective time (including in connection with such indemnified parties service as a director or officer of the Company or any of its subsidiaries or a fiduciary of a company benefit plan or services performed by such persons at the request of or for the benefit of the Company or its subsidiaries), whether asserted or claimed prior to, at or after the effective time, including, in connection with (1) the transactions contemplated by the merger agreement and (2) actions to enforce the provision of the merger agreement described here or any other indemnification, exculpation or advancement right of any indemnified party. For a period of six years from and after the effective time, Parent is required, unless otherwise prohibited by applicable law, to cause the certificate of incorporation and bylaws of the surviving corporation to contain provisions no less favorable to the indemnified parties with respect to indemnification, exculpation from liabilities and rights to advancement of expenses than those set forth as of the date of the merger agreement in the certificate of incorporation and bylaws of the Company, and not to amend, repeal or otherwise modify those provisions in a manner that would adversely affect the rights of any indemnified party. In addition, from and after the effective time, each of Parent and the surviving corporation must advance costs and expenses (including attorneys fees) as incurred by any indemnified party promptly (and in any event within 10 days) after receipt by Parent of a written request for such advance to the fullest extent permitted under applicable law, provided that any person to whom expenses are advanced provides an undertaking to repay the advances if it is ultimately determined by final adjudication that such person is not entitled to indemnification.

In addition, prior to the effective time, the Company must obtain and fully pre-pay the premium for (and, following the effective time, the surviving corporation must, and Parent must cause the surviving corporation to, maintain with reputable and financially sound carriers) the extension of (1) the directors and officers liability coverage of the Company s existing directors and officers insurance policies and (2) the Company s existing fiduciary liability insurance policies (referred to in this proxy statement as D&O insurance), in each case for a claims reporting or discovery period (whichever is greater) of six years from and after the effective time with respect to any claim arising from facts or events that existed or occurred at or prior to the effective time with terms, conditions, retentions, coverage limits and limits of liability that are at least as favorable as the coverage provided under the Company s existing policies in effect on the date of the merger agreement, or the surviving corporation will, and Parent will cause the surviving corporation to, maintain the D&O insurance for such six-year period or purchase comparable insurance as the D&O insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable as the coverage provided under the Company s existing policies as of the date of the merger agreement. In no event will the Company or the surviving corporation be required to expend for any such policies pursuant to the foregoing an annual premium amount in excess of 300% of the current aggregate annual premium paid by the Company for such insurance and, if the annual premiums of such insurance coverage exceeds such maximum amount, the Company or the surviving corporation will obtain a policy with the greatest coverage available for such maximum amount.

Coordination on Transaction Litigation

The Company, Parent and Merger Sub have agreed, subject to the preservation of attorney-client or other applicable privilege, trade secret protection and the provisions of the merger agreement governing the use and disclosure of confidential information, to keep the other party reasonably informed on a current basis with respect to any actions commenced against it or any of its affiliates arising from or relating to the merger

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agreement or the transactions contemplated by the merger agreement (referred to in this proxy statement as transaction litigation), to reasonably consult with the other party and give consideration to the other s advice regarding transaction litigation, and to give the other party the opportunity to participate in the defense, settlement or prosecution of any transaction litigation, provided that the Company will in any event control any such defense, settlement or prosecution. The Company, Parent and Merger Sub have agreed not to settle any transaction litigation without the written consent of the other party (which may not be unreasonably withheld, conditioned or delayed).

Other Covenants and Agreements

The merger agreement also contains additional covenants, including covenants relating to (1) the filing of this proxy statement, (2) public announcements with respect to the transactions contemplated by the merger agreement, (3) other actions related to takeover statutes, rights plans and reporting requirements under Section 16 of the Exchange Act, (4) satisfaction, prior to the closing of the merger, of certain existing obligations to issue common stock and (5) the conduct prior to the effective time of Parent and Merger Sub.

Conditions to Completion of the Merger

Each party s obligation to complete the merger is subject to the satisfaction or waiver at or prior to the effective time of the following conditions:

- the adoption of the merger agreement by a majority of the outstanding shares of the Company's common stock entitled to vote thereon;
- the expiration or termination of the waiting period applicable to the completion of the merger under the HSR Act and the decisions, orders, consents or expiration of any waiting periods required to consummate the transaction under the GWB must have occurred or been granted; and
- no law or order having been enacted, issued, promulgated, enforced or entered by a court or other governmental entity of competent jurisdiction that is in effect and that restrains, enjoins or otherwise prohibits the completion of the merger.

The respective obligations of Parent and Merger Sub to complete the merger are subject to the satisfaction or waiver by Parent at or prior to the effective time of the following additional conditions:

- the accuracy of the representations and warranties of the Company as of the closing date (except for any representations and warranties made as of a particular date, which representations and warranties must be true and correct only as of that date), generally subject to a company material adverse effect or other qualification provided in the merger agreement;
- the performance by the Company in all material respects of the agreements and covenants required to be performed or complied with by it under the merger agreement at or prior to the effective time;
- the absence of a company material adverse effect occurring after the date of the merger agreement; and
- the receipt by Parent of a certificate signed by an executive officer of the Company, dated the closing date, to the effect that the conditions set forth in the three preceding bullet points have been satisfied.

The obligation of the Company to complete the merger is subject to the satisfaction or waiver by the Company at or prior to the effective time of the following additional conditions:

- the accuracy of the representations and warranties of Parent and Merger Sub as of the closing date (except for any representations and warranties made as of a particular date, which representations and warranties must be true and correct only as of that date), generally subject to a parent material adverse effect or other qualification provided in the merger agreement;
- the performance by each of Parent and Merger Sub in all material respects of the agreements and covenants required to be performed or complied with by it under the merger agreement at or prior to the effective time;

and

- the receipt by the Company of a certificate signed by an executive officer of Parent, dated the closing date, to the effect that the conditions set forth in the two preceding bullet points have been satisfied.

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No party may rely, either as a basis for not completing the merger or any of the other transactions contemplated by the merger agreement or terminating the merger agreement and abandoning the merger, on the failure of a condition to closing set forth in the merger agreement to be satisfied if such failure was caused by such party s failure to act in good faith or to use the efforts to cause the closing of the merger to occur as required by the merger agreement.

Termination

The merger agreement may be terminated and the merger may be abandoned in the following circumstances:

- at any time prior to the effective time by the mutual written consent of the Company and Parent;
- at any time prior to the effective time by either the Company or Parent:
  - if the merger has not been completed on or before August 3, 2019 (referred to in this proxy statement as the termination date); provided that the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point will not be available to a party if the failure of the merger to have been completed on or before the termination date was primarily caused by the failure of such party to perform any of its obligations under the merger agreement; or
  - if the special meeting has been duly held and completed and the company stockholder approval has not been obtained at the special meeting or any adjournment or postponement thereof at which a vote on the adoption of the merger agreement is taken; or
  - if an order by a court or other governmental entity of competent jurisdiction permanently restraining, enjoining or otherwise prohibiting the completion of the merger has become final and non-appealable or any statute, rule or regulation will have been enacted, entered, enforced or deemed applicable to the merger that prohibits, makes illegal or enjoins the consummation of the merger; provided that the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point will not be available to a party if the enactment, issuance, promulgation, enforcement or entry of such order, or the order becoming final and non-appealable, was primarily caused by the failure of such party to perform any of its obligations under the merger agreement;
- by the Company:
  - at any time prior to the time the company stockholder approval is obtained, in order to substantially concurrently enter into an alternative acquisition agreement providing for a superior proposal in accordance with the merger agreement, subject to complying with the terms of the merger agreement; provided that prior to or substantially concurrently with, and as a condition to, such termination, the Company pays to Parent the company termination fee described below;
  - at any time prior to the effective time, if Parent or Merger Sub has breached any of its representations, warranties, covenants or agreements in the merger agreement, which breach (1) would give rise to the failure of a condition to the obligation of the Company to complete the merger related to Parent's or Merger Sub's representations, warranties, covenants and agreements in the merger agreement and (2) is either not capable of being cured before the termination date or is not cured before the earlier of 30 business days following receipt of written notice from the Company of such breach or the termination date; provided that the Company will not have the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point if it is then in breach of any of its representations, warranties, covenants or agreements in the merger agreement, such that any condition to the obligations of Parent or Merger Sub to complete the merger related to the Company's representations, warranties, covenants and agreements in the merger agreement would not be satisfied if the closing date were the date of such termination; or
  - at any time prior to the effective time if the marketing period has ended and all of the conditions to the obligation of Parent to complete the merger have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the closing of the merger, each of which is capable of being satisfied if the closing date were the date of such termination, and, solely with

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respect to the condition relating to the expiration or termination of the waiting period applicable to the completion of the merger under the HSR Act or the GWB, if the failure of such condition to be satisfied is primarily caused by a material breach by Parent or Merger Sub of any of their respective covenants or agreements set forth in the provisions of the merger agreement described in the section of this proxy statement entitled *The Merger Agreement — Efforts to Complete the Merger*); Parent and Merger Sub do not complete the merger on or prior to the date the closing is required to occur pursuant to the merger agreement; the Company has irrevocably confirmed in writing to Parent that it is ready, willing and able to complete the merger throughout the three-business-day period following delivery of such confirmation; and Parent and Merger Sub fail to complete the merger within three business days following delivery of such confirmation;

- by Parent:
  - at any time prior to the time the company stockholder approval is obtained, if the Company's board of directors (or any committee thereof) has made a change of recommendation or allowed the Company or any of its subsidiaries to enter into an alternative acquisition agreement (other than an acceptable confidentiality agreement); provided that Parent's right to terminate the merger agreement pursuant to this bullet point will expire at 5:00 p.m., New York City time, on the tenth business day following the date on which such right to terminate first arose; or
  - at any time prior to the effective time if the Company has breached any of its representations, warranties, covenants or agreements in the merger agreement, which breach (1) would give rise to the failure of a condition to the obligations of Parent and Merger Sub to complete the merger related to the Company's representations, warranties, covenants and agreements in the merger agreement and (2) is either not capable of being cured before the termination date or is not cured before the earlier of 30 business days following receipt of written notice from Parent of such breach or the termination date; provided that Parent will not have the right to terminate the merger agreement pursuant to the termination provision referred to in this bullet point if it or Merger Sub is then in breach of any of their representations, warranties, covenants or agreements in the merger agreement, such that any condition to the obligation of the Company to complete the merger related to Parent's or Merger Sub's representations, warranties, covenants and agreements in the merger agreement would not be satisfied if the closing date were the date of such termination.

Company Termination Fee

The Company will pay Parent the company termination fee in an amount equal to $331 million in the following circumstances:

- if the merger agreement is terminated by the Company at any time prior to the time the company stockholder approval is obtained, in order to substantially concurrently enter into an alternative acquisition agreement providing for a superior proposal, provided that the amount of the company termination fee will be $110 million instead of the greater amount set forth above if (x) the merger agreement is terminated by the Company (i) at any time prior to the time the company stockholder approval is obtained, in order to substantially concurrently enter into an alternative acquisition agreement providing for a superior proposal and (ii) such time of termination is prior to the no-shop period start date, and (y) the Company has entered into a definitive alternative acquisition agreement with an excluded party to consummate an acquisition proposal at the time of such termination; or
- if the merger agreement is terminated by Parent because the Company's board of directors (or any committee thereof) has made a change of recommendation or allowed the Company or any of its subsidiaries to enter into an alternative acquisition agreement (other than an acceptable confidentiality agreement).
- if all three of the following conditions are satisfied:

(1) the merger agreement is terminated by (i) either the Company or Parent because the merger has not been completed on or before the termination date, (ii) either the Company or Parent because the company stockholder

approval has not been obtained or (iii) Parent as a result of a breach by the Company of any representation, warranty, covenant or agreement in the merger agreement, which breach (x) gives rise to the failure of a condition to the obligations of Parent and Merger Sub to

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complete the merger related to the Company s representations, warranties, covenants and agreements in the merger agreement and (y) is either not capable of being cured before the termination date or is not cured before the earlier of 30 business days following receipt of written notice from Parent of such breach or the termination date, and in case of each of clause (i) and (iii) above, at the time of the termination, the company stockholder approval has not been obtained, and

(2) any person has publicly proposed, announced or made an acquisition proposal (or in the case of clause (1)(iii), an acquisition proposal has been made to the Company s management or the Company s board of directors (or any committee thereof)) after the date of the merger agreement and prior to the special meeting and has not been withdrawn at least two business days prior to the special meeting (and in the case of clause (1)(iii), prior to the breach that forms the basis of the termination), and

(3) within 12 months after the termination, the Company completes an acquisition proposal or enters into a definitive agreement for an acquisition proposal that is subsequently completed (even if after such 12-month period),

(provided that, for purposes of the provision referred to in this bullet point, the references to 20% and 80% in the definition of acquisition proposal are deemed to be references to 50%);

In no event will the Company be required to pay the company termination fee on more than one occasion or be subject to monetary damages for a willful and material breach by the Company of its obligations under the merger agreement in an amount in excess of $550 million (referred to in this proxy statement as the company damage cap) in the aggregate (including any payment of the company termination fee). In addition, in no event will Parent and Merger Sub be entitled to (1) payment of monetary damages prior to the termination of the merger agreement or in amounts in excess of the company damage cap, (2) payment of both monetary damages and the company termination fee in a combined amount in excess of the company damage cap or (3) both (a) payment of any monetary damages and/or the company termination fee and (b) a grant of specific performance of the merger agreement or any other equitable remedy against the Company that results in the closing of the merger.

Parent Termination Fee

Parent will pay the Company the parent termination fee in an amount equal to $550 million if the merger agreement is terminated by the Company because the marketing period has ended and all of the conditions to the obligation of Parent to complete the merger have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the closing of the merger, each of which is capable of being satisfied if the closing date were the date of such termination, and, solely with respect to the condition relating to the expiration or termination of the waiting period applicable to the completion of the merger under the HSR Act or the GWB, if the failure of such condition to be satisfied is primarily caused by a material breach by Parent or Merger Sub of any of their respective covenants or agreements set forth in the provisions of the merger agreement described in the section of this proxy statement entitled — *Efforts to Complete the Merger*); Parent and Merger Sub do not complete the merger on or prior to the date the closing is required to occur pursuant to the merger agreement; the Company has irrevocably confirmed in writing to Parent that it is ready, willing and able to complete the merger on and throughout the three-business-day period following delivery of such confirmation; and Parent and Merger Sub fail to complete the merger within three business days following delivery of such confirmation; provided that any purported termination of the merger agreement by either the Company or Parent because the merger has not been completed on or before the termination date will be deemed to be a termination on the grounds described in this paragraph if, at the time of such termination, the Company would have been entitled to terminate the merger agreement on the grounds described in this paragraph.

In no event will Parent be obligated to pay the parent termination fee on more than one occasion or be subject to monetary damages for a willful and material breach by Parent or Merger Sub of their obligations under the merger

agreement in an amount in excess of the parent termination fee in the aggregate. In addition, in no event will the Company be entitled to (1) payment of monetary damages prior to the termination of the merger agreement or in amounts in excess of the parent termination fee, (2) payment of both monetary damages and the parent termination fee in a combined amount in excess of the parent termination fee or (3) both (a) payment of any monetary damages and/or the parent termination fee and (b) a grant of specific performance of the merger agreement or any other equitable remedy against Parent or Merger Sub that results in the closing of the merger.

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Limitation on Remedies

In the event of the termination of the merger agreement and the abandonment of the merger in accordance with the provisions described in the section of this proxy statement entitled — *Termination*, the merger agreement will become void and of no effect with no liability to any person on the part of the Company, Parent or Merger Sub or their respective affiliates, directors, officers, employees or stockholders, except that no such termination will relieve (1) the Company of any liability to pay the company termination fee or Parent of any liability to pay the parent termination fee, in each case to the extent required pursuant to the merger agreement, or (2) the Company, Parent or Merger Sub of any liability for any willful and material breach of the merger agreement prior to such termination, subject to the other limitations set forth in the merger agreement. In addition, certain sections of the merger agreement, including among others sections relating to termination, termination fees and expenses and confidentiality, will survive termination.

As noted above, in no event will the Company be required to pay the company termination fee on more than one occasion or be subject to monetary damages for a willful and material breach by the Company of its obligations under the merger agreement in an amount in excess of the company damage cap in the aggregate (including any payment of the company termination fee). In addition, in no event will Parent and Merger Sub be entitled to (1) payment of monetary damages prior to the termination of the merger agreement or in amounts in excess of the company damage cap, (2) payment of both monetary damages and the company termination fee in a combined amount in excess of the company damage cap or (3) both (a) payment of any monetary damages and/or the company termination fee and (b) a grant of specific performance of the merger agreement or any other equitable remedy against the Company that results in the closing of the merger.

As noted above, in no event will Parent be obligated to pay the parent termination fee on more than one occasion or be subject to monetary damages for a willful and material breach by Parent or Merger Sub of their obligations under the merger agreement in an amount in excess of the parent termination fee in the aggregate. In addition, in no event will the Company be entitled to (1) payment of monetary damages prior to the termination of the merger agreement or in amounts in excess of the parent termination fee, (2) payment of both monetary damages and the parent termination fee in a combined amount in excess of the parent termination fee or (3) both (a) payment of any monetary damages and/or the parent termination fee and (b) a grant of specific performance of the merger agreement or any other equitable remedy against Parent or Merger Sub that results in the closing of the merger.

Expenses

Except as otherwise provided in the merger agreement or each limited guarantee, whether or not the merger is completed, all costs and expenses incurred in connection with the merger agreement and the transactions contemplated by the merger agreement will be paid by the party incurring such expense, except that all filing fees under the HSR Act in connection with the transactions contemplated by the merger agreement will be borne by Parent.

Amendment and Modification

Subject to the provisions of applicable law, at any time prior to the effective time, the merger agreement may be amended, modified or waived if the amendment, modification or waiver is in writing and signed, in the case of an amendment or modification, by Parent, Merger Sub and the Company, or in the case of a waiver, by the party against whom the waiver is to be effective, except that (1) after receipt of the company stockholder approval, no amendment may be made which by applicable law requires further approval by the holders of the Company s common stock without obtaining that further approval and (2) the provisions of the merger agreement to which the lenders under the debt commitment letter and their respective representatives are third party beneficiaries may not be amended in any way adverse to such lenders or their representatives without the prior written consent of such lenders.

Jurisdiction; Specific Enforcement

Under the merger agreement, each of the parties has agreed that it will bring any action or proceeding in respect of any claim arising out of or relating to the merger agreement or the transactions contemplated by the merger agreement exclusively in the Court of Chancery of the State of Delaware or, if that court lacks or declines to accept jurisdiction, another federal or state court located in the State of Delaware. However, each of the parties

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has agreed that it will not be permitted to bring or support any action or claim against the lenders party to the debt commitment letter or their representatives arising out of or relating to the merger agreement or any of the transactions contemplated by the merger agreement in any forum other than any state or federal court sitting in the Borough of Manhattan in the City of New York.

Each of the parties has agreed that if for any reason any of the provisions of the merger agreement are not performed in accordance with their specific terms or are otherwise breached or threatened to be breached, irreparable damage would occur for which monetary damages would not be an adequate remedy. Accordingly, in addition to any other available remedies a party may have in equity or at law, each party will be entitled to an injunction, specific performance and other equitable relief to prevent breaches or threatened breaches of the merger agreement and to enforce specifically the terms and provisions of the merger agreement. Notwithstanding the foregoing, (i) the Company will be entitled to specific performance of Parent s and Merger Sub s obligations pursuant to the merger agreement and the equity commitment letters to complete the merger only if all of the conditions to Parent s obligation to effect the merger (set forth in sections 6.1 and 6.2 of the merger agreement) have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the closing of the merger, provided that those conditions would be satisfied if the closing were on such date), Parent and Merger Sub fail to complete the closing by the date the closing is required to have occurred pursuant to the merger agreement, Parent s debt financing has been funded or will be funded at the closing if Parent s equity financing is funded at the closing, and the Company has irrevocably confirmed in a written notice to Parent that the closing will occur if Parent s equity financing and debt financing are funded and specific performance is granted; and (ii) the Company will be entitled to specific performance requiring Parent and Merger Sub to enforce the terms of the debt commitment letter and the obligations of the lenders to fund the debt financing only if all of the conditions to Parent s obligation to effect the merger (set forth in sections 6.1 and 6.2 of the merger agreement) have been satisfied (other than those conditions that by their nature are to be satisfied at the closing of the merger, provided that those conditions would be satisfied if the closing were on such date), Parent and Merger Sub fail to complete the closing by the date the closing is required to have occurred pursuant to the merger agreement, all of the conditions (other than those conditions that by their nature are to be satisfied at the closing of the merger under the debt commitment letter, provided that those conditions would be satisfied if the closing were on such date) to the consummation of the debt financing provided for in the debt commitment letter have been satisfied, and the Company has irrevocably confirmed in a written notice to Parent that the closing will occur if Parent s equity financing and debt financing are funded and specific performance is granted. Pursuant to the merger agreement, each of the parties has agreed that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that there is adequate remedy at law or that an award of specific performance is not an appropriate remedy.

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ADVISORY VOTE ON NAMED EXECUTIVE OFFICER MERGER-RELATED COMPENSATION

As required by Section 14A of the Exchange Act and the applicable SEC rules issued thereunder, Ultimate is providing its stockholders with a separate advisory (non-binding) vote to approve certain compensation that may be paid or become payable to its named executive officers in connection with the merger, as described in the table in the section of this proxy statement entitled *The Merger — Interests of the Company's Directors and Executive Officers in the Merger — Quantification of Potential Payments and Benefits to the Company's Named Executive Officers in Connection with the Merger*, including the footnotes to the table and related narrative discussion beginning on page 56 of this proxy statement.

The Ultimate board of directors unanimously recommends that the stockholders of Ultimate approve the following resolution:

RESOLVED, that the compensation that may be paid or become payable to Ultimate s named executive officers in connection with the merger, and the agreements or understandings pursuant to which such compensation may be paid or become payable, in each case, as disclosed pursuant to Item 402(t) of Regulation S-K in the table in the section of this proxy statement entitled The Merger — Interests of the Company s Directors and Executive Officers in the Merger — Quantification of Potential Payments and Benefits to the Company s Named Executive Officers in Connection with the Merger, including the footnotes to the table and the related narrative discussion, is hereby APPROVED.

The vote on the named executive officer merger-related compensation proposal is a vote separate and apart from the vote on the proposal to adopt the merger agreement. Accordingly, you may vote to adopt the merger agreement and vote not to approve the named executive officer merger-related compensation proposal and vice versa. Because the vote on the named executive officer merger-related compensation proposal is advisory only, it will not be binding on either Ultimate or Parent. Accordingly, if the merger agreement is adopted and the merger is completed, the compensation will be payable, subject only to the conditions applicable thereto under the applicable compensation agreements and arrangements, regardless of the outcome of the non-binding, advisory vote of Ultimate s stockholders.

The above resolution approving the merger-related compensation of Ultimate s named executive officers on an advisory (non-binding) basis requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon.

The Ultimate board of directors unanimously recommends that the stockholders of Ultimate vote FOR the named executive officer merger-related compensation proposal.

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VOTE ON ADJOURNMENT

The Company s stockholders are being asked to approve a proposal that will give the Ultimate board of directors authority to adjourn the special meeting, if necessary or appropriate, including to solicit additional proxies in favor of the proposal to adopt the merger agreement, if there are insufficient votes at the time of the special meeting to approve the proposal to adopt the merger agreement. If this adjournment proposal is approved, the special meeting could be adjourned by the Ultimate board of directors to any date (subject to certain restrictions in the merger agreement, including that the special meeting may not be held, without Parent s consent, on a date that is more than five business days prior to the termination date). In addition, the Ultimate board of directors could postpone the special meeting before it commences. If the special meeting is adjourned for the purpose of soliciting additional proxies, stockholders who have already submitted their proxies will be able to revoke them at any time before their use. If you sign and return a proxy and do not indicate how you wish to vote on any proposal, or if you sign and return a proxy and you indicate that you wish to vote in favor of the proposal to adopt the merger agreement but do not indicate a choice on the adjournment proposal, your shares of common stock will be voted in favor of the adjournment proposal.

The Company does not anticipate calling a vote on this proposal if the proposal to adopt the merger agreement is approved by the requisite number of shares of Ultimate common stock at the special meeting.

The vote on the adjournment proposal is a vote separate and apart from the vote on the proposal to adopt the merger agreement. Accordingly, you may vote to approve the proposal to adopt the merger agreement and vote not to approve the adjournment proposal and vice versa.

Approval of the adjournment proposal requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy at the special meeting and entitled to vote thereon.

The Ultimate board of directors unanimously recommends that the stockholders of Ultimate vote FOR the adjournment proposal, if a vote on the adjournment proposal is called.

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MARKET PRICE OF THE COMPANY COMMON STOCK

Ultimate s common stock is traded on the NASDAQ under the symbol ULTI. On March 18, 2019 (six business days prior to the record date for the special meeting), there were approximately 48,022 holders of record of our common stock. Certain shares of our common stock are held in street name and accordingly, the number of beneficial owners of such shares is not known or included in the foregoing number.

The following table sets forth for the periods indicated the high and low sales prices per share for our common stock on the NASDAQ. The table also provides information as to dividends declared per share of our common stock.

	Market Price		Dividend Per Share
	Low	High	
Fiscal 2017			
First Quarter	$ 182.35	$ 201.65	$ 0
Second Quarter	$ 192.83	$ 225.63	$ 0
Third Quarter	$ 181.59	$ 233.42	$ 0
Fourth Quarter	$ 188.96	$ 224.57	$ 0
Fiscal 2018			
First Quarter	$ 207.02	$ 257.93	$ 0
Second Quarter	$ 233.53	$ 282.39	$ 0
Third Quarter	$ 255.14	$ 332.44	$ 0
Fourth Quarter	$ 219.97	$ 326.00	$ 0
Fiscal 2019			
First Quarter (through March 25, 2019)	$ 234.19	$ 365.86	$ 0

The closing sale price of our common stock on February 1, 2019, the last trading day prior to the execution of the merger agreement, was $277.83 per share. On March 25, 2019, the most recent practicable date before the filing of this proxy statement, the closing price for our common stock was $329.76 per share. You are encouraged to obtain current market quotations for our common stock in connection with voting your shares of common stock.

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SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Except as noted below, the following table sets forth the amount and percent of shares of our common stock that as of February 15, 2019, are deemed under the rules of the SEC to be beneficially owned by each member of the Ultimate board of directors, by each of our named executive officers, by all of our directors and executive officers as a group, and by any person or group (as that term is used in the Exchange Act) known to us to be a beneficial owner of more than 5% of the outstanding shares of our common stock as of that date. The information concerning the beneficial ownership of our directors and officers is based solely on information provided by those individuals. Unless otherwise stated, the beneficial owner has sole voting and investment power over the listed common stock or shares such power with his or her spouse.

Name and Address of Beneficial Owner	Amount and Nature of Beneficial Ownership[1]	Percent of Class[2]
FMR LLC[3] 245 Summer Street Boston, MA 02210	3,159,401	9.8 %
Janus Henderson Group[4] 201 Bishopgate EC2M 3AE United Kingdom	3,146,256	9.8 %
BlackRock, Inc.[5] 55 East 52nd Street New York, NY 10055	2,864,995	8.9 %
The Vanguard Group[6] 100 Vanguard Boulevard Malvern, PA 19355	2,745,841	8.5 %
T. Rowe Price Associates, Inc.[7] 100 E. Pratt Street Baltimore, MD 21202	2,325,560	7.2 %
Scott Scherr[8]	135,758	*
Felicia Alvaro[9]	40,000	*
Mitchell K. Dauerman[10]	39,773	*
Adam Rogers[11]	48,334	*
Julie Dodd[12]	49,196	*
Greg Swick[13]	29,167	*
Marc Scherr[14]	94,018	*

James A. FitzPatrick, Jr.[15]	10,424	*
Jonathan D. Mariner[16]	4,507	*
Rick A. Wilber[17]	140,005	*
Jason Dorsey[18]	4,157	*
Alois T. Leiter[19]	177,739	*
All directors and executive officers as a group (14 persons)[20]	879,455	2.7 %

* Indicates beneficial ownership of less than 1.0% of the outstanding Ultimate common stock.

(1) Beneficial ownership is determined in accordance with the rules of the SEC and includes voting or investment power with respect to securities. Ultimate has made restricted stock awards to named executive officers and non-employee directors under the equity and incentive plan (referred to in this proxy statement as restricted stock awards). All shares of common stock issued under the restricted stock awards are considered to be beneficially owned for purposes of computing the holders' respective percentages of ownership in this table. Ultimate has also made awards of stock units under the equity and incentive plan (referred to in this proxy statement as stock unit awards). Stock unit awards are not included in this table because the grantee does not have any rights as a stockholder

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with respect to the shares subject to a stock unit award until such time as shares of common stock are delivered to the grantee pursuant to the terms of the related stock unit award agreement. Except for shares held jointly with a person s spouse or subject to applicable community property laws, or as indicated in the footnotes to this table, each stockholder identified in this table possesses the sole voting and investment power with respect to all shares of common stock shown as beneficially owned by such stockholder.

(2) Applicable percentage of ownership is based on 32,260,565 shares of common stock outstanding.

(3) Represents shares held as of December 31, 2018 as reported on Schedule 13G/A filed by FMR LLC. As reported on Schedule 13G/A, FMR LLC has sole voting power of 375,959 shares of common stock and sole dispositive power of 3,159,401 shares of common stock. Various persons have the right to receive or the power to direct the receipt of dividends from, or the proceeds from the sale of, the shares of common stock reflected as beneficially owned by FMR LLC.

(4) Represents shares held as of December 31, 2018 as reported on Schedule 13G/A filed by Janus Henderson Group. As reported on Schedule 13G/A, Janus Henderson Group has shared voting power of 3,146,256 shares of common stock and shared dispositive power of 3,146,256 shares of common stock. The managed portfolios have the right to receive all dividends from, and the proceeds from the sale of, the securities held in their respective accounts.

(5) Represents shares held as of December 31, 2018 as reported on Schedule 13G/A filed by BlackRock, Inc. As reported on Schedule 13G/A, BlackRock, Inc. has sole voting power of 2,725,578 shares of common stock and sole dispositive power of 2,864,995 shares of common stock. As reported on Schedule 13G/A, BlackRock, Inc. is a parent holding company or control person in accordance with Rule 13d-1(b)(1)(ii)(G) under the Exchange Act. The aggregate amount beneficially owned by each reporting person of 2,379,320 shares of common stock of Ultimate is on a consolidated basis and includes any beneficial ownership separately reported by a subsidiary.

(6) Represents shares held as of December 31, 2018 as reported on Schedule 13G filed by The Vanguard Group (Vanguard). As reported on Schedule 13G, Vanguard has sole voting power of 16,796, sole dispositive power of 2,726,939, shared voting power of 5,012 and shared dispositive power of 18,902, shares of common stock of Ultimate. As reported on Schedule 13G, Vanguard is an investment adviser in accordance with 240.13d-1(b)(1)(ii)(E) under the Exchange Act. The aggregate amount beneficially owned by each reporting person of 2,350,643 shares of common stock of Ultimate is on a consolidated basis and includes any beneficial ownership separately reported by a subsidiary.

(7) Represents shares held as of December 31, 2018 as reported on Schedule 13G/A filed by T. Rowe Price Associates, Inc. (Price Associates). As reported on Schedule 13G/A, Price Associates has sole voting power of 704,738 shares of common stock and sole dispositive power of 2,325,560 shares of common stock. Price Associates does not serve as custodian of the assets of any of its clients; accordingly, in each instance only the client or the client's custodian or trustee bank has the right to receive dividends paid with respect to, and proceeds from the sale of such securities.

(8) Represents 25,000 shares of common stock held by Mr. Scott Scherr and 110,758 shares of common stock subject to restricted stock awards.

(9) Represents 40,000 shares of common stock subject to restricted stock awards held by Ms. Felicia Alvaro.

(10) Represents 39,773 shares of common stock subject to restricted stock awards held by Mr. Mitchell K. Dauerman.

(11) Represents 48,334 shares of common stock subject to restricted stock awards held by Mr. Adam Rogers.

(12) Represents 10,862 shares of common stock held by Ms. Julie Dodd and 38,334 shares of common stock subject to restricted stock awards.

(13) Represents 29,167 shares of common stock subject to restricted stock awards held by Mr. Greg Swick.

(14) Represents 21,594 shares of common stock held by Mr. Marc Scherr and 72,424 shares of common stock subject to restricted stock awards.

(15) Represents 2,527 shares of common stock held by Mr. FitzPatrick and 7,897 shares of common stock subject to restricted stock awards.

(16) Represents 4,507 shares of common stock subject to restricted stock awards held by Mr. Jonathan D. Mariner.

(17) Represents 132,508 shares of common stock held by Mr. Wilber and 7,497 shares of common stock subject to restricted stock awards.

(18) Represents 4,157 shares of common stock subject to restricted stock awards held by Mr. Jason Dorsey.

(19) Represents 168,732 shares of common stock held by Mr. Leiter, 1,315 shares of common stock held by certain trusts for the benefit of Mr. Leiter's children, 345 shares of common stock held by certain trusts established for the benefit of Mr. Leiter's minor children and 7,347 shares of common stock subject to restricted stock awards. Mr. Leiter disclaims beneficial ownership of the shares owned by the trusts established for the benefit of his children.

(20) Represents an aggregate of 420,092 shares of common stock (both directly and indirectly owned) and 459,363 shares of common stock subject to restricted stock awards.

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APPRAISAL RIGHTS

Under the DGCL, you have the right to dissent from the merger and to receive payment in cash for the fair value of your shares of common stock as determined by the Delaware Court of Chancery, together with interest, if any, as determined by the Court, in lieu of the consideration you would otherwise be entitled to pursuant to the merger agreement. These rights are known as appraisal rights. Stockholders electing to exercise appraisal rights must comply with the provisions of Section 262 of the DGCL in order to perfect their rights. Strict compliance with the statutory procedures is required to perfect appraisal rights under Delaware law.

The following is intended as a brief summary of the material provisions of the Delaware statutory procedures required to be followed by a stockholder in order to dissent from the merger and perfect appraisal rights. This summary, however, is not a complete statement of all applicable requirements and is qualified in its entirety by reference to Section 262 of the DGCL, the full text of which appears in Annex C to this proxy statement. Failure to precisely follow any of the statutory procedures set forth in Section 262 of the DGCL may result in the loss or waiver of your appraisal rights. All references in this summary to a stockholder are to the record holder of shares of common stock of the Company unless otherwise indicated.

Beneficial owners of shares of common stock who do not also hold such shares of record may have the registered owner, such as a broker, bank or other nominee, submit the required demand in respect of those shares. If shares of common stock are owned of record in a fiduciary capacity, such as by a trustee, guardian or custodian, execution of a demand for appraisal should be made in that capacity, and if the shares of common stock are owned of record by more than one person, as in a joint tenancy or tenancy in common, the demand should be executed by or for all joint owners. An authorized agent, including an authorized agent for two or more joint owners, may execute the demand for appraisal on behalf of a stockholder of record; however, the agent must identify the record owner or owners and expressly disclose the fact that, in executing the demand, he or she is acting as agent for the record owner. In the event a record owner, such as a broker, who holds shares of common stock as a nominee for others, exercises his or her right of appraisal with respect to the shares of common stock held for one or more beneficial owners, while not exercising this right for other beneficial owners, we recommend that the written demand state the number of shares of common stock as to which appraisal is sought. Where no number of shares is expressly mentioned, we will presume that the demand covers all shares held in the name of the record owner. If you hold your shares of common stock in a brokerage account or in other nominee form and you wish to exercise appraisal rights, you should consult with your broker or the other nominee to determine the appropriate procedures for the making of a demand for appraisal by the nominee.

Section 262 of the DGCL requires that stockholders for whom appraisal rights are available be notified not less than 20 days before the special meeting to vote on the merger in connection with which appraisal rights will be available. A copy of Section 262 of the DGCL must be included with such notice. This proxy statement constitutes our notice to the Company s stockholders of the availability of appraisal rights in connection with the merger in compliance with the requirements of Section 262 of the DGCL and a copy of the full text of Section 262 of the DGCL is attached hereto as Annex C. If you wish to consider exercising your appraisal rights, you should carefully review the text of Section 262 of the DGCL contained in Annex C to this proxy statement since failure to timely and properly comply with the requirements of Section 262 of the DGCL may result in the loss of your appraisal rights under the DGCL.

If you elect to demand appraisal of your shares, you must satisfy each of the following conditions:

- You must deliver to us a written demand for appraisal of your shares before the vote with respect to the merger is taken. This written demand for appraisal must be in addition to and separate from any proxy or vote abstaining from or voting against the adoption and approval of the merger agreement and the merger. Voting against or failing to vote for the adoption and approval of the merger agreement and the merger by

itself does not constitute a demand for appraisal within the meaning of Section 262 of the DGCL. The demand must reasonably inform us of the identity of the stockholder and the intention of the stockholder to demand appraisal of his, her or its shares. A stockholder's failure to make a written demand before the vote with respect to the merger is taken will constitute a waiver of appraisal rights.

- You must not vote in favor of, or consent in writing to, the adoption and approval of the merger agreement and the merger. A vote in favor of the adoption and approval of the merger agreement and merger, by proxy submitted by mail, over the Internet, by telephone or in person, will constitute a

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waiver of your appraisal rights in respect of the shares so voted and will nullify any previously filed written demands for appraisal. A proxy which does not contain voting instructions will, unless revoked, be voted in favor of the adoption and approval of the merger agreement and the merger. Therefore, a stockholder who votes by proxy and who wishes to exercise appraisal rights must vote against the merger agreement and the merger or abstain from voting on the merger agreement and the merger.

- You must continue to hold your shares of common stock from the date of making the demand through the effective date of the merger. Therefore, a stockholder who is the record holder of shares of common stock on the date the written demand for appraisal is made but who thereafter transfers the shares before the effective date of the merger will lose any right to appraisal with respect to such shares.
- You must otherwise comply with the procedures set forth in Section 262 of the DGCL.

If you fail to comply with any of these conditions and the merger is completed, you will be entitled to receive the merger consideration (without interest and subject to any required withholding taxes), but you will have no appraisal rights with respect to your shares of common stock.

All demands for appraisal pursuant to Section 262 of the DGCL should be addressed to the Company, in care of the Secretary, at The Ultimate Software Group, Inc., 2000 Ultimate Way, Weston, Florida 33326, and must be delivered before the vote on the merger agreement is taken at the special meeting and should be executed by, or on behalf of, the record holder of the shares of common stock.

Within 10 days after the effective date of the merger, the surviving corporation (*i.e.*, The Ultimate Software Group, Inc.) must give written notice that the merger has become effective to each stockholder who has properly filed a written demand for appraisal and who did not vote in favor of the merger agreement and the merger. At any time within 60 days after the effective date of the merger, any stockholder who has demanded an appraisal, and who has not commenced an appraisal proceeding or joined that proceeding as a named party, has the right to withdraw such stockholder s demand for appraisal and to accept the merger consideration (without interest and subject to any required withholding taxes) specified by the merger agreement for his or her shares of common stock; after this period, the stockholder may withdraw such demand for appraisal only with the consent of the surviving corporation. Within 120 days after the effective date of the merger, any stockholder who has complied with Section 262 of the DGCL will, upon written request to the surviving corporation, be entitled to receive a written statement setting forth the aggregate number of shares not voted in favor of the merger agreement and the merger and with respect to which demands for appraisal rights have been received and the aggregate number of holders of such shares. A person who is the beneficial owner of shares of common stock held in a voting trust or by a nominee on behalf of such person may, in such person s own name, request from the corporation the statement described in the previous sentence. Such written statement will be mailed to the requesting stockholder within 10 days after such written request is received by the surviving corporation or within 10 days after expiration of the period for delivery of demands for appraisal, whichever is later. Within 120 days after the effective time, but not thereafter, either the surviving corporation or any stockholder who has complied with the requirements of Section 262 of the DGCL and who is otherwise entitled to appraisal rights may file a petition in the Delaware Court of Chancery demanding a determination of the fair value of the shares held by all stockholders entitled to appraisal. A person who is the beneficial owner of shares of common stock held in a voting trust or by a nominee on behalf of such person may, in such person s own name, file the petition described in the previous sentence. Upon the filing of the petition by a stockholder, service of a copy of such petition must be made upon the Company, as the surviving corporation. If no such petition is filed within that 120-day period, appraisal rights will be lost for all holders of shares who had previously demanded appraisal of their shares. The surviving corporation has no obligation to file such a petition in the event there are dissenting stockholders. Accordingly, the failure of a stockholder to file such a petition within the period specified could nullify the stockholder s previously written demand for appraisal. There is no present intent on the part of the Company to file an appraisal petition, and stockholders seeking to exercise appraisal rights should not assume that the Company will file such a petition or that the Company will initiate any negotiations with respect to the fair value of such shares. Accordingly, stockholders

who desire to have their shares appraised should initiate any petitions necessary for the perfection of their appraisal rights within the time periods and in the manner prescribed in Section 262 of the DGCL.

If a petition for appraisal is duly filed by a stockholder and a copy of the petition is delivered to the surviving corporation, the surviving corporation will then be obligated, within 20 days after receiving service of a copy of

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the petition, to file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving corporation. The Register in Chancery, if so ordered by the Delaware Court of Chancery, must give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving corporation and to the stockholders shown on the list at the addresses therein stated. Such notice must also be given by one or more publications at least one week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Delaware Court of Chancery deems advisable. The forms of the notices by mail and by publication must be approved by the Delaware Court of Chancery, and the costs thereof will be borne by the surviving corporation. At the hearing on such petition, the Delaware Court of Chancery will determine the stockholders who have complied with Section 262 of the DGCL and who have become entitled to appraisal rights. The Delaware Court of Chancery may require the stockholders who have demanded appraisal for their shares and who hold stock represented by certificates to submit their stock certificates to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; if any stockholder fails to comply with that direction, the Delaware Court of Chancery may dismiss the proceedings as to that stockholder. If immediately before the merger the shares of the class or series of stock as to which appraisal rights are available were listed on a national securities exchange, the Delaware Court of Chancery will dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger for such total number of shares exceeds $1 million or (3) the merger was approved pursuant to Sections 253 or 267 of the DGCL.

After determination of the stockholders entitled to appraisal of their shares of common stock, the Delaware Court of Chancery will appraise the shares, determining their fair value exclusive of any element of value arising from the accomplishment or expectation of the merger, together with interest, if any. Unless the Delaware Court of Chancery in its discretion determines otherwise for good cause shown, and except as otherwise provided in Section 262, interest from the effective date of the merger through the date of payment of the judgment will be compounded quarterly and will accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving corporation may pay to each stockholder entitled to appraisal an amount in cash, in which case interest will accrue thereafter only upon the sum of (1) the difference, if any, between the amount paid and the fair value of the shares as determined by the Delaware Court of Chancery, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving corporation or by any stockholder entitled to participate in the appraisal proceeding, the Delaware Court of Chancery may, in its discretion, proceed to trial upon the appraisal before the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving corporation and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under Section 262 of the DGCL. When the fair value is determined, the Delaware Court of Chancery will direct the payment of such value, with interest thereon, if any, by the surviving corporation to the stockholders entitled to receive the same, in the case of holders of uncertificated stock forthwith, and in the case of holders of shares represented by certificates upon the surrender to the surviving corporation of the certificates representing such stock.

In determining the fair value of the shares of common stock, the Delaware Court of Chancery is required to take into account all relevant factors. In *Weinberger* v. *UOP, Inc.*, the Delaware Supreme Court discussed the factors that could be considered in determining fair value in an appraisal proceeding, stating that proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court should be considered, and that [f]air price obviously requires consideration of all relevant factors involving the value of a company.

The Delaware Supreme Court has stated that in making this determination of fair value, the court must consider market value, asset value, dividends, earnings prospects, the nature of the enterprise and any other facts that could be ascertained as of the date of the merger that throw any light on future prospects of the merged corporation. Section 262 of the DGCL provides that fair value is to be exclusive of any element of value arising from the accomplishment or expectation of the merger. In *Cede & Co.* v. *Technicolor, Inc.*, the Delaware Supreme Court stated that such exclusion is a narrow exclusion [that] does not encompass known elements of

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value, but rather applies only to the speculative elements of value arising from such accomplishment or expectation. In *Weinberger*, the Delaware Supreme Court also stated that elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and not the product of speculation, may be considered.

You should be aware that the fair value of your shares of common stock as determined under Section 262 of the DGCL could be more than, the same as, or less than the value that you are entitled to receive under the terms of the merger agreement and that an opinion of an investment banking firm as to the fairness, from a financial point of view, of the consideration payable in a sale transaction, such as the merger, is not an opinion as to, and does not otherwise address, fair value under Section 262 of the DGCL.

Moreover, we do not anticipate offering more than the per share merger consideration to any stockholder exercising appraisal rights and reserve the right to assert, in any appraisal proceeding, that, for purposes of Section 262 of the DGCL, the fair value of a share of common stock is less than the per share merger consideration.

Costs of the appraisal proceeding may be imposed upon the surviving corporation and the stockholders participating in the appraisal proceeding by the Delaware Court of Chancery as the Court deems equitable in the circumstances. Upon the application of a stockholder, the Delaware Court of Chancery may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorneys fees and the fees and expenses of experts, to be charged pro rata against the value of all shares entitled to appraisal. In the absence of an order, each party bears its own expenses. Any stockholder who has duly demanded and perfected appraisal rights in compliance with Section 262 of the DGCL will not, after the effective time, be entitled to vote shares subject to that demand for any purpose or to receive payments of dividends or any other distribution with respect to those shares, other than with respect to payment as of a record date before the effective time; however, if no petition for appraisal is filed within 120 days after the effective date of the merger, or if the stockholder delivers a written withdrawal of his or her demand for appraisal and an acceptance of the terms of the merger within 60 days after the effective date of the merger or thereafter with the written approval of the Company, then the right of that stockholder to appraisal will cease. No appraisal proceeding in the Delaware Court of Chancery will be dismissed as to any stockholder without the prior approval of the Court, and such approval may be conditioned upon such terms as the Delaware Court of Chancery deems just; provided, however, that any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party will maintain the right to withdraw its demand for appraisal and to accept the merger consideration that such holder would have received (without interest and subject to any required withholding taxes) pursuant to the merger agreement within 60 days after the effective date of the merger.

In view of the complexity of Section 262 of the DGCL, stockholders who may wish to dissent from the merger and pursue appraisal rights should consult their legal advisors.

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SUBMISSION OF STOCKHOLDER PROPOSALS

If the merger is completed, the Company does not expect to hold a 2019 annual meeting of stockholders. However, if the merger is not completed, the Company will hold a 2019 annual meeting of stockholders.

As described in the Company s annual meeting proxy statement for the 2018 annual meeting of stockholders filed on April 2, 2018, any stockholder proposals submitted in accordance with SEC rules were to have been received by us no later than the close of business on December 5, 2018.

In addition, as described in the Company s annual meeting proxy statement for the 2018 annual meeting of stockholders filed on April 2, 2018, under Ultimate s By-laws, proposals of stockholders not included in the proxy materials may be presented at the 2019 annual meeting of stockholders only if Ultimate s Corporate Secretary has been notified of the nature of the proposal and is provided certain additional information at least sixty days but not more than ninety days prior to April 2, 2019, the first anniversary of the proxy statement in connection with the 2018 annual meeting of stockholders; provided, however, that if a 2019 annual meeting of stockholders is held and the date of such annual meeting is more than 30 days after the date contemplated at the time of the previous year s proxy statement, we must receive the stockholder s notice not less than a reasonable time, as determined by the Company s board of directors, prior to the date of any such annual meeting.

In addition, as described in the Company s annual meeting proxy statement for the 2018 annual meeting of stockholders filed on April 2, 2018, the board of directors adopted proxy access, which allows a stockholder or group of up to twenty stockholders who have owned at least 3% of Ultimate s common stock for at least three years to submit director nominees (up to the greater of two directors or 20% of the board of directors) for inclusion in our proxy materials if the stockholder(s) provide timely written notice of such nomination(s) and the stockholder(s) and the nominee(s) satisfy the requirements specified in our By-laws. To be timely for inclusion in Ultimate s proxy materials for the 2019 annual meeting of stockholders, notice was to have been received by the Corporate Secretary at Ultimate s principal corporate offices at 2000 Ultimate Way, Weston, Florida 33326, no earlier than the close of business on November 5, 2018, and no later than the close of business on December 5, 2018; provided, however, that if a 2019 annual meeting of stockholders is held and the date of the date of such annual meeting is more than 30 days after the anniversary date of the prior year s annual meeting, we must receive the stockholder(s) s notice by the close of business on the later of 120 days prior to the annual meeting and the 10th day after the day we provide public disclosure of the meeting date. Any such notice must contain the information required by Ultimate s By-laws, and the stockholder(s) and nominee(s) must comply with the information and other requirements in our By-laws relating to the inclusion of stockholder nominees in Ultimate s proxy materials. Stockholders may request a copy of the By-law provisions discussed above from Corporate Secretary at the address above.

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MULTIPLE STOCKHOLDERS SHARING ONE ADDRESS

In accordance with Rule 14a-3(e)(1) under the Exchange Act, one proxy statement will be delivered to two or more stockholders who share an address, unless the Company has received contrary instructions from one or more of the stockholders. Each stockholder will receive a separate proxy card. The Company will deliver promptly upon written or oral request a separate copy of the proxy statement to a stockholder at a shared address to which a single copy of the proxy statement was delivered. Requests for additional copies of the proxy statement should be directed to the Company, in care of the Secretary, at The Ultimate Software Group, Inc., 2000 Ultimate Way, Weston, Florida 33326, or by calling our Investor Relations department at (954) 331-7069. In addition, stockholders who share a single address but receive multiple copies of the proxy statement may request that in the future they receive a single copy by contacting the Company at the address and phone number set forth in the prior sentence.

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WHERE YOU CAN FIND ADDITIONAL INFORMATION

The Company files annual, quarterly and current reports, proxy statements and other information with the SEC. You may obtain any reports, proxy statements or other information that we file with the SEC from document retrieval services and the Internet website maintained by the SEC at www.sec.gov.

The Company will make available a copy of its public reports, without charge, on its website at https://www.ultimatesoftware.com/ as soon as reasonably practicable after the Company files the reports electronically with the SEC. The information provided on our website is not part of this proxy statement, and is not incorporated by reference herein. In addition, you may obtain a copy of the reports, without charge, by contacting the Company at The Ultimate Software Group, Inc., Attn: Mitch Dauerman, 2000 Ultimate Way, Weston, Florida 33326, or by calling (954) 331-7069. In order to ensure timely delivery of the documents before the special meeting, any request should be made promptly to the Company.

The SEC allows us to incorporate by reference into this proxy statement documents we file with the SEC. This means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be a part of this proxy statement, and later information that we file with the SEC will update and supersede that information. Information in documents that is deemed, in accordance with SEC rules, to be furnished and not filed will not be deemed to be incorporated by reference into this proxy statement. We incorporate by reference the documents listed below and any documents filed by us pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of this proxy statement, and before the date of the special meeting (provided that we are not incorporating by reference any information furnished to, but not filed with, the SEC):

- Ultimate’s Annual Report on Form 10-K for the fiscal year ended December 31, 2018; and
- Ultimate’s Current Reports on Form 8-K, in each case to the extent filed and not furnished with the SEC on February 4, 2019.

THIS PROXY STATEMENT DOES NOT CONSTITUTE THE SOLICITATION OF A PROXY IN ANY JURISDICTION TO OR FROM ANY PERSON TO WHOM OR FROM WHOM IT IS UNLAWFUL TO MAKE SUCH PROXY SOLICITATION IN THAT JURISDICTION. YOU SHOULD RELY ONLY ON THE INFORMATION CONTAINED OR INCORPORATED BY REFERENCE INTO THIS PROXY STATEMENT TO VOTE YOUR SHARES AT THE SPECIAL MEETING. NO PERSONS HAVE BEEN AUTHORIZED TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS ABOUT THE MERGER OR THE SPECIAL MEETING OTHER THAN THOSE CONTAINED IN THIS PROXY STATEMENT, AND, IF GIVEN OR MADE, SUCH INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY US OR ANY OTHER PERSON. THIS PROXY STATEMENT IS DATED MARCH 26, 2019. YOU SHOULD NOT ASSUME THAT THE INFORMATION CONTAINED IN THIS PROXY STATEMENT IS ACCURATE AS OF ANY DATE OTHER THAN THAT DATE, AND THE MAILING OF THIS PROXY STATEMENT TO STOCKHOLDERS DOES NOT AND WILL NOT CREATE ANY IMPLICATION TO THE CONTRARY.

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Annex A

AGREEMENT AND PLAN OF MERGER

by and among

UNITE PARENT CORP.,

UNITE MERGER SUB CORP.

and

THE ULTIMATE SOFTWARE GROUP, INC.

Dated as of February 3, 2019

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of February 3, 2019 (this Agreement), by and among Unite Parent Corp., a Delaware corporation (Parent), Unite Merger Sub Corp., a Delaware corporation and indirect wholly owned Subsidiary of Parent (Merger Sub), and The Ultimate Software Group, Inc., a Delaware corporation (the Company).

RECITALS

WHEREAS, the board of directors of the Company (the Company Board) has unanimously approved the merger of Merger Sub with and into the Company (the Merger), upon the terms and subject to the conditions set forth in this Agreement and in accordance with the provisions of the General Corporation Law of the State of Delaware (the DGCL), and has approved and declared this Agreement fair and advisable to and in the best interests of its stockholders;

WHEREAS, the boards of directors of Parent and Merger Sub have each approved this Agreement and declared it advisable for Parent and Merger Sub, respectively, to enter into this Agreement;

WHEREAS, the sole stockholder of Merger Sub, has approved and adopted this Agreement and the transactions contemplated by this Agreement, including the Merger;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the Company s willingness to enter into this Agreement, each Guarantor (as defined below) is entering into a limited guarantee in favor of the Company (each, a Limited Guarantee), pursuant to which, subject to the terms and conditions contained therein, each Guarantor is guaranteeing certain obligations of Parent and Merger Sub in connection with this Agreement; and

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with the transactions contemplated by this Agreement and also to prescribe certain conditions to the transactions contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

THE MERGER

Section 1.1. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Merger Sub shall be merged with and into the Company, in accordance with the provisions of the DGCL, and the separate corporate existence of Merger Sub shall thereupon cease. The Company shall be the surviving corporation in the Merger (sometimes hereinafter referred to as the Surviving Corporation) and, following the Merger, shall be an indirect wholly owned Subsidiary of Parent, and the separate corporate existence of the Company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth in this Agreement.

Section 1.2. Closing. The closing of the Merger (the Closing) shall take place: (a) at 9:00 a.m., New York City time, no later than the third (3rd) Business Day following the satisfaction or waiver (if permissible under applicable Law) of all of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied

at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), at the offices of Simpson Thacher & Bartlett LLP, 2475 Hanover Street, Palo Alto, California 94304; provided, that if the Marketing Period has not ended on or prior to the time the Closing would have otherwise been required to occur pursuant to the foregoing, the Closing shall not occur until the earlier to occur of (i) a Business Day during the Marketing Period specified by Parent on no fewer than three (3) Business Days written notice to the Company (it being understood that such date may be conditioned upon the simultaneous consummation of the Debt Financing) and (ii) the first Business Day following the final day of the Marketing Period (subject, in the case of each of the foregoing clauses (i) and (ii), to the satisfaction or (to the extent permitted by applicable Law) waiver of all of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) as of the date determined pursuant to this proviso) or (b) at such other date, time, or place as

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agreed to in writing by Parent and the Company. The date on which the Closing actually occurs is referred to herein as the "Closing Date". For the avoidance of doubt, a condition may only be waived in writing by the party or parties entitled to such condition under this Agreement.

Section 1.3. Effective Time. Subject to the terms and conditions hereof, on the Closing Date, the Company and Parent will cause a certificate of merger (the "Certificate of Merger") to be duly executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with Section 251 of the DGCL. The Merger shall become effective at the time when the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later time as the parties shall agree in writing and specify in the Certificate of Merger in accordance with the DGCL (the "Effective Time").

ARTICLE II

EFFECTS OF THE MERGER

Section 2.1. Effects of the Merger. The Merger shall have the effects specified in this Agreement and the applicable provisions of the DGCL.

Section 2.2. Certificate of Incorporation. Subject to Section 5.10, at the Effective Time, the certificate of incorporation of the Surviving Corporation (the "Charter") shall be amended and restated in its entirety to be in the form of the certificate of incorporation of Merger Sub (except with respect to the name of the Surviving Corporation, which from and after the Effective Time shall be the name of the Company), until thereafter amended as provided therein or by applicable Law.

Section 2.3. Bylaws. Subject to Section 5.10, at the Effective Time, the bylaws of the Surviving Corporation (the "Bylaws") shall be amended and restated in their entirety to be in the form of the bylaws of Merger Sub (except that the name of the Surviving Corporation shall be the name of the Company), until thereafter amended as provided therein or in the Charter or by applicable Law.

Section 2.4. Directors. The directors of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the Bylaws.

Section 2.5. Officers. The officers of the Company immediately prior to the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Charter and the Bylaws.

Section 2.6. Effect on Capital Stock. At the Effective Time, as a result of the Merger and without any action on the part of the holders of any capital stock of the Company or any other Person:

(a) Merger Consideration. Each share of Common Stock (a "Share" or, collectively, the "Shares") issued and outstanding immediately prior to the Effective Time (other than Cancelled Shares, Converted Shares and Dissenting Shares (collectively, "Excluded Shares")) shall at the Effective Time automatically be cancelled and converted into the right to receive $331.50 per Share in cash (the "Merger Consideration"), without interest and subject to applicable withholding taxes pursuant to Section 2.7(g), whereupon such Shares will cease to exist and no longer be outstanding, and each holder thereof will cease to have any rights with respect thereto, except the right to receive the Merger Consideration, without interest, upon surrender of Certificates or Book-Entry Shares in accordance with Section 2.7.

(b) Cancellation of Cancelled Shares; Conversion of Converted Shares. Shares that immediately prior to the Effective Time are held by the Company in treasury or by Parent or Merger Sub (collectively, Cancelled Shares) shall at the Effective Time automatically be cancelled and shall cease to exist, and no consideration shall be delivered or deliverable in exchange therefor. Shares that immediately prior to the Effective Time are held by any wholly owned Subsidiary of the Company or any wholly owned Subsidiary of Parent (other than Merger Sub) (collectively, Converted Shares) shall at the Effective Time automatically be converted into such number of fully paid and nonassessable shares of common stock, par value $0.01 per share, of the Surviving Corporation such that the ownership percentage of any such Subsidiary in the Surviving Corporation immediately following the Effective Time shall equal the ownership percentage of such Subsidiary in the Company immediately prior to the Effective Time.

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(c) Conversion of Merger Sub Common Stock. At the Effective Time, 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 one fully paid and nonassessable share of common stock, par value $0.01 per share, of the Surviving Corporation.

Section 2.7. Payment.

(a) Paying Agent; Exchange Fund. Prior to the Effective Time, Parent shall designate a bank or trust company reasonably acceptable to the Company to act as agent (the Paying Agent) for the payment of the Merger Consideration in accordance with this Article II, and in connection therewith, shall enter into an agreement reasonably acceptable to the Company relating to the Paying Agent s responsibilities with respect to this Agreement. At or prior to the Effective Time, Parent shall deposit (or shall cause to be deposited) with the Paying Agent in trust for the benefit of the holders of Shares a cash amount sufficient to pay the aggregate Merger Consideration (such cash being hereinafter referred to as the Exchange Fund). The Exchange Fund shall not be used for any purpose except as set forth herein. The Paying Agent shall invest the Exchange Fund as reasonably directed by Parent; provided, that such investments shall be in short-term obligations of, or guaranteed in full by, the United States of America with maturities no more than thirty (30) days. Any interest and other income resulting from such investments shall be payable to Parent or the Surviving Corporation and any amounts in excess of the amounts payable under this Article II shall be promptly returned to the Surviving Corporation. To the extent that there are any losses with respect to any such investments, Parent shall, or shall cause the Surviving Corporation to, promptly replace or restore the cash in the Exchange Fund so as to ensure that the Exchange Fund is at all times maintained at a level sufficient for the Paying Agent to pay the aggregate Merger Consideration under this Article II. No investment losses resulting from investment of the funds deposited with the Paying Agent shall diminish the rights of any holder of Shares to receive the Merger Consideration as provided herein.

(b) Procedures for Surrender.

(i) *Common Stock Certificates*. As soon as reasonably practicable after the Effective Time (but in any event no later than three (3) Business Days after the date on which the Effective Time occurs), Parent shall cause the Paying Agent to mail to each Record Holder of a certificate or certificates that immediately prior to the Effective Time represented outstanding Shares (each such certificate, a Certificate), which Shares were converted into the right to receive the Merger Consideration pursuant to the provisions of this Article II, (A) a letter of transmittal, which shall be in customary form and with such other provisions as Parent and the Company shall reasonably agree, and which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of such Certificates (or affidavits of loss in lieu thereof as provided in Section 2.7(e)) and (B) instructions for effecting the surrender of Certificates (or affidavits of loss in lieu thereof as provided in Section 2.7(e)) to the Paying Agent in exchange for payment of the Merger Consideration for which such Shares have been converted pursuant the provisions of this Article II. Upon surrender to the Paying Agent of a Certificate (or affidavit of loss in lieu thereof as provided in Section 2.7(e)) for cancellation, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other customary documents as may reasonably be required by the Paying Agent, the holder of such Certificate shall be entitled to receive in exchange therefor the applicable Merger Consideration pursuant to the provisions of this Article II in respect of each Share formerly represented by such Certificate, and the Certificate (or affidavit of loss in lieu thereof as provided in Section 2.7(e)) so surrendered shall forthwith be cancelled. No interest will be paid or accrued on any amount payable in respect of any Shares. If payment of the Merger Consideration is to be made to a Person other than the Person in whose name a surrendered Certificate is registered, it will be a condition precedent of payment that the Certificate so surrendered be properly endorsed or otherwise be in proper form for transfer and that the Person requesting such payment has paid all transfer and other Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of the Certificate and has established to the reasonable satisfaction of the Paying Agent and the Surviving Corporation that such Taxes have been paid or are not required to be paid.

(ii) *Book-Entry Shares*. Any holder of non-certificated Shares represented by book-entry (Book-Entry Shares) and whose Shares were converted pursuant to the provisions of this Article II into the right to receive the Merger Consideration shall not be required to deliver a Certificate or an executed letter of transmittal to the Paying Agent to receive the Merger Consideration. In lieu thereof, each registered

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holder of one (1) or more Book-Entry Shares shall automatically upon the Effective Time be entitled to receive, and, upon receipt by the Paying Agent of an agent s message in customary form (or such other evidence, if any, as the Paying Agent may reasonably request), Parent shall, or shall cause the Surviving Corporation to, cause the Paying Agent to pay and deliver (after giving effect to any required withholding Taxes as provided in Section 2.7(g)) as soon as reasonably practicable after the Effective Time, the applicable Merger Consideration pursuant to the provisions of this Article II in respect of each Share formerly represented by such Book-Entry Share, and the Book-Entry Share so exchanged shall forthwith be cancelled. Payment of the Merger Consideration with respect to Book-Entry Shares shall only be made to the Person in whose name such Book-Entry Shares are registered.

(c) Closing of Transfer Books. From and after the Effective Time, the stock transfer books of the Surviving Corporation shall be closed and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Shares that were outstanding immediately prior to the Effective Time. Until surrendered as contemplated by Section 2.7(b), each Certificate and Book-Entry Share (other than Excluded Shares) shall, from and after the Effective Time, represent only the right to receive the Merger Consideration, without interest thereon, as contemplated by Section 2.6(a). If, after the Effective Time, Certificates or, in the case of Book-Entry Shares, such Shares are presented to the Surviving Corporation, Parent or the Paying Agent for transfer or any other reason, they shall be cancelled and exchanged for the Merger Consideration as provided in this Article II.

(d) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains unclaimed by the Record Holders of Shares one (1) year after the Effective Time shall be delivered to the Surviving Corporation. Any Record Holder of Shares (other than Excluded Shares) who has not theretofore complied with this Article II shall thereafter look only to the Surviving Corporation and Parent, which shall remain responsible for payment of the Merger Consideration for such Shares as provided in this Article II, without any interest thereon. Notwithstanding anything to the contrary herein, none of the Surviving Corporation, Parent, Merger Sub, the Paying Agent or any other Person shall be liable to any Record Holder of Shares for any amount properly delivered to a public official pursuant to applicable abandoned property, escheat or similar Laws.

(e) Lost, Stolen or Destroyed Certificates. In the event that any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the holder thereof, and if required by Parent in its sole discretion, the posting by such holder of a bond in customary amount and upon such terms as may be required by Parent as indemnity against any claim that may be made against it, the Surviving Corporation or the Paying Agent with respect to such Certificate, Parent will cause the Surviving Corporation or the Paying Agent to pay in exchange for such lost, stolen or destroyed Certificate the Merger Consideration payable in respect of the Shares previously evidenced by such lost, stolen or destroyed Certificate, without any interest thereon.

(f) Dissenting Shares. Notwithstanding anything in this Agreement to the contrary, if required by the DGCL (but only to the extent required thereby), Shares that are issued and outstanding immediately prior to the Effective Time (other than Cancelled Shares and Converted Shares) and that are held by holders of such Shares who have not voted in favor of the adoption of this Agreement or consented thereto in writing and who have properly exercised appraisal rights with respect thereto in accordance with, and who have complied with, Section 262 of the DGCL (the Dissenting Shares) will not be converted into the right to receive the Merger Consideration, and holders of such Dissenting Shares will be entitled to receive payment of the fair value of such Dissenting Shares in accordance with the provisions of such Section 262 unless and until any such holder fails to perfect or effectively withdraws or loses its rights to appraisal and payment under the DGCL. If, after the Effective Time, any such holder fails to perfect or effectively withdraws or loses such right, such Dissenting Shares will thereupon be treated as if they had been converted into and had become exchangeable for, at the Effective Time, the right to receive the Merger Consideration, without any interest thereon. At the Effective Time, any holder of Dissenting Shares shall cease to have any rights with respect thereto, except the rights provided in Section 262 of the DGCL and as provided in the previous sentence. The Company will give Parent (i) reasonably prompt notice of any demands received by the Company for appraisals

of Shares, withdrawals of such demands, and any other instruments received by the Company pursuant to Section 262 of the DGCL and (ii) the opportunity to participate in all negotiations and proceedings with respect to such notices and demands. Parent shall have the right to direct and control all negotiations and proceedings with respect to any such demands, withdrawals or attempted withdrawals of such demands; provided that, after the date hereof until the

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Effective Time, Parent shall consult with the Company with respect to such negotiations and proceedings. The Company shall not, except with the prior written consent of Parent, and prior to the Effective Time, Parent shall not, except with the prior written consent of the Company, make any payment with respect to any demands for appraisal or offer to settle or compromise, or settle or compromise or otherwise negotiate, any such demands, or approve any withdrawal of any such demands, or waive any failure to timely deliver a written demand for appraisal or otherwise to comply with Section 262 of the DGCL, or agree to do any of the foregoing.

(g) Withholding Rights. Each of Parent, the Surviving Corporation and the Paying Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement such Taxes as it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the Code) or under any other applicable provision of Law. To the extent that amounts are so deducted and withheld and timely paid over to the appropriate Governmental Entity, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

Section 2.8. Company Equity Awards.

(a) Each outstanding option to acquire Shares (each, a Company Stock Option), whether vested or unvested, that is outstanding and unexercised immediately prior to the Effective Time shall, as of the Effective Time, become fully vested (to the extent unvested) and be converted into the right to receive an amount in cash equal to the product of (i) the excess, if any, of the Merger Consideration over the exercise price per Share of such Company Stock Option, multiplied by (ii) the total number of Shares subject to such Company Stock Option, subject to applicable Tax withholding. Any Company Stock Option that has an exercise price per Share that is greater than or equal to the Merger Consideration shall be cancelled for no consideration.

(b) Each restricted stock award (each, a Company Restricted Stock Award) and restricted stock unit award (each, a Company RSU Award and, together with the Company Stock Options and the Company Restricted Stock Awards, the Company Equity Awards) that is outstanding immediately prior to the Effective Time shall, as of the Effective Time, whether granted prior to the date of this Agreement or granted after the date of this Agreement as permitted by this Agreement, become fully vested and nonforfeitable, and shall be cancelled and converted automatically into the right to receive an amount in cash equal to the Merger Consideration in respect of each vested Share subject to such Company Restricted Stock Award or Company RSU Award, subject to applicable Tax withholding.

(c) The Surviving Corporation shall pay the holders of Company Equity Awards the cash payments described in Section 2.8(a) and Section 2.8(b) on or as soon as reasonably practicable after the Closing Date, but in any event within five (5) Business Days thereafter; provided that, notwithstanding anything to the contrary contained in this Agreement, any such delivery of the Merger Consideration in respect of a Company RSU Award that constitutes deferred compensation subject to Section 409A of the Code shall be made on the earliest possible date that such payment would not trigger a tax or penalty under Section 409A of the Code.

(d) Prior to the Effective Time, the Company Board or any authorized committee thereof shall adopt such resolutions as may reasonably be appropriate or required in its discretion to effectuate the actions contemplated by this Section 2.8.

Section 2.9. Adjustments to Prevent Dilution. In the event that, between the date of this Agreement and the Effective Time, the Company changes the number of Shares issued and outstanding as a result of a reclassification, stock split or reverse stock split, stock dividend or stock distribution, recapitalization, combination, merger, issuer tender or exchange offer, or other similar transaction, the Merger Consideration shall be correspondingly adjusted to reflect such change and to provide the holders of Shares the same economic effect as contemplated by this Agreement

prior to such action, and as so adjusted shall, from and after the date of such event, be the Merger Consideration.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in (a) the Company SEC Documents (other than any disclosures contained or referenced therein under the captions Risk Factors or Forward Looking Statements (to the extent such disclosures are general and cautionary, predictive or forward-looking in nature)) filed with or furnished to the SEC by the

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Company (including any documents incorporated by reference into any of the Company SEC Documents) since January 1, 2018 and publicly available on or before the day that is two (2) Business Days prior to the date of this Agreement or (b) the disclosure letter delivered by the Company to Parent prior to entering into this Agreement (the Company Disclosure Schedule) (it being acknowledged and agreed that (i) disclosure of any item in any section or subsection of the Company Disclosure Schedule, whether or not an explicit cross reference appears, shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on the face of such disclosure, and (ii) the mere inclusion of an item in the Company Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item is material or constitutes a Company Material Adverse Effect or that the inclusion of such item in the Company Disclosure Schedule is required), the Company hereby represents and warrants to Parent and Merger Sub as follows:

Section 3.1. Organization and Power. The Company and each of its Subsidiaries is duly organized, validly existing and in good standing (with respect to jurisdictions that recognize that concept) under the Laws of its respective jurisdiction of organization and each has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, except where the failure to be in good standing or to have such corporate or similar power and authority would not constitute a Company Material Adverse Effect. The Company and each of its Subsidiaries is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions that recognize that concept) as a foreign corporation (or other applicable entity) in each jurisdiction where the ownership, leasing or operation of its properties or assets or conduct of its business requires such qualification or licensing, except in such jurisdictions where the failure to be so qualified or licensed or to be in good standing would not constitute a Company Material Adverse Effect. The Company has made available to Parent true, complete and correct copies of its and its Significant Subsidiaries certificate of incorporation and bylaws (or similar organizational documents), in each case as amended and in effect as of the date of this Agreement. The Company is not in violation of any provision of its certificate of incorporation or bylaws.

Section 3.2. Subsidiaries. Section 3.2 of the Company Disclosure Schedule sets forth as of the date hereof a true and complete list of the Subsidiaries of the Company and indicates the jurisdiction of organization or formation of each such Subsidiary. All of the outstanding shares of capital stock or other equity interests of each Subsidiary of the Company have been duly authorized, validly issued and free of preemptive rights and in the case of corporations are fully paid and nonassessable. All of the outstanding shares of capital stock or equity interests of each Subsidiary of the Company are owned by the Company, directly or indirectly, free and clear of all Liens, other than Permitted Liens. As of the date hereof, neither the Company nor any of the Subsidiaries owns, directly or indirectly, any capital stock of, or any joint venture, membership, partnership, voting or equity interest of any nature in, any other Person, other than the Subsidiaries identified in Section 3.2 of the Company Disclosure Schedule.

Section 3.3. Capitalization.

(a) The authorized capital stock of the Company consists of 50,000,000 shares of common stock, par value $0.01 per share (the Common Stock), and 2,500,000 shares of preferred stock, par value $0.01 per share (the Company Preferred Stock). At the close of business on February 1, 2019 (the Capitalization Date), (i) 35,985,995 shares of Common Stock were issued and outstanding, (ii) 4,657,995 shares of Common Stock were held by the Company in its treasury, (iii) no shares of Common Stock were reserved for issuance pursuant to outstanding Company Stock Options, (iv) 750,691 shares of Common Stock were reserved for issuance pursuant to outstanding Company RSU Awards, (v) 686,042 Company Restricted Stock Awards were issued and outstanding, and (vi) no shares of Company Preferred Stock were issued and outstanding. All outstanding Shares and all Shares reserved for issuance pursuant to Company Stock Options, Company Restricted Stock Awards and outstanding Company RSU Awards as noted in clauses (iii), (iv) and (v) of the foregoing sentence, when issued in accordance with the respective terms of such Company Stock Options, Company Restricted Stock Awards and Company RSU Awards, are or will be duly

authorized, validly issued, fully paid and nonassessable and free of preemptive rights.

(b) Except as set forth in this Section 3.3 and for changes since the Capitalization Date resulting from the exercise, vesting or settlement of Company Stock Options, the vesting of Company Restricted Stock Awards or the vesting or settlement of Company RSU Awards outstanding on the Capitalization Date, as of the date hereof, there are no outstanding or reserved for issuance (i) shares of capital stock or voting securities of the

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Company, (ii) bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter on which the Company s stockholders may vote, (iii) securities, options, warrants, calls, rights, commitments, profits interests, stock appreciation rights, phantom stock agreements, arrangements or undertakings of any kind (an Undertaking) to which the Company or any of its Subsidiaries is a party or by which any of them is bound obligating the Company or any of its Subsidiaries to issue or sell, or cause to be issued or sold, additional shares of capital stock or other voting or equity securities or interests of the Company or of any of its Subsidiaries (or any security convertible or exercisable therefor) or obligating the Company or any of its Subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, profits interest, agreement, arrangement or Undertaking (the items in clauses (i) through (iii) being referred to collectively as the Company Securities) or (iv) contractual obligations of the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Company Securities (other than in connection with the exercise, vesting or settlement, as applicable, of Company Equity Awards (which Company Equity Awards are set forth on Section 3.3(d) of the Company Disclosure Schedule or are granted following the date hereof in accordance with this Agreement), including with respect to the satisfaction of Tax withholding, and with respect to Company Stock Options, the payment of the exercise price). No shares of capital stock of the Company are owned by any Subsidiary of the Company.

(c) There are no voting agreements, voting trusts, stockholders agreements, proxies or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of, restricting the transfer or sale of, or providing for registration rights with respect to, the capital stock or other equity interests of the Company or any of its Subsidiaries.

(d) Section 3.3(d) of the Company Disclosure Schedule sets forth, as of the Capitalization Date, a list of all holders of Company Equity Awards and, with respect to each, the type of award, the date of grant, the exercise price, if applicable, and the number of shares of Common Stock subject to such award.

Section 3.4. Authority.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and, subject to obtaining the Stockholder Approval, to perform its obligations hereunder and to consummate the Merger and the other transactions contemplated hereby. The execution and delivery of this Agreement by the Company and the consummation by the Company of the Merger and the other transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of the Company, subject to obtaining the Stockholder Approval and filing the Certificate of Merger with the Secretary of State of the State of Delaware. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due and valid authorization, execution and delivery of this Agreement by Parent and Merger Sub, constitutes a valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as limited by (i) bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar Laws of general applicability affecting or relating to creditors rights generally and (ii) general principles of equity, whether such enforceability is considered in a proceeding in equity or at Law (clauses (i) and (ii) collectively, the Enforceability Exceptions).

(b) The Company Board, at a meeting duly called and held, has (i) determined that the Merger is fair to, and in the best interests of, the Company and its stockholders, (ii) approved and declared advisable this Agreement and the Merger and the other transactions contemplated hereby, (iii) directed that the adoption of this Agreement be submitted to a vote of the stockholders of the Company and (iv) subject to Section 5.2, resolved to recommend adoption of this Agreement by the stockholders of the Company (the Company Recommendation), which resolutions, as of the date hereof, remain in full force and effect and have not been subsequently rescinded, modified or withdrawn in any way.

(c) The Stockholder Approval is the only vote of the holders of any class or series of capital stock of the Company required to adopt this Agreement and approve the Merger and the other transactions contemplated hereby.

Section 3.5. Consents and Approvals; No Violations. Except as may be required under, and other applicable requirements of, the Exchange Act, ERISA, the Code, the HSR Act, the DGCL, the rules and regulations of NASDAQ, state securities laws, and foreign and supranational laws relating to antitrust and competition clearances and other applicable Regulatory Laws, neither the execution, delivery or performance of

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this Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby will (i) subject to obtaining the Stockholder Approval, contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws of the Company or of the similar organizational documents of any of the Company s Subsidiaries, (ii) require the Company to make any notice to, or filing with, or obtain any permit, authorization, consent or approval of, any Governmental Entity of competent jurisdiction or (iii) assuming compliance with the matters referred to in clause (ii), contravene, conflict with or result in a violation or breach of any provision of any applicable Law, require any consent by any Person under, constitute a default or an event that, with or without notice, lapse of time or both, would constitute a default under, or cause or permit the termination, cancellation, or acceleration of any right or obligation under, or the loss of a benefit under, any provision of any Material Contract, or result in the creation or imposition of any Lien, other than any Permitted Lien, on any asset of the Company or any of its Subsidiaries, with such exceptions, in the case of each of clauses (ii) and (iii), as would not constitute a Company Material Adverse Effect.

Section 3.6. Company SEC Documents.

(a) Since December 31, 2017, the Company has filed with or furnished to the SEC, on a timely basis, all forms, reports, statements, certifications, schedules and other documents required to be filed with or furnished to the SEC under the Securities Act or the Exchange Act (collectively with any amendments thereto, the Company SEC Documents). As of their respective filing dates (or if amended, as of the date of such amendment), and in the case of registration statements and proxy statements, as of the dates of effectiveness and the dates of mailing, respectively, the Company SEC Documents complied as to form in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act of 2002, as the case may be, each as in effect on the date so filed (or amended). At the time filed with the SEC (or if amended, as of the date of such amendment), and in the case of registration statements and proxy statements, as of the dates of effectiveness and the dates of mailing, respectively, none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except to the extent that the information in such Company SEC Document has been amended or superseded by a later Company SEC Document filed prior to the date hereof. None of the Company s Subsidiaries is required to file periodic reports with the SEC pursuant to the Exchange Act. The Company has made available to Parent all comment letters and all material correspondence between the SEC and the Company with respect to the Company SEC Documents since December 31, 2017. As of the date of this Agreement, there are no outstanding or unresolved comment letters received from the SEC with respect to any of the Company SEC Documents. As of the date hereof, to the Knowledge of the Company, none of the Company SEC Documents is the subject of active, ongoing SEC review.

(b) The financial statements of the Company included in the Company SEC Documents (including the related notes and schedules thereto) complied as of their respective dates in all material respects with the then-applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, except to the extent disclosed in any such Company SEC Document, have been prepared in all material respects in accordance with United States generally accepted accounting principles (GAAP) (except, in the case of the unaudited statements or any foreign Subsidiaries, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto) and, on that basis, fairly presented in all material respects the consolidated financial position, results of operations, changes in stockholder s equity and cash flows of the Company and its Subsidiaries as of the indicated dates and for the indicated periods (subject, in the case of unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto).

(c) The Company has established and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as required by Rule 13a-15(a) under the Exchange Act, and the Company has established and maintains internal control over financial reporting (as such term is defined in Rule 13a-15(f) under the Exchange

Act) as required by Rule 13a-15(a) under the Exchange Act. Such disclosure controls and procedures are designed to provide reasonable assurances that (i) material information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the Company s management as appropriate to allow timely decisions regarding disclosure and

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(ii) information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC s applicable rules and forms, the Exchange Act and the Securities Act.

(d) The Company, based on its most recent evaluation of internal control over financial reporting, has not identified (i) any significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting that are reasonably likely to adversely affect the Company s ability to record, process, summarize and report financial information and/or (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company s internal control over financial reporting.

(e) Since December 31, 2017, (i) neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any director, officer, employee, auditor, accountant or other representative of the Company or any of its Subsidiaries, has received any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of the Company or any of its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that the Company or any of its Subsidiaries has engaged in improper accounting or auditing practices, and (ii) no attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has, to the Knowledge of the Company, reported in writing evidence of a material violation of securities Laws, breach of fiduciary duty or similar violation by the Company or any of its Subsidiaries or their respective officers, directors, employees or agents to the Company Board or any committee thereof or to any director or officer of the Company.

(f) Since December 31, 2017, the Company has complied in all material respects with the applicable listing and corporate governance rules and regulations of NASDAQ.

Section 3.7. Absence of Certain Changes or Events.

(a) From December 31, 2017 through the date hereof, except in connection with the Company s sale process, including the transactions contemplated by this Agreement, the Company and its Subsidiaries have conducted their respective businesses in all material respects in the ordinary course of business consistent with past practice and have not taken any action that, if taken after the date hereof, would require Parent s consent pursuant to clauses (i), (ii), (iv), (viii), (x), (xi), (xiv), (xv) or (xvi) or, solely to the extent related to the foregoing clauses, clause (xix), in each case of Section 5.1(b).

(b) Since December 31, 2017, there has not been a Company Material Adverse Effect.

Section 3.8. Information Supplied. None of the information supplied or to be supplied by or on behalf of the Company for inclusion or incorporation by reference in the Proxy Statement will, at the time the Proxy Statement is first mailed to the Company s stockholders or at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Proxy Statement will comply in all material respects with the requirements of the Exchange Act. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to statements made or incorporated by reference in the Proxy Statement based on information supplied by or on behalf of Parent or Merger Sub in writing specifically for inclusion therein.

Section 3.9. Compliance with Laws; Permits.

(a) Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries (i) are, and since December 31, 2017 have been, in compliance with all Laws and Orders applicable to the Company and its Subsidiaries, and (ii) to the Knowledge of the Company, are not under investigation by any Governmental Entity with respect to, and have not been threatened to be charged with or given notice by any Governmental Entity of, any violation of any such Law or Order. Except as would not constitute a Company Material Adverse Effect, each of the Company and its Subsidiaries has in effect all licenses, certificates, authorizations, consents, permits, approvals and other similar authorizations of, from or by a Governmental Entity necessary for it to own, lease or operate its properties and assets and to carry on its business as currently conducted (collectively, Permits). No default has occurred under, and there exists no event that, with or without notice, lapse of time or both, would result in a default under, or would give to others any right of

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revocation, non-renewal, adverse modification or cancellation of, any such Permit, and neither the Company nor any of its Subsidiaries has received any cease and desist letters or material written inquiries from any Governmental Entity with respect to any such Permit, except, in each case, as would not constitute a Company Material Adverse Effect.

(b) Except as would not constitute a Company Material Adverse Effect, since December 31, 2017, none of the Company, any of its Subsidiaries or, to the Knowledge of the Company, any of their respective directors, officers, agents or employees acting on the Company s or its Subsidiaries behalf have (i) used any corporate, Company (and/or Subsidiary) funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or unlawfully offered or provided, directly or indirectly, anything of value to (or received anything of value from) any foreign or domestic government employee or official, in each case in violation of or (ii) otherwise violated, any provision of the United States Foreign Corrupt Practices Act of 1977, as amended, and any rules or regulations promulgated thereunder (the FCPA), or the UK Bribery Act (the Bribery Act). Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries have instituted policies and procedures reasonably designed to ensure compliance with the FCPA and the Bribery Act and since December 31, 2017 have maintained such policies and procedures in force. Except as would not constitute a Company Material Adverse Effect, since December 31, 2017, neither the Company, any of its Subsidiaries nor, to the Knowledge of the Company, any of their respective directors, officers, agents or employees acting on the Company s or its Subsidiaries behalf has violated any (x) U.S. export control laws administered by the Bureau of Industry and Security at the United States Department of Commerce (BIS) or the Directorate of Defense Trade Controls at the U.S. Department of State, or (y) U.S. anti-boycott regulations administered by the Office of Antiboycott Compliance at the BIS. To the Knowledge of the Company, except as would not constitute a Company Material Adverse Effect, (A) the Company, its Subsidiaries, or the Company s or any of its Subsidiaries directors, officers or employees are not listed on the Specially Designated Nationals and Blocked Persons List administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury (OFAC) and (B) since December 31, 2017, neither the Company nor any of its Subsidiaries has directly engaged in any business with any Person with whom, or in any country in which, it is prohibited for a United States person to engage under applicable United States sanctions administered by OFAC.

Section 3.10. Tax Matters. Except as would not constitute a Company Material Adverse Effect:

(a) Each of the Company and its Subsidiaries has timely filed or caused to be timely filed (after taking into account all applicable extensions) all Tax Returns required to be filed by any of them. All such Tax Returns are true, complete and correct in all respects.

(b) Each of the Company and its Subsidiaries has timely paid or caused to be timely paid all Taxes due by any of them (including Taxes required to be withheld from payments to third parties), except for Taxes for which adequate reserves have been established, in accordance with GAAP, in the financial statements included in the Company SEC Documents filed prior to the date hereof.

(c) There are no pending audits, examinations, investigations or other proceedings in respect of any Taxes of the Company or any of its Subsidiaries, and no written notification has been received by the Company or any of its Subsidiaries that such an audit, examination, investigation or other proceeding in respect of Taxes is proposed or threatened. No Governmental Entity has asserted in writing any deficiency, claim or proposed adjustment with respect to Taxes of the Company or any of its Subsidiaries, which deficiency, claim or proposed adjustment has not been satisfied by payment, settled, withdrawn or otherwise contested and adequately reserved for under GAAP.

(d) No claim has been made in writing within the past three (3) years by a Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that the Company or any such Subsidiary is or may be required to file Tax Returns in, or subject to income or franchise Tax by that jurisdiction.

(e) There are no Liens for Taxes upon the assets of the Company or any of its Subsidiaries other than Permitted Liens.

(f) Neither the Company nor any of its Subsidiaries (i) is a party to any Tax allocation, sharing or indemnity agreement (other than (A) any Tax indemnification provisions in ordinary course commercial agreements or agreements that are not primarily related to Taxes and (B) any agreement solely between or among

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any of the Company and its Subsidiaries) or (ii) is liable for any Taxes of any other Person (other than the Company or its Subsidiaries) pursuant to Treasury Regulation Section 1.1502-6 (or any comparable provision of state, local or foreign Law) or as a transferee or successor.

(g) Neither the Company nor any of its Subsidiaries has waived any statute of limitations applicable to, or consented to extend, the time in which any Tax may be assessed or collected by any Governmental Entity or in which any Tax Return may be filed, which waiver or extension is still in effect or which Tax Return has not since been filed.

(h) Neither the Company nor any of its Subsidiaries has participated in a listed transaction within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

(i) Neither the Company nor any of its Subsidiaries has constituted either a distributing corporation or a controlled corporation in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code in the two-year period ending on the date of this Agreement (or will constitute such a corporation in the two-year period ending on the Effective Time).

(j) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(k) No Subsidiary of the Company which is a foreign corporation shall have recognized a material amount of subpart F income as defined in Section 952 of the Code or global intangible low-taxed income as defined in Section 951A of the Code during a taxable year of such Subsidiary which includes but does not end on the Closing Date.

(l) Neither the Company nor any of its Subsidiaries was required to include any amounts in income as a result of the application of Section 965 of the Code.

Section 3.11. Liabilities. Neither the Company nor any of its Subsidiaries has any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise) that would be required by GAAP to be reflected in the consolidated balance sheet of the Company, other than liabilities and obligations (a) reserved against or reflected in the Company s consolidated balance sheet for the fiscal year ended December 31, 2017 included in the Company SEC Documents (including in the notes thereto), (b) incurred in the ordinary course of business consistent with past practice since December 31, 2017, (c) incurred in connection with the Company s sale process, including the transactions contemplated by this Agreement, the entry into this Agreement and the performance of the transactions contemplated by this Agreement or (d) that would not constitute a Company Material Adverse Effect.

Section 3.12. Litigation. There is no Action pending or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries or any of their properties, rights or assets that constitutes a Company Material Adverse Effect. There is no Order imposed upon or, to the Knowledge of the Company, threatened in writing against the Company or any of its Subsidiaries or any of their properties, rights or assets that constitutes a Company Material Adverse Effect.

Section 3.13. Employees and Employee Benefit Plans.

(a) Section 3.13(a) of the Company Disclosure Schedule contains a list of each material Company Benefit Plan. The Company has made available to Parent copies of (i) each material Company Benefit Plan (or, with respect to any unwritten material Company Benefit Plan, a written description of the material terms thereof) and (ii) to the extent applicable, (A) the most recent annual report on Form 5500 filed and all schedules thereto filed with respect to such Company Benefit Plan, (B) each current trust agreement, insurance contract or policy, group annuity contract and any other funding arrangement relating to such Company Benefit Plan, (C) the most recent Internal Revenue Service

opinion or favorable determination letter, and (D) the most recent summary plan description, if any, required under ERISA with respect to such Company Benefit Plan.

(b) Except as would not constitute a Company Material Adverse Effect, (i) each Company Benefit Plan has been maintained in compliance with its terms and with the requirements of applicable Law, (ii) all employer contributions, premiums and expenses to or in respect of each Company Benefit Plan have been paid in full or, to the extent not yet due, have been adequately accrued on the applicable financial statements of the Company

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included in the Company SEC Documents in accordance with GAAP, and (iii) each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code has either received a favorable determination letter from the Internal Revenue Service or may rely on a favorable opinion letter issued by the Internal Revenue Service.

(c) Except as would not constitute a Company Material Adverse Effect, no Company Benefit Plan is subject to Title IV of ERISA or Section 412 of the Code, and, during the immediately preceding six (6) years, none of the Company, its Subsidiaries or any of their respective ERISA Affiliates has contributed to, or been required to contribute to, a plan subject to Title IV of ERISA or Section 412 of the Code.

(d) Except as would not constitute a Company Material Adverse Effect, no Company Benefit Plan provides health insurance, life insurance or death benefits to current or former employees of the Company or any of its Subsidiaries beyond their retirement or other termination of service, other than as required by Section 4980B of the Code or other applicable Law.

(e) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will (alone or in combination with any other event) (i) entitle any officer, director or employee of the Company or any of its Subsidiaries to severance or termination pay pursuant to a Company Benefit Plan, (ii) accelerate the time of payment or vesting, result in any forgiveness of indebtedness or trigger any payment or funding (through a grantor trust or otherwise) of compensation or benefits under, or increase the amount payable pursuant to, any Company Benefit Plan or (iii) result in any excess parachute payment (within the meaning of Section 280G of the Code) becoming due to any officer, director or employee of the Company or any of its Subsidiaries.

(f) Neither the Company nor any of its Subsidiaries (i) has agreed to recognize any labor union, works council or labor organization, nor has any labor union, works council or labor organization been certified as the exclusive bargaining representative of any employees of the Company or any of its Subsidiaries, (ii) is a party to or otherwise bound by, or currently negotiating, any collective bargaining agreement or other Contract with a labor union, works council or labor organization or (iii) as of the date hereof is the subject of any material proceeding seeking to compel it to bargain with any labor union, works council or labor organization, nor, to the Knowledge of the Company, is any such proceeding threatened. Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries are in compliance with all applicable Laws respecting labor, employment, fair employment practices, terms and conditions of employment, workers compensation, occupational safety and health requirements, plant closings, wages and hours, withholding of Taxes, worker classification, employment discrimination, disability rights or benefits, equal opportunity, labor relations, employee leave issues and unemployment insurance and related matters. The consent or consultation of, or the rendering of formal advice by, any labor union, works council or other labor organization is not required by applicable Law or any agreement with such employee representative body for the Company to enter into this Agreement or to consummate any of the transactions contemplated hereby. Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries have complied with each of their respective obligations under applicable Law or any agreement with a labor union, works council or other labor organization to inform, consult with and/or obtain consent from any such entity during past two years.

Section 3.14. Intellectual Property.

(a) Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries exclusively own all Company Intellectual Property. As of the date hereof, no Actions are pending or, to the Knowledge of the Company, since December 31, 2017, threatened, (i) challenging the ownership, enforceability or validity of any Company Intellectual Property or (ii) alleging that the Company or any of its Subsidiaries is violating, misappropriating or infringing the rights of any Person with regard to any Intellectual Property, other than, in each case, as would not constitute a Company Material Adverse Effect.

(b) Except as would not constitute a Company Material Adverse Effect, to the Knowledge of the Company, (i) no Person is violating, misappropriating or infringing any of the Company Intellectual Property, and (ii) the operation of the business of the Company and its Subsidiaries as currently conducted does not violate, misappropriate or infringe the Intellectual Property of any other Person.

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(c) Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries take, and since December 31, 2017 have taken, commercially reasonable actions to (i) maintain and preserve the Company Intellectual Property and (ii) protect and preserve, through the use of customary non-disclosure agreements the confidentiality of the source code trade secrets that comprise any part of the Company Intellectual Property.

(d) Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries are in compliance with their respective privacy policies and terms of use and with all applicable data protection, privacy and other Laws governing the collection, use, storage, distribution, transfer or disclosure of any personal information or data.

(e) Except as would not constitute a Company Material Adverse Effect, (i) no third Person has possession of, or any current or contingent right to access or possess, any material proprietary source code of the Company or any of its Subsidiaries, except pursuant to written agreements requiring such Person to maintain the confidentiality of such source code entered into in the ordinary course of business, and (ii) the material proprietary software containing proprietary source code of the Company and its Subsidiaries that is distributed or made available to third parties does not incorporate or interact with any open source software in a manner that would require the Company or its Subsidiaries to make such source code available to other third parties.

(f) Except as would not constitute a Company Material Adverse Effect, to the Knowledge of the Company, since December 31, 2017, there has been no data security breach or other material third-Person unauthorized access of the computers and information technology systems of the Company and its Subsidiaries.

Notwithstanding any other provisions of this Agreement to the contrary, the representations and warranties made in this Section 3.14 are the sole and exclusive representations and warranties of the Company with respect to intellectual property matters.

Section 3.15. Material Contracts.

(a) Except as would not constitute a Company Material Adverse Effect, (i) neither the Company nor any of its Subsidiaries is in breach of or default under, nor to the Knowledge of the Company has it received written notice alleging it to be in breach of or default under, the terms of any Material Contract, (ii) to the Knowledge of the Company, no other party to any Material Contract is in breach of or default under the terms of any such Material Contract, (iii) each Material Contract is a valid, binding and enforceable obligation of the Company or its Subsidiary that is a party thereto and is in full force and effect, except as limited by the Enforceability Exceptions and (iv) no event has occurred which would result in a breach of or default under any Material Contract (in each case, with or without notice, lapse of time or both) by the Company or any of its Subsidiaries or, to the Knowledge of the Company, any other party thereto.

(b) A true and complete list of the Material Contracts as of the date hereof is set forth in Section 3.15(b) of the Company Disclosure Schedule. The Company has made available to Parent a true and complete copy of each Material Contract, each as amended to the date hereof. For purposes of this Agreement, the term Material Contract means any of the following Contracts (together with all exhibits and schedules thereto), excluding any Company Benefit Plan, to which the Company or any of its Subsidiaries is a party as of the date hereof:

(i) any limited liability company, partnership, joint venture or other similar agreement or arrangement relating to the formation, creation, operation, management or control of any partnership or joint venture that is material to the business of the Company and its Subsidiaries, taken as a whole, other than any such limited liability company, partnership or joint venture that is a Subsidiary of the Company;

(ii) any Contract (other than between or among the Company and any of its Subsidiaries or between or among any of the Subsidiaries of the Company) (x) relating to (A) indebtedness for borrowed money in excess of $10 million, (B) other indebtedness of the Company or its Subsidiaries in excess of $10 million evidenced by credit agreements, notes, bonds, indentures, securities or debentures, (C) any financial guaranty by the Company or its Subsidiaries of indebtedness of any other Person described in clauses (A) or (B), and (D) swaps, options, derivatives and other hedging arrangements entered into by the Company or its Subsidiaries in connection with indebtedness described in clauses (A), (B) or (C) or (y)

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containing any limitation on the ability of the Company or any of its Subsidiaries to incur indebtedness for borrowed money, give guarantees of indebtedness for borrowed money of the Company or any of its Subsidiaries, or incur Liens other than Permitted Liens;

(iii) any Contract that (A) limits the right of the Company or its Subsidiaries to engage or compete in any line of business or to compete or operate in any location, (B) provides for exclusivity in favor of any third party or (C) grants any rights of first refusal, rights of first negotiation, or most favored nation rights to any third party, in each case in any respect material to the business of the Company and its Subsidiaries, taken as a whole;

(iv) any Contract (A) that relates to the acquisition or disposition of any business, assets or properties of or by the Company or its Subsidiaries, whether by way of merger, consolidation, purchase of stock or assets or otherwise, and that contains material continuing representations, covenants, indemnities or other obligations of the Company, or (B) pursuant to which the Company or any of its Subsidiaries has continuing indemnification, earn-out or other contingent payment obligations, in each case that would reasonably be expected to result in payments in excess of $25 million;

(v) any Contract with (A) each of the ten (10) largest customers of the Company and (B) each of the ten (10) largest commercial vendors of the Company, in each case by dollar amount for the fiscal year ending December 31, 2018;

(vi) any Contract for capital expenditures which requires aggregate future payments in excess of $15 million;

(vii) any Contract under which a Governmental Entity procures or supplies services from the Company;

(viii) each Real Property Lease and any Contract pursuant to which the Company or any of its Subsidiaries is a lessor or lessee of any machinery, equipment, office furniture or other personal property, in each case requiring by its terms aggregate payments by the Company or any of its Subsidiaries in excess of $5 million for the 12-month period ending December 31, 2018;

(ix) any Contract involving any resolution or settlement since January 1, 2017 of any actual or threatened Action involving the Company or any of its Subsidiaries involving (A) a payment in excess of $20 million or (B) any material ongoing requirements or restrictions on the Company or any of its Subsidiaries; and

(x) any Contract that expressly prohibits the payment of dividends or distributions in respect of the capital stock of the Company or any of its Subsidiaries, or prohibits the pledging of the capital stock of the Company or any of its Subsidiaries.

(xi) any Contract under which the Company or any of its Subsidiaries uses or has the right to use any Intellectual Property licensed from third parties or under which the Company or any of its Subsidiaries grants any third party the right to license or use Company Intellectual Property, in each case that provides for payments by or to the Company and its Subsidiaries of $25 million or more per annum (other than non-exclusive, off-the-shelf software licenses and customer agreements); and

(xii) any Contract required to be filed by the Company with the SEC as a material contract pursuant to Item 601(b)(10) of Regulation S-K.

Section 3.16. Real and Personal Property.

(a) The Company owns no real property.

(b) Section 3.16(b) of the Company Disclosure Schedule sets forth a true and complete list as of the date hereof of all leases and subleases pursuant to which the Company or any of its Subsidiaries is a party as of the date hereof with respect to real property leased or subleased by the Company or any of its Subsidiaries (Real Property Leases) requiring aggregate annual payments of more than $5 million. Except as would not constitute a Company Material Adverse Effect, the Company or one of its Subsidiaries has valid and enforceable leasehold estates in or other rights to use all real property leased, subleased, licensed or otherwise occupied (whether as tenant, subtenant or pursuant to other occupancy arrangements) by the Company or any of its Subsidiaries, free and clear of all Liens, except for Permitted Liens.

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(c) Except as would not constitute a Company Material Adverse Effect, the Company and its Subsidiaries have good and valid title to, or valid and enforceable rights to use under existing franchises, easements or licenses of, or valid and enforceable leasehold interests in, all of their material tangible personal properties and assets necessary to carry on their businesses as currently conducted, free and clear of all Liens, except for Permitted Liens.

Section 3.17. Environmental Laws. Except as would not constitute a Company Material Adverse Effect, to the Knowledge of the Company, the Company and its Subsidiaries are not in violation of any Environmental Law, and as of the date hereof neither the Company nor any of its Subsidiaries has received any written notification alleging that it has any material liability or material obligation under any Environmental Law or in connection with any release or threatened release of Materials of Environmental Concern, except to the extent such matter has been fully resolved with the appropriate Governmental Entity.

Section 3.18. Insurance Policies. Except as would not constitute a Company Material Adverse Effect, (a) all insurance policies maintained by the Company and its Subsidiaries are in full force and effect and all premiums due and payable thereon have been paid, and (b) neither the Company nor any of its Subsidiaries is in breach of or default under any such insurance policies, and to the Knowledge of the Company, neither the Company nor any of its Subsidiaries has taken any action or failed to take any action which, with or without notice, lapse of time or both, would constitute such a breach or default or permit termination or adverse modification of any such insurance policies. Except as would not constitute a Company Material Adverse Effect, as of the date hereof, the Company has not received any notice of termination, cancellation or non-renewal or material premium increase with respect to any such insurance policy nor, to the Knowledge of the Company, are any of the foregoing threatened, and there is no claim pending under any such insurance policies as to which coverage has been denied or disputed by the underwriters of such policies.

Section 3.19. Opinion of Financial Advisor. The Company Board has received the opinion of Goldman Sachs & Co. LLC, dated as of the date of this Agreement, to the effect that, as of the date of this Agreement, and subject to the qualifications and assumptions set forth in such opinion, the Merger Consideration to be paid to holders (other than Parent and its affiliates) of Shares is fair, from a financial point of view, to such holders. A signed and complete copy of such opinion will promptly be made available to Parent for informational purposes only following receipt thereof by the Company.

Section 3.20. Brokers. No broker, finder, investment banker, financial advisor or other similar Person, other than Goldman Sachs & Co. LLC, the fees and expenses of which will be paid by the Company, is entitled to any broker s, finder s, financial advisor s or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. The Company has furnished to Parent a true and complete copy of the engagement letter between the Company and Goldman Sachs & Co. LLC relating to the transactions contemplated by this Agreement, which agreement discloses all fees payable and other material obligations thereunder.

Section 3.21. Takeover Statutes Not Applicable; Rights Plan.

(a) Assuming the accuracy of the representation and warranty contained in Section 4.9, no moratorium, business combination, control share acquisition or similar provision of any state anti-takeover Law, including Section 203 of the DGCL, or any similar anti-takeover provision in the certificate of incorporation or bylaws of the Company, is applicable to the transactions contemplated by this Agreement, including the Merger.

(b) The Company has taken all actions necessary to (i) render the Rights Plan inapplicable to this Agreement and the transactions contemplated by this Agreement; (ii) ensure that in connection with the transactions contemplated by this Agreement, (A) neither Parent, Merger Sub or any of their Affiliates or Associates (each as defined in the Rights

Plan) is or will be (1) a Beneficial Owner of or deemed to Beneficially Own and have Beneficial Ownership (each as defined in the Rights Plan) of any securities of the Company or (2) an Acquiring Person (as defined in the Rights Plan) and (B) none of a Stock Acquisition Date, a Distribution Date (as such terms are defined in the Rights Plan) or an event described in Section 11(a) in the Rights Plan occurs or will occur, in each case of clauses (A) and (B), by reason of the execution of this Agreement, or the consummation of the Merger or the other transactions contemplated by this Agreement; and (iii) provide that the Expiration Date (as defined in the Rights Plan) shall occur immediately prior to the

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Effective Time. Prior to the execution of this Agreement, the Company has provided Parent with a copy of the Company Board s resolutions and a copy of the amendment to the Rights Plan (which shall be in a form acceptable to Parent), in each case effecting the foregoing.

Section 3.22. Related Party Transactions. Neither the Company nor any of its Subsidiaries is a party to any agreement, commitment or transaction with or for the benefit of any Person that is required to be disclosed under Item 404 of Regulation S-K under the Securities Act and that is not so disclosed.

Section 3.23. Exclusivity of Representations. Except for the representations and warranties expressly set forth in this Article III, neither the Company nor any other Person makes any other express or implied representation or warranty on behalf of the Company or any of its Affiliates, and for the avoidance of doubt, neither the Company nor any of its Affiliates makes any express or implied representation or warranty with respect to the Confidential Information (as defined in the Confidentiality Agreement).

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as set forth in the disclosure letter delivered by Parent to the Company prior to entering into this Agreement (the Parent Disclosure Schedule) (it being acknowledged and agreed that (i) disclosure of any item in any section or subsection of the Parent Disclosure Schedule, whether or not an explicit cross reference appears, shall be deemed disclosure with respect to any other section or subsection to which the relevance of such item is reasonably apparent on the face of such disclosure, and (ii) the mere inclusion of an item in the Parent Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission that such item represents a material exception or material fact, event or circumstance or that such item is material or constitutes a Parent Material Adverse Effect or that the inclusion of such item in the Parent Disclosure Schedule is required), Parent and Merger Sub jointly and severally hereby represent and warrant to the Company as follows:

Section 4.1. Organization. Parent is a corporation and Merger Sub is a corporation, in each case, duly organized, validly existing and in good standing (with respect to jurisdictions that recognize that concept) under the Laws of its respective jurisdiction of organization and each has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as currently conducted, except where the failure to be in good standing or to have such corporate or similar power and authority would not constitute a Parent Material Adverse Effect. Each of Parent and Merger Sub is duly qualified or licensed to do business and is in good standing (with respect to jurisdictions that recognize that concept) as a foreign corporation (or other applicable entity) in each jurisdiction where the ownership, leasing or operation of its properties or assets or conduct of its business requires such qualification or licensing, except in such jurisdictions where the failure to be so qualified or licensed or to be in good standing would not constitute a Parent Material Adverse Effect. For purposes of this Agreement, a Parent Material Adverse Effect means any fact, circumstance, change, event, occurrence or effect that, individually or in the aggregate, materially impairs, materially delays or prevents, or would reasonably be expected to materially impair, materially delay or prevent, Parent or Merger Sub from consummating the Merger prior to the Termination Date. Parent has made available to the Company true, complete and correct copies of the organizational or governing documents of Parent and Merger Sub, in each case as amended and in effect as of the date of this Agreement. Except as would not constitute a Parent Material Adverse Effect, neither Parent nor Merger Sub is in violation of any provision of its certificate of incorporation or bylaws (or similar organization documents).

Section 4.2. Merger Sub.

(a) The authorized capital stock of Merger Sub consists solely of 1,000 shares of common stock, par value $0.01 per share, of which 100 shares are validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is, and at the Effective Time will be, owned indirectly by Parent (through wholly owned subsidiaries of Parent) free and clear of all Liens.

(b) Merger Sub has been formed solely for the purpose of the Merger and, prior to the Effective Time, will have engaged in no other business activities and will have owned no assets and incurred no liabilities or obligations other than in connection with the transactions contemplated hereby and activities incidental to its formation.

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Section 4.3. Authority. Each of Parent and Merger Sub has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Merger and the other transactions contemplated hereby. The execution and delivery of this Agreement by Parent and Merger Sub and the consummation by each of Parent and Merger Sub of the Merger and the other transactions contemplated hereby have been duly authorized by all necessary actions on the part of each of Parent and Merger Sub. Concurrently with the execution of this Agreement, the sole stockholder of Merger Sub has adopted this Agreement and approved the Merger and the other transactions contemplated hereby, and no other actions on the part of Parent or Merger Sub or any other Subsidiary of Parent are necessary to authorize the consummation of the Merger and the other transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by each of Parent and Merger Sub and (assuming the due and valid authorization, execution and delivery of this Agreement by the Company) constitutes a valid and binding obligation of each of Parent and Merger Sub, enforceable against each of them in accordance with its terms, except as limited by the Enforceability Exceptions.

Section 4.4. Consents and Approvals; No Violations. Except as may be required under, and other applicable requirements of, the Exchange Act, the HSR Act, the DGCL, the rules and regulations of NASDAQ, state securities laws, and foreign and supranational laws relating to antitrust and competition clearances and other applicable Regulatory Laws, neither the execution, delivery or performance of this Agreement by Parent and Merger Sub nor the consummation by Parent and Merger Sub of the transactions contemplated hereby will (i) contravene, conflict with, or result in any violation or breach of any provision of the certificate of incorporation or bylaws, or similar organizational documents, of Parent or Merger Sub or any other Subsidiary of Parent, (ii) require Parent or Merger Sub or any other Subsidiary of Parent to make any notice to, or filing with, or obtain any permit, authorization, consent or approval of, any Governmental Entity of competent jurisdiction, or (iii) assuming compliance with the matters referred to in clause (ii), contravene, conflict with or result in a violation or breach of any provision of any applicable Law, require any consent by any Person under, constitute a default, or an event that, with or without notice, lapse of time or both, would constitute a default under, or cause or permit the termination, cancellation or acceleration of any right or obligation under, or the loss of a benefit under, any provision of any Contract to which Parent or Merger Sub or any other Subsidiary of Parent is a party, or result in the creation or imposition of any Lien on any asset of Parent or Merger Sub or any other Subsidiary of Parent, with such exceptions, in the case of each of clauses (ii) and (iii), as would not constitute a Parent Material Adverse Effect.

Section 4.5. Information Supplied. None of the written information supplied or to be supplied by or on behalf of Parent or Merger Sub specifically for inclusion or incorporation by reference in the Proxy Statement will, at the time the Proxy Statement is first mailed to the Company s stockholders or at the time of the Stockholders Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. Notwithstanding the foregoing, neither Parent nor Merger Sub makes any representation or warranty with respect to statements made or incorporated by reference in the Proxy Statement based on information supplied by or on behalf of the Company or its Subsidiaries.

Section 4.6. Litigation. There is no Action pending or, to the Knowledge of Parent, threatened in writing against Parent or any of its Subsidiaries (including Merger Sub) or any of their properties, rights or assets that constitutes a Parent Material Adverse Effect. There is no Order imposed upon or, to the Knowledge of Parent, threatened in writing against Parent or any of its Subsidiaries (including Merger Sub) or any of their properties, rights or assets that constitutes a Parent Material Adverse Effect.

Section 4.7. Financing.

(a) Parent is party to and has accepted a fully executed commitment letter, dated February 3, 2019 (together with all exhibits and schedules thereto, the Debt Commitment Letter), from the lenders party thereto (collectively, the

Lenders) pursuant to which the Lenders have agreed, subject to the terms and conditions thereof, to provide debt financing in the amounts set forth therein. The debt financing committed pursuant to the Debt Commitment Letter is collectively referred to in this Agreement as the Debt Financing.

(b) Parent is a party to and has accepted fully executed commitment letters, dated February 3, 2019 (each, together with all exhibits and schedules thereto, an Equity Commitment Letter and collectively, the Equity Commitment Letters and, together with the Debt Commitment Letter, the Commitment Letters),

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from the Equity Investors pursuant to which the Equity Investors have agreed, subject to the terms and conditions thereof, to invest in Parent the amounts set forth therein. The cash equity committed pursuant to the Equity Commitment Letters is collectively referred to in this Agreement as the Cash Equity. The Cash Equity and the Debt Financing are collectively referred to in this Agreement as the Financing.

(c) Parent and Merger Sub have delivered to the Company true, complete and correct copies of the executed Commitment Letters and any fee letters related thereto, subject, in the case of such fee letters, to redaction solely of fee and other economic provisions that are customarily redacted in connection with transactions of this type and that could not in any event adversely affect the availability, conditionality, enforceability or amount of the Financing.

(d) Except as expressly set forth in the Commitment Letters, there are no conditions precedent to the obligations of the Lenders and the Equity Investors to provide the Financing or any contingencies that would permit the Lenders or the Equity Investors to reduce the total amount of the Financing, including any condition or other contingency relating to the amount or availability of the Debt Financing pursuant to any flex provision. As of the date of this Agreement, neither Parent nor Merger Sub has any reason to believe that it will be unable to satisfy on a timely basis all of the terms and conditions to be satisfied by it in any of the Commitment Letters on or prior to the Closing Date, nor does Parent or Merger Sub have knowledge that any of the Lenders or the Equity Investors will not perform its obligations thereunder. As of the date of this Agreement, there are no side letters, understandings or other agreements, contracts or arrangements of any kind relating to the Commitment Letters that could adversely affect the availability, conditionality, enforceability or amount of the Financing contemplated by the Commitment Letters (other than original issue discount provisions as part of the flex terms in the fee letter relating to the Debt Commitment Letter).

(e) The Financing, when funded in accordance with the Commitment Letters, will, together with available cash at the Company and its Subsidiaries and other available cash or other funds of Parent and its Subsidiaries, in the aggregate, provide Parent with cash proceeds on the Closing Date sufficient for the satisfaction of all of Parent s and Merger Sub s obligations under this Agreement and under the Commitment Letters, including the payment of the Merger Consideration, any payments pursuant to Section 2.8, payment of any fees and expenses of or payable by Parent, Merger Sub or the Surviving Corporation, and any repayment or refinancing of any outstanding indebtedness of Parent, the Company and their respective Subsidiaries contemplated by, or required in connection with the transactions described in, this Agreement or the Commitment Letters (such amounts, collectively, the Merger Amounts).

(f) As of the date of this Agreement, the Commitment Letters constitute the legal, valid, binding and enforceable obligations of Parent and, to the Knowledge of Parent, of all the other parties thereto, except as limited by the Enforceability Exceptions, and are in full force and effect. As of the date of this Agreement, (i) no event has occurred which (with or without notice, lapse of time or both) would constitute a breach or failure to satisfy a condition by Parent or Merger Sub under the terms and conditions of the Commitment Letters, and (ii) assuming satisfaction or waiver (to the extent permitted by Law) of the conditions set forth in Sections 6.1 and 6.2, neither Parent nor Merger Sub has any reason to believe that any of the conditions to the Financing will not be satisfied by Parent or Merger Sub, as applicable, on a timely basis or that the Financing will not be available to Parent on the Closing Date. Parent has paid in full any and all commitment fees or other fees required to be paid pursuant to the terms of the Commitment Letters on or before the date of this Agreement, and will pay in full any such amounts due on or before the Closing Date. As of the date hereof, (x) none of the Commitment Letters has been modified, amended or altered and (y) none of the respective commitments under any of the Commitment Letters has been withdrawn or rescinded in any respect, and, to the Knowledge of Parent, no withdrawal or rescission thereof is contemplated. To the Knowledge of Parent, no modification of, or amendment to, the Commitment Letters is currently contemplated except for the addition as parties to the Debt Commitment Letter of Lenders, lead arrangers, bookrunners, agents or similar entities who have not executed the Debt Commitment Letter as of the date hereof.

(g) In no event shall the receipt or availability of any funds or financing (including, for the avoidance of doubt, the Financing) by Parent, Merger Sub or any of their respective Affiliates or any other financing or other transactions be a condition to any of Parent s or Merger Sub s obligations under this Agreement.

Section 4.8. Limited Guarantees. Concurrently with the execution of this Agreement, each Guarantor has delivered to the Company a true, complete and correct copy of its duly executed Limited Guarantee. Each

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Limited Guarantee is (assuming the due and valid authorization, execution and delivery of such Limited Guarantee by the Company) in full force and effect, has not been amended, modified, withdrawn or rescinded in any respect, and is the legal, valid, binding and enforceable obligation of the applicable Guarantor, subject to the Enforceability Exceptions. As of the date hereof, no event has occurred or circumstance exists which, with or without notice, lapse of time or both, would constitute a default or breach on the part of any Guarantor under any Limited Guarantee.

Section 4.9. Share Ownership. As of the date hereof and at all times prior to the time that is immediately prior to the Effective Time, neither Parent nor any of its Subsidiaries (including Merger Sub) is or will be the beneficial owner of any Shares.

Section 4.10. Brokers. No broker, finder, investment banker, financial advisor or other similar Person, other than those, the fees and expenses of which will be paid by Parent or its Affiliates, is entitled to any broker s, finder s, financial advisor s or other similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent or Merger Sub or any of their respective Affiliates.

Section 4.11. Solvency. Neither Parent nor Merger Sub is entering into the transactions contemplated by this Agreement with the actual intent to hinder, delay or defraud either present or future creditors of the Company or any of its Subsidiaries. As of the Effective Time, assuming (i) the satisfaction or waiver of the conditions set forth in Sections 6.1 and 6.2, (ii) (a) the representations and warranties of the Company contained in this Agreement (other than those qualified by materiality or Company Material Adverse Effect) are true and correct in all material respects and (b) the representations and warranties of the Company contained in this Agreement that are qualified by materiality or Company Material Adverse Effect are true and correct in all respects, and (iii) any estimates, projections or forecasts of the Company or its Subsidiaries that have been provided by the Company to Parent have been prepared in good faith based upon assumptions that were, at the time made, and continue to be, at the Effective Time, reasonable, after giving effect to all of the transactions contemplated by this Agreement, including the Financing, any alternative financing and the payment of the aggregate Merger Consideration and the other Merger Amounts, the Surviving Corporation and its Subsidiaries, taken as a whole, will be Solvent. For purposes of this Section 4.11, the term Solvent means, with respect to any Person as of a particular date, that on such date, (a) the sum of the assets, at a fair valuation, of such Person exceeds its debts, (b) such Person has not incurred debts beyond its ability to pay such debts as such debts mature and (c) such Person does not have unreasonably small capital with which to conduct its business. For purposes of this Section 4.11, debt means any liability whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. For purposes of this Section 4.11, the amount of any unliquidated or contingent liabilities at any time shall be the maximum amount which, in light of all the facts and circumstances existing at such time, could reasonably be expected to become an actual or matured liability.

Section 4.12. Exclusivity of Representations. Except for the representations and warranties expressly set forth in this Article IV, neither Parent nor Merger Sub nor any other Person makes any other express or implied representation or warranty on behalf of Parent or Merger Sub or any of their respective Affiliates.

Section 4.13. No Other Company Representations or Warranties.

(a) Each of Parent and Merger Sub acknowledges that (i) it and its Representatives have received access to such books and records, facilities, equipment, contracts and other assets of the Company which it and its Representatives have desired, requested or required to review, (ii) it and its Representatives have had reasonable opportunity to meet with the management of the Company and to discuss the business and assets of the Company, (iii) it and its Representatives have been afforded the opportunity to ask questions of and receive answers from personnel of the Company and (iv) it has conducted its own independent investigation of the Company and its Subsidiaries, their

respective businesses and the transactions contemplated hereby.

(b) Each of Parent and Merger Sub acknowledges that neither the Company nor any Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Company furnished or made available to Parent, its Affiliates (including Merger Sub) and their respective Representatives (and has not relied on any representation, warranty or other statement made by the Company or any Person on behalf of the Company or any of its Subsidiaries), except for the representations and warranties expressly set forth in Article III (which includes exceptions set forth therein and in the Company

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Disclosure Schedule), and that all other representations and warranties, express or implied, are specifically disclaimed. Except for the representations and warranties expressly set forth in Article III (after taking into account exceptions set forth therein and in the Company Disclosure Schedule), neither the Company nor any other Person shall be subject to any liability to Parent, Merger Sub or any other Person resulting from the Company s making available to Parent, its Affiliates (including Merger Sub) or any of their respective Representatives, or any such Person s use of or reliance on, such information, including any Confidential Information (as defined in the Confidentiality Agreement) or presentation materials delivered to Parent, its Affiliates (including Merger Sub) or any of their respective Representatives, as subsequently updated, supplemented or amended, or any information, documents or material made available to Parent, its Affiliates (including Merger Sub) or any of their respective Representatives in the due diligence materials provided to Parent, its Affiliates (including Merger Sub) or any of their respective Representatives, including in any data room, management presentation (formal or informal) or in any other form in connection with the transactions contemplated by this Agreement (collectively, the Company Information). Without limiting the foregoing, except for the representations and warranties expressly set forth in Article III, the Company makes no representation or warranty, express or implied, to Parent or Merger Sub or any other Person with respect to (i) the information set forth in the Company Information, (ii) any financial projection or forecast relating to the Company or any of its Subsidiaries, whether or not included in the Company Information or (iii) any other information concerning the Company, any of its Subsidiaries or the transactions contemplated hereby.

ARTICLE V

COVENANTS

Section 5.1. Conduct of Business by the Company Pending the Merger.

(a) From and after the date hereof and prior to the Effective Time or the earlier termination of this Agreement, except (i) with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), (ii) as required by applicable Law, (iii) as expressly contemplated by this Agreement or (iv) as otherwise set forth in Section 5.1 of the Company Disclosure Schedule, the Company shall, and shall cause its Subsidiaries to, carry on its business in all material respects in the ordinary course of business and use commercially reasonable efforts to preserve its business organization intact and maintain existing relations with key customers, suppliers and other third parties with whom the Company and its Subsidiaries have significant business relationships; provided, however, that no action by the Company or its Subsidiaries with respect to matters permitted by any provision of Section 5.1(b) shall be deemed a breach of this Section 5.1(a) unless such action would constitute a breach of such other provision of Section 5.1(b).

(b) From and after the date hereof and prior to the Effective Time or the earlier termination of this Agreement, except (i) with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), (ii) as required by applicable Law, (iii) as expressly contemplated by this Agreement or (iv) as otherwise set forth in Section 5.1 of the Company Disclosure Schedule, the Company shall not, and shall not permit any of its Subsidiaries to:

(i) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock or equity interests, except for dividends or distributions by a Subsidiary of the Company to the Company or to another wholly owned Subsidiary of the Company;

(ii) other than in the case of wholly owned Subsidiaries, split, combine, subdivide, adjust, amend the terms of or reclassify any of its capital stock or equity interests;

(iii) issue, deliver, sell, pledge, grant, transfer or otherwise encumber any shares of its capital stock or other equity securities or any option, warrant or other right to acquire or receive any shares of its capital stock or other equity securities, or redeem, purchase or otherwise acquire any shares of its capital stock or other equity securities, other than (A) in connection with the exercise, vesting or settlement, as applicable, of Company Equity Awards outstanding as of the date of this Agreement or granted in accordance with this Agreement, including with respect to the satisfaction of Tax withholding and, with respect to Company Stock Options outstanding as of the date of this Agreement or granted in accordance

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with this Agreement, the payment of the exercise price, (B) the issuance of any shares of capital stock or equity interests to the Company or any wholly owned Subsidiary of the Company and (C) the grant of any Liens to secure obligations of the Company or any of its Subsidiaries in respect of any indebtedness permitted under clause (viii) below;

(iv) amend the certificate of incorporation or bylaws of the Company or amend other similar organizational documents of any of its Subsidiaries, except, in the case of Subsidiaries, for amendments that would not be materially adverse to the Company or adversely impact the transactions contemplated hereby;

(v) other than (A) acquisitions of inventory, raw materials and other property in the ordinary course of business consistent with past practice, (B) pursuant to transactions that would be permissible under clause (vii) below or as otherwise set forth in Section 5.1(b)(v) of the Company Disclosure Schedule, or (C) in transactions among wholly owned Subsidiaries of the Company, acquire (by merger, consolidation, purchase of stock or assets or otherwise) any entity, business or assets that constitute a business or division of any Person or make any investments in or loans or capital contributions to any other Person (other than the Company or any of its wholly owned Subsidiaries), in each case for an amount in excess of $21 million individually or $52.5 million in the aggregate;

(vi) other than contemplated by the capital budget of the Company made available to Parent prior to the date hereof, make any capital expenditures that exceed $15 million in the aggregate;

(vii) other than in the ordinary course of business consistent with past practice or in transactions among wholly owned Subsidiaries of the Company, sell, lease, license, allow the expiration or lapse of (with respect to Intellectual Property registration or applications material to the business of the Company or its Subsidiaries as currently conducted), encumber (other than Liens securing Indebtedness permitted under clause (viii) below or Permitted Liens) or otherwise dispose of (by merger, consolidation, sale of stock or assets or otherwise) any entity, business or assets for a purchase price or, if no purchase price is received, with a value, in excess of $21 million individually or $52.5 million in the aggregate;

(viii) create, incur, assume or otherwise be liable with respect to, or modify the terms of, any indebtedness for borrowed money in an amount in excess of $21 million individually or $52.5 million in the aggregate, excluding (A) indebtedness solely among the Company and its wholly owned Subsidiaries or among its wholly owned Subsidiaries, (B) pursuant to the terms of the Contracts set forth on Section 5.1(b)(viii) of the Company Disclosure Schedule, or (C) to finance acquisitions or investments permitted under clause (v) above; provided, however, that any indebtedness incurred or modified in accordance with this Section 5.1(b)(viii) shall not reasonably be expected to adversely affect the ability of Parent or Merger Sub to consummate the Financing;

(ix) other than in the ordinary course of business consistent with past practice, renew or extend, materially amend or terminate, or waive any material right, remedy or default under, any Material Contract, or enter into or materially amend any Contract that, if existing on the date hereof, would be a Material Contract, in each case of the types referred to in clauses (i), (iii), (iv), (v), (vii), (x) or (xii) of Section 3.15(b), other than entering into any Contract solely to the extent effecting a capital expenditure acquisition, disposition, or other transaction permitted by this Section 5.1(b);

(x) merge, combine or consolidate the Company or any of its Subsidiaries with and into any other Person, other than, in the case of any Subsidiary of the Company, to effect any acquisition permitted by clause (v) or any disposition permitted by clause (vii) and other than transactions solely among wholly owned Subsidiaries of the Company;

(xi) adopt or enter into a plan of complete or partial liquidation, restructuring, capitalization, reorganization or dissolution (other than with respect to or among wholly owned Subsidiaries of the Company);

(xii) waive, settle or compromise any pending or threatened Action against the Company or any of its Subsidiaries, other than waivers, settlements or agreements (A) for an amount not in excess of $15 million in the aggregate (excluding amounts to be paid under existing insurance policies or renewals thereof), and (B) that do not impose any material restrictions on the operations or businesses of the Company or its Subsidiaries, taken as a whole, or any equitable relief on, or the admission of wrongdoing by, the Company or any of its Subsidiaries;

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(xiii) except as required by any Company Benefit Plan or applicable Law, (A) increase the compensation or severance benefits of any director, officer, individual independent contractor or employee of the Company or any of its Subsidiaries, except for increases in base salary and payments of cash incentive compensation to non-executive officers, in each case, in the ordinary course of business consistent with past practice, (B) adopt any material new employee benefit plan or arrangement or materially amend, modify or terminate any existing Company Benefit Plan, in each case, other than (1) as would not materially increase the cost to the Company or its Subsidiaries or (2) offer letters that are entered into in the ordinary course of business consistent with past practice with newly hired employees who are not executive officers and that do not provide for any severance benefits, (C) take any action to accelerate the vesting or payment, or the funding of any payment or benefit under, any Company Benefit Plan, (D) recognize any union, works council or other labor organization as the representative of any of the employees of the Company or any of its Subsidiaries or enter into any collective bargaining agreements or (E) hire or terminate the employment or services of any executive officer of the Company, other than because such executive officer committed an act or omission constituting cause or due to permanent disability;

(xiv) make any change in financial accounting methods, principles, policies or practices of the Company or any of its Subsidiaries, except insofar as may be required by GAAP (or any interpretation or enforcement thereof) or applicable Law;

(xv) (A) make, change or revoke any material Tax election, (B) enter into any settlement or compromise of any material Tax liability, (C) file any amended material Tax Return that would result in a change in Tax liability, taxable income or loss, (D) adopt or change any method of Tax accounting or annual Tax accounting period, (E) enter into any closing agreement relating to any material Tax liability, (F) agree to extend the statute of limitations in respect of any material amount of Taxes or (G) surrender any right to claim a material Tax refund;

(xvi) guarantee any indebtedness of another Person (other than the Company or any of its Subsidiaries), enter into any keep well or other agreement to maintain any financial statement condition of another Person (other than the Company or any of its Subsidiaries) or enter into any arrangement having the economic effect of any of the foregoing;

(xvii) enter into any new line of business outside of the Company s and its Subsidiaries existing businesses on the date of this Agreement;

(xviii) adopt or amend a shareholder rights plan or poison pill , other than such amendments to the Rights Plan as are contemplated by Section 3.21(b) of this Agreement; or

(xix) agree to take, make any commitment to take, or adopt any resolutions of the Company Board in support of, any of the foregoing.

(c) Except as expressly contemplated by this Agreement, none of Parent, Merger Sub or the Company shall take or permit any of their respective Subsidiaries to take any action that could reasonably be expected to prevent or to impede, interfere with, hinder or delay in any material respect the consummation of the Merger and the other transactions contemplated hereby.

(d) Nothing contained in this Agreement shall give Parent or Merger Sub, directly or indirectly, the right to control or direct the operations of the Company or any of its Subsidiaries prior to the Effective Time. Prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries respective operations.

Section 5.2. Go-Shop; Acquisition Proposals.

(a) Except as permitted by this Section 5.2, the Company shall not, and shall cause its Subsidiaries not to, and shall use its reasonable best efforts to cause its and their directors, officers, employees, other Affiliates, investment bankers, attorneys, accountants and other advisors or representatives (collectively, Representatives) not to, directly or indirectly (i) initiate or solicit, or knowingly facilitate or encourage, any inquiries, discussions or requests with respect to or the making of any proposal or offer that constitutes or would reasonably be expected to lead to an Acquisition Proposal (an Inquiry), (ii) engage in or otherwise participate in any discussions or negotiations regarding an Acquisition Proposal or Inquiry or that would reasonably be expected to lead to an Acquisition Proposal, or provide any access to its properties, books or records or any non-public

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information to any Person relating to the Company or any of its Subsidiaries in connection with the foregoing, (iii) enter into any other acquisition agreement, option agreement, joint venture agreement, partnership agreement, letter of intent, term sheet, merger agreement or similar agreement (other than an Acceptable Confidentiality Agreement) with respect to an Acquisition Proposal (an Alternative Acquisition Agreement), (iv) approve, endorse, declare advisable or recommend any Acquisition Proposal, (v) take any action to make the provisions of any Takeover Statute or any restrictive provision of any applicable anti-takeover provision in the certificate of incorporation or bylaws of the Company or any shareholder rights plan or poison pill (including the Rights Plan) inapplicable to any transactions contemplated by any Acquisition Proposal or (vi) authorize, commit to, agree or publicly propose to do any of the foregoing. Notwithstanding the foregoing, from the date hereof until the earlier to occur of the termination of this Agreement pursuant to ARTICLE VII and the Effective Time, the Company shall not terminate, amend, release or modify any provision of any standstill agreement, except that the Company will not be required to enforce, and will be permitted to waive, any provision of any standstill or confidentiality agreement solely to the extent that such provision prohibits or purports to prohibit a confidential Acquisition Proposal being made to the Company or the Company Board (or any committee thereof).

(i) Notwithstanding anything to the contrary set forth in this Agreement, during the period beginning on the date of this Agreement and continuing until 11:59 p.m. (New York City time) on March 25, 2019 (the No-Shop Period Start Date), the Company and its Representatives shall have the right to (A) initiate or solicit, or knowingly facilitate or encourage, any Inquiry and (B) engage in or otherwise participate in any discussions or negotiations regarding an Acquisition Proposal or Inquiry or that would reasonably be expected to lead to an Acquisition Proposal, or, subject to the entry into, and in accordance with, an Acceptable Confidentiality Agreement, provide any access to its properties, books or records or any non-public information to any Person (and its Representatives and Financing Sources subject to the terms and conditions of such Acceptable Confidentiality Agreement applicable to such Person) relating to the Company or any of its Subsidiaries in connection with the foregoing; provided that (x) the Company will provide to Parent any information relating to the Company or any of the Company Subsidiaries that was not previously provided or made available to Parent substantially concurrently with (and in any event within twenty-four (24) hours after) the time it is furnished to such Person (and its Representatives and Financing Sources) and (y) the Company and its Subsidiaries will not pay, agree to pay or cause to be paid or reimburse, agree to reimburse or cause to be reimbursed, the expenses of any such Person in connection with any Acquisition Proposals or Inquiries.

(ii) On the No-Shop Period Start Date, the Company shall notify Parent in writing of (x) the number of parties with which the Company entered into an Acceptable Confidentiality Agreement and (y) the number of parties that submitted an Acquisition Proposal after the date of this Agreement and prior to the No-Shop Period Start Date, which notice shall include a summary of all material terms of any pending Acquisition Proposals that were made in writing by any Excluded Party or any other Acquisition Proposal which the Company Board determined in good faith, after consultation with its financial advisor and outside legal counsel, warranted the Company Board s further discussion.

(iii) On the No-Shop Period Start Date, the Company shall, and shall cause its Subsidiaries and its and their directors, officers and employees and shall instruct its Affiliates and other Representatives to immediately cease all solicitations, discussions and negotiations with any Persons (other than Parent and its Representatives and any Excluded Party and its Representatives) that may be ongoing with respect to an Acquisition Proposal and request that each such Person (other than Parent and its Representatives and any Excluded Party and its Representatives) promptly return or destroy all confidential information furnished to such Person by or on behalf of the Company in connection with any such Acquisition Proposal.

(b) Notwithstanding anything to the contrary contained in Section 5.2(a) or elsewhere in this Agreement, at any time following the No-Shop Period Start Date and prior to the time the Stockholder Approval is obtained, if the Company, directly or indirectly through one or more of its Representatives, receives a written unsolicited and bona fide Acquisition Proposal that did not result from a breach of this Section 5.2, the Company and its Representatives

may contact the Person or group of Persons making such Acquisition Proposal to clarify the terms and conditions thereof so as to determine whether such Acquisition Proposal constitutes, or could reasonably be expected to result in, a Superior Proposal, and may (i) provide information to such Person or group of Persons (including their respective Representatives and prospective equity and debt financing sources) if the Company receives from such Person or group of Persons (or has received from such Person or group of

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Persons) an executed confidentiality agreement containing terms that are not less favorable in any material respect to the Company than those contained in the Confidentiality Agreement, except that such confidentiality agreement need not contain any standstill or similar provision (an Acceptable Confidentiality Agreement); provided, that the Company shall make available to Parent and Merger Sub any non-public information concerning the Company or its Subsidiaries that is provided to any such Person or group of Persons which was not previously made available to Parent or Merger Sub substantially concurrently (and in any event within twenty-four (24) hours thereafter), and (ii) engage or participate in any discussions or negotiations with such Person or group of Persons, if prior to taking any action described in clause (i) or (ii) above, (A) the Company Board determines in good faith after consultation with its financial advisor and outside legal counsel that such Acquisition Proposal constitutes, or would reasonably be expected to result in, a Superior Proposal and (B) the Company Board determines in good faith after consultation with its outside legal counsel that failure to take such action would be reasonably likely to be inconsistent with its fiduciary obligations under applicable Law. It is understood and agreed that any contacts, disclosures, discussions or negotiations permitted under this Section 5.2(b), including any public announcement that the Company or the Company Board has made any determination required under this Section 5.2(b) to take or engage in any such actions (provided that the Company Board expressly publicly reaffirms the Company Recommendation in connection with such disclosure), shall not constitute a Change of Recommendation or otherwise constitute a basis for Parent to terminate this Agreement pursuant to Section 7.4.

(c) Except as set forth in this Section 5.2(c) or in Section 5.2(d), neither the Company Board nor any committee thereof shall (1) withhold, withdraw, qualify or modify (or publicly propose to withhold, withdraw, qualify or modify), in each case in a manner adverse to Parent, the Company Recommendation, (2) fail to include the Company Recommendation in the Proxy Statement, (3) adopt, approve or recommend or endorse or otherwise declare advisable, or publicly propose to adopt, approve or recommend, any Acquisition Proposal, (4) fail to publicly reaffirm the Company Recommendation within ten (10) Business Days after Parent so requests in writing following any public disclosure of an Acquisition Proposal (other than of the type referred to in the proviso to the following clause (5)) from any Person other than Parent and Merger Sub (provided that if the Stockholders Meeting is scheduled to be held within ten (10) Business Days from the date of such written request, promptly and in any event prior to the date which is two (2) Business Days before the date on which the Stockholders Meeting is scheduled to be held) or (5) fail to recommend, in a Solicitation/Recommendation Statement on Schedule 14D-9 under the Exchange Act, against any Acquisition Proposal that is a tender offer or exchange offer subject to Regulation 14D promulgated under the Exchange Act within ten (10) Business Days after the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of such tender offer or exchange offer (or if the Stockholders Meeting is scheduled to be held within ten (10) Business Days from the date of such commencement, promptly and in any event prior to the date which is two (2) Business Days before the date on which the Stockholders Meeting is scheduled to be held) (any of the foregoing, a Change of Recommendation); provided, that any communication made in accordance with Section 5.2(d)(ii), or the failure by the Company Board to take a position with respect to an Acquisition Proposal referred to in the preceding clause (4) or a tender offer or exchange offer referred to in the preceding clause (5), shall not be deemed a Change of Recommendation if such communication is made or such position is taken prior to the tenth (10th) Business Day after the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of such tender offer or exchange offer or Parent s written request following the public disclosure of such Acquisition Proposal, as applicable (or such earlier time as referenced above). Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, prior to the time the Stockholder Approval is obtained, the Company Board may (x) effect a Change of Recommendation contemplated by clauses (1) or (2) of the definition thereof if, upon the occurrence of an Intervening Event, the Company Board determines in good faith, after consultation with its outside legal counsel, that failure to do so would be reasonably likely to be inconsistent with its fiduciary obligations under applicable Law or (y) if the Company receives, directly or indirectly through one or more of its Representatives, either (A) after the date hereof and prior to the No-Shop Period Start Date from an Excluded Party an Acquisition Proposal or (B) after the No-Shop Period Start Date an unsolicited, written, bona fide Acquisition Proposal, in each of the case of subclauses (A) and (B), that the Company Board concludes in good faith, after consultation with its financial advisor and outside

legal counsel, constitutes a Superior Proposal

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and such Acquisition Proposal did not result from a material breach by the Company of this Section 5.2, effect a Change of Recommendation and/or terminate this Agreement pursuant to Section 7.3(a) in order to enter into an Alternative Acquisition Agreement providing for such Superior Proposal, and, in the case of either clause (x) or (y):

(i) the Company shall have provided prior written notice to Parent, at least five (5) Business Days in advance, that it intends to effect a Change of Recommendation (a Notice of Change of Recommendation) and/or terminate this Agreement pursuant to Section 7.3(a), which notice shall specify in reasonable detail the basis for the Change of Recommendation and/or termination and (A) in the case of a Superior Proposal, the identity of the Person or group of Persons making such Superior Proposal and the material terms thereof along with a copy of any proposed agreement in respect of such Superior Proposal (or, if there is no such proposed agreement, a written summary of the material terms and conditions of such Superior Proposal); or (B) in the case of an Intervening Event, reasonable detail regarding the Intervening Event;

(ii) after providing such notice and prior to effecting such Change of Recommendation and/or terminating this Agreement pursuant to Section 7.3(a), the Company shall have negotiated, and shall have caused its Representatives to be available to negotiate, with Parent and Merger Sub in good faith (to the extent Parent and Merger Sub desire to negotiate) during such five (5) Business Day period to make such adjustments to the terms and conditions of this Agreement as would obviate the need for the Company to effect a Change of Recommendation and/or terminate this Agreement pursuant to Section 7.3(a); and

(iii) following the end of such five (5) Business Day period, the Company Board shall have determined in good faith, after consultation with its outside legal counsel and, with respect to clause (A) below, its financial advisor, taking into account any changes to this Agreement proposed in writing by Parent in response to the Notice of Change of Recommendation, that (A) the Superior Proposal giving rise to the Notice of Change of Recommendation continues to be a Superior Proposal or (B) in the case of an Intervening Event, the failure of the Company Board to effect a Change of Recommendation would continue to be reasonably likely to be inconsistent with its fiduciary obligations under applicable Law.

Any amendment to the financial terms or any other material change to the terms of a Superior Proposal shall require the Company to deliver a new Notice of Change of Recommendation and the Company shall be required to comply again with the requirements of clauses (i)-(iii) above; provided, however, that references to the five (5) Business Day period above shall then be deemed to be references to a three (3) Business Day period following receipt by Parent of any such new Notice of Change of Recommendation.

(d) Nothing contained in this Section 5.2 or elsewhere in this Agreement shall be deemed to prohibit the Company or the Company Board or any committee thereof from (i) complying with its disclosure obligations under applicable Law or NASDAQ, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) under the Exchange Act (or any similar communication to stockholders) or (ii) making any stop-look-and-listen communication to stockholders of the Company pursuant to Rule 14d-9(f) under the Exchange Act (or any similar communications to stockholders of the Company, including any such similar communication in response to an Acquisition Proposal that is not a tender offer or exchange offer); provided, however, that (x) except as provided in the next sentence, any disclosure made as permitted under clause (i) of this Section 5.2(d) (other than any stop-look-and-listen or similar communication) that relates to an Acquisition Proposal shall be deemed to be a Change of Recommendation unless the Company Board expressly publicly reaffirms the Company Recommendation in connection with such disclosure, and (y) neither the Company nor the Company Board (nor any committee thereof) shall be permitted to recommend any Acquisition Proposal (including that the stockholders of the Company tender any securities in connection with any tender offer or exchange offer that is an Acquisition Proposal) or otherwise effect a Change of Recommendation with respect thereto, except as permitted by Section 5.2(c). It is understood and agreed that any stop-look-and-listen or similar communication permitted under clause (ii) of this Section 5.2(d) made

prior to the tenth (10^{th}) Business Day after the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of such tender offer or exchange offer (or, if earlier, no fewer than two (2) Business Days prior to the date on which the Stockholders Meeting is scheduled to be held) shall not constitute a Change of Recommendation or otherwise constitute a basis for Parent to terminate this Agreement pursuant to Section 7.4. The Company shall in

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no event be deemed to violate this Section 5.2 as a result of responding (x) prior to the No-Shop Period Start Date, to any Inquiry or Acquisition Proposal, or (y) from and after the No-Shop Period Start Date, to any unsolicited proposal or inquiry, in each case, solely by advising the Person making such proposal or inquiry of the terms of this Section 5.2.

(e) The Company shall promptly (and, in any event, within twenty-four (24) hours) notify Parent in writing if, from and after the date hereof, any Acquisition Proposal or Inquiry (including any request for non-public information in connection therewith) is received by the Company, any of its Subsidiaries or any of its or their Representatives, indicating (except to the extent prohibited by applicable Law or Contract in effect as of the date hereof) the identity of the Person or group of Persons making such Acquisition Proposal, Inquiry or request and the material terms and conditions of any such Acquisition Proposal (including, if applicable, providing copies of any written Inquiries and any proposed agreements related thereto). Without limiting the foregoing, the Company shall (x) promptly (and in any event within twenty-four (24) hours) notify Parent in writing (i) if the Company determines to begin providing non-public information or to engage in negotiations or discussions concerning an Acquisition Proposal in accordance with this Section 5.2 and (ii) thereafter of any change to the financial and other material terms and conditions of any Acquisition Proposal, and (y) otherwise keep Parent reasonably informed of the status and material terms of any such Inquiry, Acquisition Proposal, discussions or negotiations on a reasonably current basis, including by providing a copy of all proposals, offers or drafts of proposed agreements. Neither the Company nor any of its Subsidiaries shall, after the date of this Agreement, enter into any confidentiality or similar agreement that would prohibit it from providing such information to Parent.

Section 5.3. Proxy Statement.

(a) As promptly as reasonably practicable after the date hereof (and in any event within twenty (20) Business Days after the date hereof), the Company shall prepare and file with the SEC a preliminary proxy statement relating to the Stockholders Meeting (together with any amendments thereof or supplements thereto, the Proxy Statement), and each of the Company and Parent shall, or shall cause their respective Affiliates to, prepare and file with the SEC all other documents required by the Exchange Act in connection with the Merger and the other transactions contemplated hereby, and Parent and the Company shall cooperate with each other in connection with the preparation of the Proxy Statement and any such other filings. Except as permitted by Section 5.2, the Proxy Statement shall include the Company Recommendation; provided, that if the Company Board shall have effected a Change of Recommendation in accordance with Section 5.2, then in submitting this Agreement to the Company s stockholders, the Company Board may submit this Agreement to the Company s stockholders without the Company Recommendation, in which event the Company Board may communicate the basis for its lack of recommendation to the Company s stockholders in the Proxy Statement or an appropriate amendment thereof or supplement thereto. Parent agrees to provide or cause to be provided all information with respect to itself, its Affiliates and their respective Representatives as may be reasonably requested by the Company for inclusion in the Proxy Statement and any such other filings.

(b) Each party shall as promptly as reasonably practicable notify the other parties of the receipt of any comments of the SEC with respect to the Proxy Statement and of any request by the SEC for any amendment or supplement thereto or for additional information and shall as promptly as reasonably practicable provide to the other party copies of all written correspondence with the SEC with respect to the Proxy Statement or the transactions contemplated hereby. Except in the case of a Non-Objection, the Company and Parent shall each use its reasonable best efforts to (i) promptly provide responses to the SEC with respect to all comments received on the Proxy Statement from the SEC and to make any amendments or filings as may be necessary in connection therewith and (ii) have the Proxy Statement cleared by the SEC staff, as soon as reasonably practical after such filing. The Company shall cause the definitive Proxy Statement to be mailed as promptly as reasonably practicable after a Non-Objection or the date the SEC staff advises that it has no further comments thereon or that the Company may commence mailing the Proxy Statement.

(c) Subject to applicable Law, prior to filing or mailing the Proxy Statement or filing any other required filings (or, in each case, any amendment thereof or supplement thereto) or responding to any comments of the SEC with respect thereto, the Company shall (unless and until a Change of Recommendation has occurred or in connection with the matters described in Section 5.2) provide Parent with an opportunity to review and comment on (which comments shall be made promptly) such document or response and shall consider in good faith including in such document or response comments reasonably proposed by Parent.

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(d) If, at any time prior to the receipt of the Stockholder Approval, any information relating to the Company or Parent, or any of their respective Affiliates, should be discovered by the Company or Parent which, in the reasonable judgment of the Company or Parent, as the case may be, should be set forth in an amendment of, or a supplement to, the Proxy Statement, so that the Proxy Statement would not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto, and the Company and Parent shall cooperate in the prompt filing with the SEC of any necessary amendment of, or supplement to, the Proxy Statement and, to the extent required by applicable Law, in disseminating the information contained in such amendment or supplement to the stockholders of the Company. Nothing in this Section 5.3(d) shall limit the rights or obligations of any party under any other paragraph of this Section 5.3.

(e) All documents that the Company is responsible for filing with the SEC in connection with the Merger will comply as to form and substance in all material respects with the applicable requirements of the Exchange Act.

Section 5.4. Stockholders Meeting.

(a) Subject to Section 5.3, the Company will take, in accordance with applicable Law and its certificate of incorporation and bylaws, all action necessary to duly call, give notice of, convene and hold a meeting of holders of Shares (including any adjournment or postponement thereof as permitted by this Section 5.4, the Stockholders Meeting) as promptly as reasonably practicable following clearance of the Proxy Statement by the SEC or a Non-Objection, to consider and vote upon the adoption of this Agreement; provided, that the Company may postpone or adjourn to a later date the Stockholders Meeting (i) with the written consent of Parent (which consent shall not be unreasonably withheld, conditioned or delayed), (ii) for the absence of a quorum, (iii) to allow reasonable additional time to solicit additional proxies if the Company has not received proxies representing a sufficient number of shares of Common Stock to adopt this Agreement, whether or not a quorum is present, (iv) if required by applicable Law or (v) to allow reasonable additional time for the filing and dissemination of any supplemental or amended disclosure if, in the good faith judgment of the Company Board (after consultation with outside legal counsel), the failure to do so would be reasonably likely to be inconsistent with its fiduciary obligations under applicable Law; provided, further, that in no event shall the Stockholders Meeting be postponed or adjourned beyond the date that is five (5) Business Days prior to the Termination Date without the prior written consent of Parent. Unless there has been a Change of Recommendation pursuant to Section 5.2, the Company shall use its reasonable best efforts to lawfully obtain the Stockholder Approval, including actively soliciting proxies in favor of the adoption of this Agreement at the Stockholders Meeting. Unless this Agreement is terminated in accordance with its terms, the Company shall not submit to the vote of its stockholders any other Acquisition Proposal.

(b) The Company shall keep Parent informed with respect to proxy solicitation results as reasonably requested by Parent and shall provide such information and reasonable cooperation as Parent may reasonably request in connection therewith. Notwithstanding anything to the contrary in this Agreement, unless this Agreement is terminated in accordance with its terms, the Company shall remain obligated to provide the information and cooperation described in the immediately preceding sentence and duly call, give notice of, convene and hold the Stockholders Meeting and mail the Proxy Statement (and any amendment or supplement thereto that maybe required by applicable Law) to the Company s stockholders in accordance with Section 5.3 and this Section 5.4, notwithstanding any Change of Recommendation.

Section 5.5. Reasonable Best Efforts; Filings; Other Actions.

(a) Subject to the terms and conditions set forth in this Agreement, the Company, Parent, Merger Sub and their respective Subsidiaries shall each use their reasonable best efforts to promptly take, or to cause to be taken, all actions,

and to do, or to cause to be done, and to assist and cooperate with the other in doing (and, in the case of Parent, to use reasonable best efforts to cause the Equity Investors and their Affiliates to assist and cooperate as necessary or appropriate with the other parties), all things necessary, proper or advisable under this Agreement or applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, including to (i) obtain from any Governmental Entities and any third parties any actions, non-actions, clearances, waivers, consents, approvals, expirations or terminations of waiting periods, permits or orders required to be obtained by the Company, Parent or any of their respective Affiliates in

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connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, (ii) make all registrations, filings, notifications or submissions which are necessary or advisable with respect to this Agreement and the Merger under (A) any applicable federal or state securities Law, (B) the HSR Act and any other applicable Regulatory Law and (C) any other applicable Law, (iii) defend against any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Merger and the other transactions contemplated hereby and (iv) execute and deliver any additional instruments necessary to consummate the transactions contemplated hereby; provided, however, that in no event shall the Company or any of its Subsidiaries be required to pay prior to the Effective Time any fee, penalty or other consideration to any third party to obtain any consent or approval required for the consummation of the Merger under any Contract; provided, further, that without the prior written consent of Parent, neither the Company nor its Subsidiaries shall pay or commit to pay to any third party whose consent or approval is being solicited any amount of cash or other consideration, make any commitment or incur any liability or other obligation in connection therewith (in each case of this proviso other than filing fees in connection with the actions described in the preceding clause (ii), reimbursements for reasonable out-of-pocket costs and expenses incurred by any such third party in connection with obtaining its consent or approval, or de minimis cash or other consideration). Notwithstanding anything to the contrary contained in this Agreement, all obligations of the Company, Parent and Merger Sub to obtain the Financing or any other financing for the transactions contemplated hereby shall be governed exclusively by Sections 5.12 and 5.13, and not this Section 5.5.

(b) In furtherance and not in limitation of this Section 5.5, each party hereto agrees to make, or cause to be made, an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the date hereof (and in any event within five (5) Business Days), to make, or cause to be made, all filings and authorizations, if any, required under any other applicable Regulatory Law set forth on Section 5.5(b) of the Company Disclosure Schedule as promptly as reasonably practicable after the date hereof, and to supply, or cause to be supplied, as promptly as reasonably practicable any additional information and material that may be requested by a Governmental Entity pursuant to any Regulatory Law. In furtherance and not in limitation of the foregoing, the parties shall request and use reasonable best efforts to obtain early termination of the waiting period under the HSR Act, and no party shall agree to extend any waiting period under any Regulatory Law applicable to or commit not to consummate any of the transactions contemplated by this Agreement without the prior written consent of all other parties.

(c) In furtherance and not in limitation of this Section 5.5, the Company shall (and cause its Subsidiaries to) and Parent shall (and cause its Subsidiaries to) and Merger Sub shall use its reasonable best efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated hereby under any Regulatory Law. If any Action, including any Action by a private party, is instituted (or threatened to be instituted) challenging the transactions contemplated hereby as violative of any Regulatory Law, the Company shall (and cause its Subsidiaries to), Parent shall (and cause its Subsidiaries to) and Merger Sub shall cooperate in all respects and use its respective reasonable best efforts to contest and resist any such Action and to have vacated, lifted, reversed or overturned any Order (whether temporary, preliminary or permanent) that is in effect and that restricts, prevents or prohibits consummation of the transactions contemplated hereby, including by pursuing all reasonable avenues of administrative and judicial appeal. In furtherance and not in limitation of the foregoing, each party shall, and, in the case of the Company or Parent, shall cause each of their respective Subsidiaries to, (x) negotiate, commit to and effect, by consent decree, hold separate order or otherwise, the sale, divestiture or disposition of any assets or businesses of Parent or any of its Subsidiaries, or of the Company or any of its Subsidiaries, and (y) otherwise take or commit to take any actions that after the Closing Date limit Parent s or its Subsidiaries (including the Surviving Corporation s) freedom of action with respect to, or its ability to retain, one or more businesses, product lines or assets of Parent or any of its Subsidiaries (including the Surviving Corporation), in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any Order which would otherwise have the effect of preventing the Closing, materially delaying the Closing or delaying the Closing beyond the Termination Date; provided, that the Company

will only be required to take or commit to take any such action, or agree to any such condition or restriction, if such action, commitment, agreement, condition or restriction is binding on the Company only if and when the Closing occurs.

(d) In furtherance and not in limitation of this Section 5.5, each of the Company, Parent and Merger Sub shall (i) subject to any restrictions under any Regulatory Law, promptly notify each other of any communication to that party from any Governmental Entity with respect to this Agreement and the transactions

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and other agreements contemplated hereby and permit the other parties to review in advance any proposed material communication to any Governmental Entity, (ii) unless required by applicable Law, not agree to participate in any meeting or teleconference with any Governmental Entity in respect of any filing, investigation or other inquiry with respect to this Agreement and the transactions and other agreements contemplated hereby unless it consults with the other parties in advance and, to the extent permitted by such Governmental Entity, gives the other parties the opportunity to attend and participate thereat, (iii) subject to any restrictions under any Regulatory Law, furnish the other parties with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Subsidiaries and their respective Representatives on the one hand, and any Governmental Entity or members of its staff on the other hand, with respect to this Agreement and the transactions and other agreements contemplated hereby (excluding any documents and communications which are subject to the attorney-client privilege or other privilege or trade secret protection or the work product doctrine), and (iv) furnish the other parties with such necessary information and reasonable assistance as such other parties may reasonably request in connection with their preparation of necessary filings, registrations or submissions of information to any Governmental Entity in connection with this Agreement and the transactions and other agreements contemplated hereby and thereby, including any filings necessary or appropriate under the provisions of any Regulatory Law; provided, however, that the parties may, as each deems advisable, reasonably designate competitively sensitive material provided under this Section 5.5 or any other section of this Agreement as outside counsel only material . Notwithstanding anything to the contrary in this Section 5.5, materials provided to the other party or its counsel may be redacted to remove references concerning the valuation of the Company, privileged communications, or other competitively sensitive material.

Section 5.6. Access and Reports.

(a) Subject to applicable Law, from and after the date of this Agreement to the Effective Time or the earlier termination of this Agreement, upon reasonable prior written notice, the Company shall, and shall cause its Subsidiaries to, afford to Parent, Merger Sub and each of their Representatives (including, to the extent requested by Parent, the Lenders), reasonable access, during normal business hours, to its officers, employees, properties, offices and other facilities, books, Contracts and records; provided, that (i) the foregoing shall not require the Company or any of its Subsidiaries to permit access to (A) any inspection or any information that would violate any of its obligations with respect to confidentiality in effect as of the date hereof, (B) any information that is subject to attorney-client privilege or other privilege or trade secret protection or the work product doctrine, (C) information that in the reasonable opinion of the Company would result in a breach of a Contract to which the Company or any of its Subsidiaries are bound as of the date hereof or (D) information related to the Company s sale process, including any information related to the negotiation and execution of this Agreement or to transactions potentially competing with or alternative to the transactions contemplated by this Agreement or proposals from other third parties relating to any competing or alternative transactions (including Acquisition Proposals) and the actions of the Company Board (or any committee thereof) with respect to any of the foregoing, whether prior to or after execution of this Agreement (access to the information described in this clause (D) shall be governed by Section 5.2), (ii) any such investigation shall be conducted in such a manner as not to unreasonably interfere with the normal business or operations of the Company or its Subsidiaries or otherwise result in any undue burden with respect to the prompt and timely discharge by employees of the Company or its Subsidiaries of their normal duties and (iii) no investigation pursuant to this Section 5.6 shall affect or be deemed to modify any representation or warranty made by the Company herein; provided, that the Company shall use its reasonable best efforts to allow for any access or disclosure in a manner that does not result in the effects set out in clauses (i)(A), (i)(B) or (i)(C), including by making appropriate substitute arrangements.

(b) Each of Parent and Merger Sub shall, and shall cause their respective Representatives and Affiliates to, hold and treat in confidence all documents and information concerning the Company and its Subsidiaries furnished to Parent or Merger Sub or their respective Representatives, financing sources or Affiliates in connection with the transactions contemplated by this Agreement in accordance with that certain letter agreement, dated December 31,

2018, between Hellman & Friedman Advisors LLC and the Company (as amended or otherwise modified from time to time, the Confidentiality Agreement) as if all such documents and information were Confidential Information (as defined in the Confidentiality Agreement), which Confidentiality Agreement shall remain in full force and effect in accordance with its terms and shall apply to Parent and Merger Sub as if they were direct parties thereto.

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(c) The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, (i) of any notice or other communication received by such party from any Governmental Entity in connection with the transactions contemplated by this Agreement or from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, if the subject matter of such communication or the failure of such party to obtain such consent would reasonably be expected to be material to the Company, the Surviving Corporation or Parent, (ii) of any Actions commenced against such party or any of its Affiliates in connection with, arising from or relating to this Agreement or the transactions contemplated by this Agreement (Transaction Litigation) or (iii) if such party becomes aware of the occurrence or non-occurrence of any event that, individually or in the aggregate, would reasonably be expected to cause any condition to the obligations of any party hereto to effect the Merger or any of the other transactions contemplated by this Agreement not to be satisfied; provided, that the delivery of any notice pursuant to this Section 5.6(c) shall not cure any breach of any representation, warranty or covenant in this Agreement or otherwise limit or affect the remedies available hereunder to any party hereto.

Section 5.7. Publicity; Communications. The initial press release regarding the Merger shall be a joint press release by the Company and Parent and thereafter (unless and until a Change of Recommendation has occurred or in connection with the matters described in Section 5.2) each party shall consult with the other parties, and give each other the opportunity to review and comment, prior to issuing any press releases or otherwise making public announcements or filings with respect to the Merger or any of the other transactions contemplated by this Agreement, except as may be required by Law or by obligations pursuant to any listing agreement with NASDAQ (in which case, such party shall, to the extent practicable, use commercially reasonable efforts to consult with the other parties before issuing such press release or making such public announcement or filing).

Section 5.8. Employee Benefits.

(a) During the period commencing on the Closing Date and ending on the first anniversary thereof, Parent shall, or shall cause its applicable Subsidiary to, provide each employee of the Company and its Subsidiaries who continues in employment with Parent, the Surviving Corporation or their Subsidiaries following the Effective Time (collectively, the Continuing Employees) with (i) a base salary or regular hourly wage (whichever is applicable) and a short-term cash incentive compensation opportunity, that, in each case, is not less than the base salary or regular hourly wage and short-term cash incentive compensation opportunity in effect for, or available to, the applicable Continuing Employee as of immediately prior to the Effective Time, and (ii) other compensation opportunities (excluding any equity award or other long-term compensation opportunities) and employee benefits (excluding any severance-related benefits) that are, in each case, substantially similar in the aggregate to the other compensation (excluding any equity award or other long-term compensation opportunities) and employee benefits (excluding any severance-related benefits), respectively, provided or available to the applicable Continuing Employee as of immediately prior to the Effective Time. Effective as of the Effective Time, the Surviving Corporation hereby expressly assumes the Company Benefit Plans and agrees to perform the obligations of the Company thereunder in accordance with the terms and conditions thereof.

(b) During the period commencing on the Closing Date and ending on the first anniversary thereof, the Surviving Corporation shall provide each Continuing Employee whose employment is terminated by Parent or one of its Subsidiaries with severance benefits and on terms and conditions, in each case, that are no less favorable than the severance benefits and protections provided to each such Continuing Employee as of immediately prior to the Effective Time as set forth in Section 5.8(b) of the Company Disclosure Schedule.

(c) Parent will cause any employee benefit plans of Parent and its Subsidiaries in which the Continuing Employees are entitled to participate after the Closing Date to take into account for purposes of eligibility, vesting and benefit accruals (other than benefit accruals under any defined benefit pension plan or as would result in a duplication of

benefits), service prior to the Effective Time by such employees to the Company and its Subsidiaries (and any predecessors) as if such service were with Parent or its Subsidiaries.

(d) With respect to any employee benefit plans maintained by Parent and its Subsidiaries for the benefit of the Continuing Employees following the Closing Date Parent shall, and shall cause the Surviving Corporation and its Subsidiaries to, (i) waive any eligibility requirements or pre-existing condition limitations or waiting period requirements with respect to any such plan providing medical, dental, pharmaceutical or vision benefits to any Continuing Employee to the same extent waived under the analogous Company Benefit Plan prior to the

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Closing Date, and (ii) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, to any eligible expenses paid by such employees during the calendar year in which the Effective Time occurs (or such later date on which a Continuing Employee commences participation in any new plan of the Surviving Corporation and its Subsidiaries) under analogous Company Benefit Plans.

(e) Nothing in this Agreement shall confer upon any Continuing Employee or other service provider any right to continue in the employ or service of Parent, the Surviving Corporation or any Affiliate of Parent, or shall interfere with or restrict in any way the rights of Parent, the Surviving Corporation or any of their respective Affiliates, which rights are hereby expressly reserved, to discharge or terminate the services of any Continuing Employee at any time for any reason whatsoever, with or without cause. In no event shall the terms of this Agreement be deemed to (i) establish, amend, or modify any Company Benefit Plan or any other employee benefit plan, program, agreement or arrangement maintained or sponsored by Parent, the Surviving Corporation or their Affiliates, or (ii) alter or limit the ability of Parent, the Surviving Corporation or any of their respective Subsidiaries or Affiliates to amend, modify or terminate any Company Benefit Plan in accordance with its terms after the Closing Date. Without limiting Section 8.9, nothing in this Section 5.8 shall create any third party beneficiary rights in any Continuing Employee or current or former service provider of the Company or its Affiliates (or any beneficiaries or dependents thereof).

(f) The Surviving Corporation shall fulfill its obligations, and shall cause each of its Subsidiaries to fulfill each of their respective obligations, under applicable Law or any Contract to inform and/or consult with any labor union, works council, trade union or other labor organization which represents employees affected by the transactions contemplated by this Agreement.

Section 5.9. Expenses. Except as otherwise provided in this Agreement or each Limited Guarantee, whether or not the Merger is consummated, all costs and expenses incurred in connection with this Agreement and the Merger and the other transactions contemplated by this Agreement shall be paid by the party incurring such expense, except that all filing fees under the HSR Act in connection with the transactions contemplated by this Agreement shall be borne by Parent.

Section 5.10. Indemnification; Directors and Officers Insurance.

(a) From and after the Effective Time, each of Parent and the Surviving Corporation shall, jointly and severally, indemnify and hold harmless, to the fullest extent permitted under applicable Law, each present and former director and officer of the Company and its Subsidiaries, and each fiduciary of a Company Benefit Plan (collectively, together with such person s heirs, executors or administrators, the Indemnified Parties) against any costs or expenses (including reasonable attorneys fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement incurred in connection with any actual or threatened Action, whether civil, criminal, administrative or investigative, arising out of, related to or in connection with any action or omission occurring or alleged to have occurred whether prior to or at the Effective Time (including in connection with such Indemnified Parties service as a director or officer of the Company or any of its Subsidiaries or a fiduciary of a Company Benefit Plan or services performed by such persons at the request of or for the benefit of the Company or its Subsidiaries), whether asserted or claimed prior to, at or after the Effective Time, including, for the avoidance of doubt, in connection with (i) the transactions contemplated by this Agreement and (ii) actions to enforce this provision or any other indemnification, exculpation or advancement right of any Indemnified Party. Without limiting the foregoing, Parent, for a period of six (6) years from and after the Effective Time, shall, unless otherwise prohibited by applicable Law, cause the Charter and the Bylaws to contain provisions no less favorable to the Indemnified Parties with respect to indemnification, exculpation from liabilities and rights to advancement of expenses than those set forth as of the date of this Agreement in the certificate of incorporation and bylaws of the Company, which provisions shall not be amended, repealed or otherwise modified in a manner that would adversely affect the rights thereunder of any Indemnified Party. In addition, from and after the Effective Time, each of Parent and the Surviving Corporation shall advance costs and expenses (including attorneys

fees) as incurred by any Indemnified Party promptly (and in any event within ten (10) days) after receipt by Parent of a written request for such advance to the fullest extent permitted under applicable Law; provided, that the Person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined (after exhausting all available appeals) that such Person is not entitled to indemnification. Any Indemnified Party wishing to claim indemnification under this Section 5.10(a), upon learning of any claim, action or proceeding in respect of which such indemnification will be sought, shall notify the Surviving

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Corporation thereof in writing; provided, that the failure to so notify the Surviving Corporation shall not affect the indemnification obligations of the Surviving Corporation or Parent under this Section 5.10(a), except to the extent such failure to notify materially prejudices the Surviving Corporation.

(b) Prior to the Effective Time, the Company shall obtain and fully pre-pay the premium for (and, following the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, maintain with reputable and financially sound carriers) the extension of (i) the directors and officers liability coverage of the Company s existing directors and officers insurance policies, and (ii) the Company s existing fiduciary liability insurance policies (collectively, D&O Insurance), in each case for a claims reporting or discovery period (whichever is greater) of six (6) years from and after the Effective Time with respect to any claim arising from facts or events that existed or occurred at or prior to the Effective Time with terms, conditions, retentions, coverage limits and limits of liability that are at least as favorable as the coverage provided under the Company s existing policies in effect on the date hereof. If the Company and the Surviving Corporation for any reason fail to obtain such tail insurance policies as of the Effective Time, the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, continue to maintain in effect for a period of six (6) years from and after the Effective Time the D&O Insurance in place as of the date hereof with terms, conditions, retentions, coverage limits and limits of liability that are at least as favorable as the coverage provided in the Company s existing policies as of the date hereof, or the Surviving Corporation shall, and Parent shall cause the Surviving Corporation to, purchase comparable insurance as the D&O Insurance for such six-year period with terms, conditions, retentions and limits of liability that are at least as favorable as the coverage provided under the Company s existing policies as of the date hereof. Notwithstanding the foregoing, (x) in no event shall the Company or the Surviving Corporation be required to expend for any such policies pursuant to this Section 5.10(b) an annual premium amount in excess of 300% of the aggregate of the annual premiums currently paid by the Company for such insurance, and (y) if the annual premiums of such insurance coverage exceed such maximum amount, the Company or the Surviving Corporation shall obtain a policy with the greatest coverage available for such maximum amount.

(c) If Parent or the Surviving Corporation or any of their successors or assigns shall (i) consolidate with or merge into any other corporation or entity and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfer all or substantially all of its properties and assets to any individual, corporation or other entity, then, in each such case, proper provisions shall be made so that such surviving or acquiring Person(s), as the case may be, shall assume all of the obligations set forth in this Section 5.10.

(d) The provisions of this Section 5.10 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Parties.

(e) The rights of the Indemnified Parties under this Section 5.10 shall be in addition to any rights such Indemnified Parties may have under the certificate of incorporation or bylaws or comparable governing documents of the Company or any of its Subsidiaries, under any applicable Contracts or Laws or otherwise. All rights to indemnification, exculpation from liabilities for acts or omissions occurring at or prior to the Effective Time and rights to advancement of expenses relating thereto now existing in favor of any Indemnified Party (whether asserted or claimed prior to, at, or after the Effective Time) as provided in the certificate of incorporation or bylaws or comparable governing documents of the Company or any of its Subsidiaries or any Contract or otherwise between such Indemnified Party and the Company or any of its Subsidiaries shall survive the Merger and continue in full force and effect (and shall be so maintained) and shall not be amended, repealed or otherwise modified in any manner that would adversely affect any right thereunder of any such Indemnified Party. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to insurance claims under any policy that is or has been in existence with respect to the Company or any of its Subsidiaries or any Indemnified Party, it being understood and agreed that the indemnification provided for in this Section 5.10 is not prior to, or in substitution for, any such claims under any such policies.

Section 5.11. Section 16 Matters. Prior to the Effective Time, the Company shall take all steps reasonably necessary to cause any dispositions of equity securities (including derivative securities) of the Company in connection with this Agreement and the transactions contemplated hereby by each individual who is a director or officer of the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act.

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Section 5.12. Financing.

(a) Parent and Merger Sub shall use reasonable best efforts to take, or cause to be taken, all actions, and shall use reasonable best efforts to do, or cause to be done, all things necessary, proper or advisable to obtain the proceeds of the Financing on the terms and conditions described in the Commitment Letters (including, as necessary, the flex provisions contained in any related fee letter) as promptly as possible (taking into account the expected timing of the Marketing Period) but in any event on or prior to the date upon which the Merger is required to be consummated pursuant to the terms hereof, including by using reasonable best efforts with respect to (i) causing the Equity Investors to maintain in effect the Equity Commitment Letters, (ii) maintaining in effect the Debt Commitment Letter, (iii) negotiating and entering into definitive agreements with respect to the Debt Financing (the Definitive Agreements) consistent with the terms and conditions contained in the Debt Commitment Letter (including, as necessary, the flex provisions contained in any related fee letter) or, if available, on other terms that (A) are acceptable to Parent in its sole discretion, (B) would not reasonably be expected to delay (taking into account the expected timing of the Marketing Period) or adversely affect the ability of Parent to consummate the transactions contemplated hereby and (C) would otherwise be permitted by Section 5.12(b), and (iv) taking into account the expected timing of the Marketing Period, satisfying (or, if reasonably required to obtain the Financing, seeking the waiver of) on a timely basis all conditions in the Debt Commitment Letter and the Definitive Agreements that are within the control of Parent or Merger Sub and complying with its obligations thereunder. In the event that all conditions contained in the Debt Commitment Letter or the Definitive Agreements (other than the consummation of the Merger and other than the availability of the Cash Equity and those that by their nature are to be satisfied at the Closing) have been satisfied or waived, Parent and Merger Sub shall use their reasonable best efforts to cause the Lenders thereunder to comply with their respective obligations thereunder, including to fund the Debt Financing (including, subject to Section 8.7(c), by promptly commencing a litigation proceeding against any breaching Lender or other financial institution to compel such Lender or financial institution to provide its portion of the Debt Financing or otherwise comply with its obligations under the Debt Commitment Letter or Definitive Agreements). Each of Parent and Merger Sub shall use its reasonable best efforts to comply with its respective obligations, and enforce its respective rights, under the Commitment Letters and Definitive Agreements in a timely and diligent manner.

(b) Parent shall not, and shall not permit Merger Sub to, without the prior written consent of the Company: (i) permit any amendment or modification to, or any waiver of any provision or remedy under, the Commitment Letters if such amendment, modification or waiver (A) adds new (or adversely modifies any existing) conditions to the consummation of all or any portion of the Financing, (B) reduces the amount of the Financing to an amount that, together with available cash at the Company and its Subsidiaries and other available cash or other funds of Parent and its Subsidiaries, would on the Closing Date be less than the Merger Amounts, (C) adversely affects in a material respect the ability of Parent to enforce its rights against other parties to the Commitment Letters or the Definitive Agreements as so amended, replaced, supplemented or otherwise modified, relative to the ability of Parent or Merger Sub, as applicable, to enforce its rights against the other parties to the Commitment Letters as in effect on the date hereof or (D) could otherwise reasonably be expected to prevent, materially impede or materially delay the consummation of the Merger and the other transactions contemplated by this Agreement (taking into account the expected timing of the Marketing Period); or (ii) terminate any Commitment Letter or any Definitive Agreement unless such Commitment Letter or Definitive Agreement is replaced at such time with a new commitment letter or a new definitive agreement that would satisfy the preceding clause (i). Parent and Merger Sub shall promptly deliver to the Company copies of any amendment, modification, waiver or replacement of any Commitment Letter or any Definitive Agreement.

(c) In the event that any portion of the Debt Financing becomes unavailable, regardless of the reason therefor, Parent and Merger Sub will (i) use reasonable best efforts to obtain alternative debt financing (in an amount sufficient, when taken together with Cash Equity and the available portion of the Debt Financing, the available cash at the Company and its Subsidiaries and other available funds or cash to Parent and its Subsidiaries, to pay the Merger

Consideration and the other Merger Amounts) as promptly as reasonably practicable from the same or other sources on terms and conditions that are not less favorable to Parent and its Subsidiaries than the terms and conditions set forth in the Debt Commitment Letter as of the date hereof and which do not include any conditions to the consummation of such alternative debt financing that would reasonably be expected to make the funding of such alternative debt financing less likely to occur, than the conditions set forth in the Debt Commitment Letter as of the date hereof (and, when obtained, provide the Company with a true and correct copy of any new financing commitment for such alternative debt financing) and

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(ii) promptly notify the Company of such unavailability and the reason therefor. For the purposes of this Agreement, the term Debt Commitment Letter shall be deemed to include any commitment letter (or similar agreement) with respect to any alternative or replacement financing arranged in compliance herewith (and any Debt Commitment Letter remaining in effect at the time in question). Parent and Merger Sub shall provide the Company with prompt oral and written notice of any actual or threatened breach, termination, repudiation or default by any party to any Commitment Letter or any Definitive Agreement, in each case, of which Parent or Merger Sub obtain Knowledge and the receipt of any written notice or other written communication from any Lender, Equity Investor or other financing source with respect to any breach, default, termination or repudiation by any party to any Commitment Letter or any Definitive Agreement of any provision thereof. Parent and Merger Sub shall keep the Company reasonably informed on a current basis of the status of its efforts to consummate the Financing. The foregoing notwithstanding, compliance by Parent and Merger Sub with this Section 5.12 shall not relieve Parent or Merger Sub of their obligation to consummate the transactions contemplated by this Agreement whether or not the Financing is available.

Section 5.13. Financing Cooperation.

(a) Prior to the Closing, the Company shall use its reasonable best efforts to, and shall cause its Subsidiaries to use their reasonable best efforts to, and shall use its reasonable efforts to cause its and their Representatives to, provide, at the expense of Parent, all cooperation reasonably requested by Parent necessary and customary for the arrangement of the Debt Financing (provided, that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company or any of its Subsidiaries), including by (i) participating in a reasonable number of meetings (including meetings with prospective lenders), presentations, road shows, due diligence sessions and sessions with rating agencies, at reasonable times and with reasonable advance notice, (ii) executing and delivering Definitive Agreements and other certificates (including a certificate of the chief financial officer of or person performing similar functions for the Company with respect to solvency matters substantially in the form attached to the Debt Commitment Letter) as may be reasonably requested by Parent, and to the extent required by the Debt Financing, using reasonable best efforts to facilitate the pledging of, and perfection of security interests in, collateral, in each such case, effective no earlier than the Effective Time, (iii) furnishing Parent and the Lenders as promptly as reasonably practicable the financial statements of the Company and its consolidated Subsidiaries required by paragraph 4 in Exhibit D to the Debt Commitment Letter (such financial statements, the Required Financial Information) and, following the delivery of a request therefor to the Company by Parent (which notice shall state with specificity the information requested), such financial and other information regarding the Company as is readily available to the Company at such time and is customarily required in connection with the execution of financings of a type similar to the Debt Financing, (iv) if requested by Parent, using reasonable best efforts to assist Parent in connection with Parent s preparation of customary pro forma financial statements as required by paragraph 5 in Exhibit D to the Debt Commitment Letter; provided, that (x) Parent shall be responsible for the preparation of such pro forma financial statements and any pro forma adjustments giving effect to the Merger and the other transactions contemplated herein and (y) the Company s assistance shall relate solely to the financial information and data derived from the Company s historical books and records, (v) in each case following Parent s reasonable request, using reasonable best efforts to assist Parent and Merger Sub in the preparation of customary (A) confidential information memoranda (including a version that does not include material non-public information and executing and delivering one or more customary authorization and representation letters contemplated by the Debt Commitment Letter or otherwise that are customary in the Debt Financing) and other customary marketing materials required in connection with financings similar to the Debt Financing, (B) materials for rating agency presentations and (C) definitive documentation for the Debt Financing, (vi) following Parent s reasonable request, using reasonable best efforts to cause directors and officers who will continue to hold such offices and positions from and after the Effective Time to execute resolutions or consents of the Company and its Subsidiaries that do not become effective until the Effective Time with respect to entering into the definitive documentation for the Debt Financing and otherwise as necessary to authorize consummation of the Debt Financing and (vii) if requested by Parent, provide, at least three (3) Business Days prior to the Closing Date, all documentation and other information relating to the Company and its Subsidiaries

as is required by applicable know your customer and anti-money laundering rules and regulations, including the USA PATRIOT Act and including, if the Company or any of its subsidiaries qualifies as a legal entity customer under the Beneficial Ownership Regulation, a Beneficial Ownership Certificate (each as defined in the Debt Commitment Letter), to the extent requested by Parent in writing at least nine (9) Business Days prior to the Closing Date. Notwithstanding the foregoing,

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neither the Company nor any of its Subsidiaries shall be required to take or permit the taking of any action pursuant to this Section 5.13 that (A) would require the Company, its Subsidiaries or any Persons who are officers or directors of the Company or its Subsidiaries to pass resolutions or consents to approve or authorize the execution of the Debt Financing that is effective prior to the Effective Time or execute or deliver any certificate, document, instrument or agreement (other than the authorization and representation letters referred to in clause (v)(A) above) or agree to any change or modification of any existing certificate, document, instrument or agreement that is effective prior to the Effective Time, (B) cause any representation or warranty in this Agreement to be breached by the Company or any of its Subsidiaries, (C) require the Company or any of its Subsidiaries to pay any commitment or other similar fee or incur any other expense, liability or obligation (other than those set forth in this Section 5.13) in connection with the Debt Financing prior to the Closing or have any obligation of the Company or any of its Subsidiaries under any agreement, certificate, document or instrument be effective until the Closing, (D) cause any director, officer or employee or stockholder of the Company or any of its Subsidiaries to incur any personal liability, (E) conflict with the organizational documents of the Company or its Subsidiaries or any Laws, (F) reasonably be expected to result (with or without notice, lapse of time, or both) in a material violation or breach of, or a default under, any Contract to which the Company or any of its Subsidiaries is a party, (G) provide access to or disclose information that the Company or any of its Subsidiaries determines would jeopardize any attorney-client privilege of the Company or any of its Subsidiaries, (H) prepare any financial statements or information that (x) are not available to it and prepared in the ordinary course of its financial reporting practice and (y) would not otherwise be available to it or capable of being prepared by it without undue burden or other than with the use of its commercially reasonable efforts or (I) require the Company or any of its Subsidiaries to enter into any instrument or agreement (other than the authorization and representation letters referred to in clause (v)(A) above) that is effective prior to the Effective Time or that would be effective if the Closing does not occur. Nothing contained in this Section 5.13 or otherwise shall require the Company or any of its Subsidiaries, prior to the Closing, to be an issuer or other obligor with respect to the Debt Financing. Parent shall, promptly upon request by the Company, reimburse the Company following termination of this Agreement for all reasonable out-of-pocket costs incurred by the Company or its Subsidiaries or their respective Representatives in connection with the cooperation contemplated by this Section 5.13 and shall indemnify and hold harmless the Company and its Subsidiaries and their respective Representatives from and against any and all losses suffered or incurred by them in connection with the arrangement of the Debt Financing, any action taken by them at the request of Parent pursuant to this Section 5.13 and any information used in connection therewith (other than information provided in writing by the Company or its Subsidiaries specifically in connection with its obligations pursuant to this Section 5.13).

(b) For the avoidance of doubt, the parties hereto acknowledge and agree that the provisions contained in this Section 5.13, represent the sole obligation of the Company, its Subsidiaries and their respective Representatives with respect to cooperation in connection with the arrangement of any financing (including the Financing) to be obtained by Parent or Merger Sub with respect to the transactions contemplated by this Agreement and no other provision of this Agreement (including the Exhibits and Schedules hereto) shall be deemed to expand or modify such obligations. In no event shall the receipt or availability of any funds or financing (including, for the avoidance of doubt, the Financing) by Parent, Merger Sub or any of their respective Affiliates or any other financing or other transactions be a condition to any of Parent s or Merger Sub s obligations under this Agreement.

(c) All non-public or otherwise confidential information regarding the Company or its Subsidiaries obtained by Parent or its Representatives pursuant to this Section 5.13 shall be kept confidential and otherwise treated in accordance with the Confidentiality Agreement or other confidentiality obligations that are substantially similar to those contained in the Confidentiality Agreement (which, with respect to the Lenders, shall be satisfied by the confidentiality provisions applicable thereto under the Debt Commitment Letter if made for the benefit of the Company). The Company hereby consents to the use of its and the Company Subsidiaries logos in connection with the Debt Financing, so long as the Company has a reasonable opportunity to preview such use of logos and such logos (i) are used solely in a manner that is not intended to or likely to harm or disparage the Company or its Subsidiaries or the

reputation or goodwill of the Company or its Subsidiaries; (ii) are used solely in connection with a description of the Company, its business and products or the Merger (including in connection with any marketing materials related to the Debt Financing); and (iii) are displayed and presented in a manner consistent with the Company s past practices.

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Section 5.14. Transaction Litigation. The Company, on the one hand, and Parent and Merger Sub, on the other hand, shall keep the other reasonably informed on a current basis with respect to any Transaction Litigation, reasonably consult with the other and give consideration to the other s advice regarding such Transaction Litigation and give each other the opportunity to participate in the defense, settlement or prosecution of any Transaction Litigation; provided that the Company shall in any event control such defense, settlement or prosecution, and the disclosure of information in connection therewith shall be subject to the provisions of Section 5.6, including regarding attorney client privilege or other privilege or trade secret protection or the work product doctrine; provided, further, that no such party or Representative of such party shall compromise, settle, come to an arrangement regarding or agree to compromise, settle or come to an arrangement regarding any Transaction Litigation or consent to the same unless the Company, in the case of any such action by Parent or Merger Sub, or Parent, in the case of any such action by the Company, shall have consented in writing (such consent not to be unreasonably withheld, delayed or conditioned).

Section 5.15. Resignation of Directors. At the Closing, except as otherwise may be agreed by Parent, the Company shall use its reasonable best efforts to deliver to Parent the resignation of all members of the Company Board who are in office immediately prior to the Effective Time, which resignations shall be effective as of immediately prior to (but conditioned on the occurrence of) the Effective Time.

Section 5.16. State Takeover Statutes; Rights Plan. The Company and the Company Board shall (a) take all action necessary to ensure that no Takeover Statute or Rights Plan is or becomes applicable to the Merger and (b) if any Takeover Statute or Rights Plan becomes applicable to the Merger, take all action necessary to ensure that the Merger may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to eliminate or minimize the effect of such Takeover Statute or Rights Plan on the Merger. For purposes of this Agreement, Takeover Statute shall mean a fair price, moratorium, control share acquisition or similar anti-takeover statute or regulation enacted under the Laws of any state in the United States that is applicable to the Company, including Section 203 of the DGCL.

Section 5.17. Conduct of Parent and Merger Sub. During the period from the date hereof until the Effective Time (or such earlier date on which this Agreement may be terminated), except (a) as required by applicable Law or (b) as expressly contemplated by this Agreement, (i) Parent shall not, and shall not permit any of its Subsidiaries (including Merger Sub) or the Equity Investors to, (A) amend, repeal or otherwise modify any provision of their respective organizational or governing documents in a manner that would reasonably be expected to result in a Parent Material Adverse Effect, (B) take any action or fail to take any action which is intended to or which would reasonably be expected to, individually or in the aggregate, prevent or materially delay or impede the ability of any of the parties hereto to obtain any necessary approvals or clearances of any Governmental Entity required for the transactions contemplated hereby, to perform its covenants and agreements under this Agreement or to consummate the transactions contemplated hereby or otherwise prevent or materially delay or impede the consummation of the Merger or the other transactions contemplated hereby or (C) agree to take, make any commitment to take, or adopt any resolutions of its board of directors or analogous governing body in support of, any of the foregoing; and (ii) Parent shall, and shall cause the Equity Investors and its and their respective Affiliates to, promptly notify the Company of any transaction or any agreement to effect any transaction known to Parent or any of the Equity Investors which would reasonably be expected to, individually or in the aggregate, prevent or materially delay or impede the ability of any of the parties hereto to obtain any necessary approvals or clearances of any Governmental Entity required for the transactions contemplated hereby.

Section 5.18. Obligations of Merger Sub and the Surviving Corporation. Parent shall take all actions necessary to cause Merger Sub and the Surviving Corporation to perform their respective obligations under this Agreement.

Section 5.19. Certain Issuances. Prior to the Closing, the Company shall issue such number of Shares to such Persons, in each case, as set forth on Section 5.19 of the Company Disclosure Schedule, and shall take such other

actions set forth therein in connection with the issuance.

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ARTICLE VI

CONDITIONS

Section 6.1. Conditions to Each Party s Obligation to Effect the Merger. The respective obligations of each party hereto to effect the Merger are subject to the satisfaction (or waiver in writing by Parent and the Company, if permissible under applicable Law) at or prior to the Effective Time of each of the following conditions:

(a) Stockholder Approval. This Agreement shall have been duly adopted by a majority of the outstanding Shares entitled to vote thereon in accordance with applicable Law and the certificate of incorporation and bylaws of the Company (the Stockholder Approval).

(b) Regulatory Consents. Any and all applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or been terminated. The decisions, orders, consents or expiration of any waiting periods required to consummate the transaction contemplated by this Agreement under the Regulatory Laws of the countries or jurisdictions listed on Section 5.5(b) of the Company Disclosure Schedule shall have occurred or been granted.

(c) Orders. No court of competent jurisdiction or other Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or Order (whether temporary, preliminary or permanent) that is in effect and that restrains, enjoins or otherwise prohibits the consummation of the Merger.

Section 6.2. Conditions to Obligations of Parent and Merger Sub. The respective obligations of Parent and Merger Sub to effect the Merger are also subject to the satisfaction (or waiver in writing by Parent, if permissible under applicable Law) at or prior to the Effective Time of each of the following conditions:

(a) Representations and Warranties. Each of (i) the representations and warranties of the Company set forth in Section 3.3(a), Section 3.3(b), Section 3.3(d) and Section 3.7(b) shall be true and correct as of the Closing Date as if made at such date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date), except, in the case of (x) Section 3.3(a) and Section 3.3(b), for inaccuracies that are *de minimis* and (y) Section 3.3(d), for inaccuracies as would not result in an increase of the aggregate cash amounts payable with respect to the Company Equity Awards other than any such increases that are de minimis relative to the aggregate Merger Consideration payable pursuant to this Agreement (including the amounts payable pursuant to Section 2.7 and 2.8); (ii) the representations and warranties of the Company set forth in Section 3.1, Section 3.2, Section 3.4 and Section 3.20 shall be true and correct in all material respects as of the Closing Date as if made at such date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct in all material respects as of such specified date); and (iii) the other representations and warranties of the Company set forth in Article III shall be true and correct as of the Closing Date as if made at such date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date) interpreted without giving effect to the words materially or material or to any qualifications based on such terms or based on the term Company Material Adverse Effect, except where the failure of such representations and warranties to be true and correct, in the aggregate, does not constitute a Company Material Adverse Effect.

(b) Performance of Obligations. The Company shall have performed or complied with in all material respects its agreements and covenants contained in this Agreement that are required to be performed or complied with by it at or prior to the Effective Time pursuant to the terms hereof.

(c) Officer s Certificate. Parent shall have received a certificate signed by an executive officer of the Company, dated the Closing Date, to the effect that the conditions set forth in Sections 6.2(a), 6.2(b) and 6.2(d) have been

satisfied.

(d) No Company Material Adverse Effect. No Company Material Adverse Effect shall have occurred after the date of this Agreement.

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Section 6.3. Conditions to Obligation of the Company. The obligation of the Company to effect the Merger is also subject to the satisfaction (or waiver in writing by the Company, if permissible under applicable Law) at or prior to the Effective Time of each of the following conditions:

(a) Representations and Warranties. Each of (i) the representations and warranties of Parent and Merger Sub set forth in Sections 4.1, 4.2, 4.3 and 4.10 shall be true and correct in all material respects as of the Closing Date as if made at such date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct in all material respects as of such specified date); and (ii) the other representations and warranties of Parent and Merger Sub set forth in Article IV shall be true and correct in all respects as of the Closing Date as if made at such date (except to the extent such representations and warranties speak as of a specified date, in which case they need only be true and correct as of such specified date) interpreted without giving effect to the words materially or material or to any qualifications based on such terms or based on the term Parent Material Adverse Effect, except where the failure of such representations and warranties to be true and correct, in the aggregate, does not constitute a Parent Material Adverse Effect.

(b) Performance of Obligations. Each of Parent and Merger shall have performed or complied with in all material respects its agreements and covenants contained in this Agreement that are required to be performed or complied by it at or prior to the Effective Time pursuant to the terms hereof.

(c) Officer s Certificate. The Company shall have received a certificate signed by an executive officer of Parent, dated the Closing Date, to the effect that the conditions set forth in Sections 6.3(a) and 6.3(b) have been satisfied.

Section 6.4. Frustration of Closing Conditions. None of Parent, Merger Sub or the Company may rely, either as a basis for not consummating the Merger or any of the other transactions contemplated by this Agreement or terminating this Agreement and abandoning the Merger, on the failure of a condition set forth in this Article VI to be satisfied if such failure was caused by such party s failure to act in good faith or to use the efforts to cause the Closing to occur as required by this Agreement.

ARTICLE VII

TERMINATION

Section 7.1. Termination by Mutual Consent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time, whether before or after the Stockholder Approval is obtained, by mutual written consent of the Company and Parent by action of their respective boards of directors.

Section 7.2. Termination by Either the Company or Parent. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by either the Company or Parent:

(a) if the Merger shall not have been consummated on or before August 3, 2019 (the Termination Date); provided, that the right to terminate this Agreement pursuant to this Section 7.2(a) shall not be available to a party if the failure of the Merger to have been consummated on or before the Termination Date was primarily caused by the failure of such party to perform any of its obligations under this Agreement;

(b) if the Stockholders Meeting (including any adjournments or postponements thereof) shall have been duly held and completed and the Stockholder Approval shall not have been obtained at such Stockholders Meeting (or at any adjournment or postponement thereof) at which a vote on the adoption of this Agreement is taken; or

(c) if any Order by a Governmental Entity of competent jurisdiction permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and non-appealable or any statute, rule or regulation will have been enacted, entered, enforced or deemed applicable to the Merger that prohibits, makes illegal or enjoins the consummation of the Merger; provided, that the right to terminate this Agreement pursuant to this Section 7.2(c) shall not be available to a party if the enactment, issuance, promulgation, enforcement or entry of any such Order, or the Order becoming final and non-appealable, was primarily caused by the failure of such party to perform any of its obligations under this Agreement.

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Section 7.3. Termination by the Company. This Agreement may be terminated and the Merger may be abandoned by the Company:

(a) at any time prior to the time the Stockholder Approval is obtained, in order to substantially concurrently enter into an Alternative Acquisition Agreement providing for a Superior Proposal in accordance with Section 5.2(c), subject to complying with the terms of this Agreement, including Sections 5.2, 5.3 and 5.4; provided, that prior to or substantially concurrently with, and as a condition to, such termination, the Company pays to Parent the Company Termination Fee due under Section 7.5(b);

(b) at any time prior to the Effective Time, if there has been a breach of any representation, warranty, covenant or agreement of Parent or Merger Sub in this Agreement, which breach (i) would give rise to the failure of a condition set forth in Section 6.3(a) or 6.3(b) and (ii) (A) is not capable of being cured by Parent or Merger Sub prior to the Termination Date or (B) if capable of being cured, shall not have been cured before the earlier of (x) thirty (30) Business Days following receipt of written notice from the Company of such breach or (y) the Termination Date; provided, that the Company is not then in breach of any representation, warranty, covenant or agreement of this Agreement such that any condition to the obligations of Parent and Merger Sub set forth in Sections 6.2(a) or 6.2(b) would not then be satisfied if the Closing Date were the date of such termination; or

(c) at any time prior to the Effective Time, if (i) the Marketing Period has ended and all of the conditions set forth in Section 6.1 and 6.2 have been, and continue to be, satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, each of which shall be capable of being satisfied if the Closing Date were the date of such termination, and, solely with respect to Section 6.1(b), if the failure of such condition to be satisfied is primarily caused by a material breach by Parent or Merger Sub of any of their respective covenants or agreements contained in Sections 5.5(a), 5.5(b), 5.5(c) or 5.5(d) of this Agreement)), (ii) Parent and Merger Sub do not consummate the Merger on or prior to the date the Closing is required to occur pursuant to Article I, (iii) the Company shall have irrevocably confirmed in writing to Parent that it is ready, willing and able to complete the Closing on the date of such confirmation and throughout the three (3) Business Day period following delivery of such confirmation and (iv) Parent and Merger Sub fail to effect the Closing within three (3) Business Days following delivery of such confirmation.

Section 7.4. Termination by Parent. This Agreement may be terminated and the Merger may be abandoned by Parent:

(a) at any time prior to the time the Stockholder Approval is obtained, if the Company Board (or any committee thereof) shall have effected a Change of Recommendation or allowed the Company or any of its Subsidiaries to enter into an Alternative Acquisition Agreement (for the avoidance of doubt, other than an Acceptable Confidentiality Agreement); provided that Parent s right to terminate this Agreement pursuant to this Section 7.4(a) will expire at 5:00 p.m., New York City time, on the tenth (10^{th}) Business Day following the date on which such right to terminate first arose; or

(b) at any time prior to the Effective Time, if there has been a breach of any representation, warranty, covenant or agreement of the Company in this Agreement, which breach (i) would give rise to the failure of a condition set forth in Section 6.2(a) or 6.2(b), and (ii) (A) is not capable of being cured by the Company by the Termination Date or (B) if capable of being cured, shall not have been cured before the earlier of (x) thirty (30) Business Days following receipt of written notice from Parent of such breach or (y) the Termination Date; provided, that neither Parent nor Merger Sub is then in breach of any representation, warranty, covenant or agreement of this Agreement such that any condition to the obligations of the Company set forth in Section 6.3(a) or 6.3(b) would not then be satisfied if the Closing Date were the date of such termination.

Section 7.5. Effect of Termination and Abandonment.

(a) In the event that this Agreement is terminated and the Merger is abandoned pursuant to this Article VII, this Agreement shall become void and of no effect with no liability to any Person on the part of any party hereto (or of any member of the Parent Group or the Company Group); provided, that (i) except as otherwise provided herein, no such termination shall relieve any party hereto of any liability to pay the Company Termination Fee or the Parent Termination Fee, as applicable, pursuant to this Section 7.5 or, subject to Sections 7.5(e) and 7.5(f), relieve the Company or Parent or Merger Sub of any liability for any Willful Breach of this Agreement prior to such termination, and (ii) the provisions listed in the second sentence of Section 8.1

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shall survive the termination of this Agreement. The party desiring to terminate this Agreement pursuant to Section 7.2, 7.3 or 7.4 shall give written notice of such termination, including a description in reasonable detail of the reasons for such termination, to the other parties in accordance with Section 8.6, specifying the provision or provisions hereof pursuant to which such termination is effected.

(b) In the event that:

(i) (A) this Agreement is terminated pursuant to Section 7.2(a), Section 7.2(b) or Section 7.4(b) (provided that with respect to Section 7.2(a) and Section 7.4(b), the Stockholder Approval has not been obtained); (B) any Person shall have publicly proposed, announced or made an Acquisition Proposal or, in the case of a termination pursuant to Section 7.4(b), an Acquisition Proposal shall have been provided to the Company s management or the Company Board (or any committee thereof), in either case after the date of this Agreement and prior to the Stockholders Meeting (and such Acquisition Proposal shall not have been withdrawn at least two (2) Business Days prior to the Stockholders Meeting) and, in the case of a termination pursuant to Section 7.4(b), prior to the breach that forms the basis for such termination; and (C) within twelve (12) months of such termination the Company shall have consummated an Acquisition Proposal or entered into a definitive agreement for an Acquisition Proposal that is subsequently consummated (whether consummated within such twelve (12)-month period or thereafter), then the Company shall, on the date such Acquisition Proposal is consummated, pay the Company Termination Fee to Parent (or its designee) by wire transfer of same day funds to one or more accounts designated by Parent; provided, that for purposes of clauses (B) and (C) above the references to 20% and 80% in the definition of Acquisition Proposal shall be deemed to be references to 50% ;

(ii) this Agreement is terminated by the Company pursuant to Section 7.3(a), the Company shall, prior to or substantially concurrently with such termination, pay the Company Termination Fee to Parent by wire transfer of same day funds to one or more accounts designated by Parent; provided, that if (A) this Agreement is terminated by the Company pursuant to Section 7.3(a) prior to the No-Shop Period Start Date and (B) the Company has entered into a definitive Alternative Acquisition Agreement with an Excluded Party to consummate an Acquisition Proposal at the time of such termination, then the Company Termination Fee shall equal $110,000,000; or

(iii) this Agreement is terminated by Parent pursuant to Section 7.4(a), the Company shall, no later than three (3) Business Days after the date of such termination, pay the Company Termination Fee to Parent by wire transfer of same day funds to one or more accounts designated by Parent.

For the avoidance of doubt, in no event shall the Company be required to pay the Company Termination Fee on more than one occasion.

(c) In the event that this Agreement is terminated by the Company pursuant to Section 7.3(c), then Parent shall, no later than three (3) Business Days after the date of such termination, pay or cause to be paid the Parent Termination Fee to the Company or its designees by wire transfer of same day funds to one or more accounts designated by the Company (it being understood that in no event shall Parent be required to pay the Parent Termination Fee on more than one occasion); provided, that any purported termination of this Agreement under Section 7.2(a) shall be deemed to be a termination under Section 7.3(c) if, at the time of such termination, the Company would have been entitled to terminate this Agreement pursuant to Section 7.3(c).

(d) In the event that the Company shall fail to pay the Company Termination Fee, or Parent shall fail to pay the Parent Termination Fee, in either case as required pursuant to this Section 7.5 when due, such fee shall accrue interest for the period commencing on the date such fee became past due, at a rate equal to the rate of interest publicly announced by JPMorgan Chase Bank, National Association, in the City of New York from time to time during such period, as such bank s prime lending rate. The Company and Parent each acknowledge that the fees and the other

provisions of this Section 7.5 are an integral part of this Agreement and are not a penalty, but rather liquidated damages in a reasonable amount that will compensate the other party in the circumstances in which such fee is payable, and that, without these provisions, the other party would not enter into this Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, in the event that Parent and Merger Sub fail to effect the Closing or otherwise breach this Agreement or fail to perform hereunder (whether willfully, intentionally, unintentionally or otherwise), then, except for an order of specific performance prior to the

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termination of this Agreement as permitted by Section 8.7, (i) the Company s sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) against (A) Parent, Merger Sub, the Financing Parties and the Equity Investors, (B) the former, current and future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders or assignees of Parent Merger Sub or any Equity Investor or (C) any future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders or assignees of any of the foregoing (collectively, the Parent Group) in respect of this Agreement, any agreement executed in connection herewith, including the Commitment Letters and each Limited Guarantee, and the transactions contemplated hereby and thereby shall be (x) to terminate this Agreement in accordance with this Article VII and collect, if due, the Parent Termination Fee pursuant to Section 7.5(c) (including any interest payable pursuant to Section 7.5(d)) from Parent or pursuant to each Limited Guarantee and, as applicable, the reimbursements contemplated by Sections 5.9 and 5.13, and (y) following the termination of this Agreement by either party, the Company s right to seek monetary damages from Parent in the event of Parent s or Merger Sub s Willful Breach of this Agreement prior to the termination of this Agreement (provided that in no event shall Parent be subject to monetary damages for Willful Breach of this Agreement in an amount in excess of an amount equal to the Parent Termination Fee (the Damage Cap)) and (ii) upon payment of such amounts, no member of the Parent Group shall have any further liability or obligation relating to or arising out of this Agreement, any agreement executed in connection herewith, the Commitment Letters or each Limited Guarantee, or the transactions contemplated hereby or thereby; provided, that in no event will the Company be entitled to (1) payment of monetary damages prior to the termination of this Agreement or in amounts in excess of the amount of the Damage Cap, (2) payment of both monetary damages and the Parent Termination Fee in a combined amount in excess of the Damage Cap, or (3) both (x) payment of any monetary damages and/or the Parent Termination Fee and (y) a grant of specific performance of this Agreement or any other equitable remedy against Parent or Merger Sub that results in the Closing.

(f) Notwithstanding anything to the contrary in this Agreement, in the event that the Company fails to effect the Closing or otherwise breaches this Agreement or fails to perform hereunder (whether willfully, intentionally, unintentionally or otherwise), then, except for an order of specific performance prior to the termination of this Agreement as permitted by Section 8.7, (i) Parent s and Merger Sub s sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) against (A) the Company and its Subsidiaries, (B) the former, current and future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders or assignees of the Company or its Subsidiaries or (C) any future holders of any equity, partnership or limited liability company interest, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders or assignees of any of the foregoing (collectively, the Company Group) in respect of this Agreement, any agreement executed in connection herewith and the transactions contemplated hereby and thereby shall be (x) to terminate this Agreement in accordance with this Article VII and collect, if due, the Company Termination Fee pursuant to Section 7.5(b) (including any interest payable pursuant to Section 7.5(d)) from the Company, and (y) following the termination of this Agreement by either party, Parent s right to seek monetary damages from the Company in the event of the Company s Willful Breach of this Agreement prior to the termination of this Agreement (provided that in no event shall the Company be subject to monetary damages for Willful Breach of this Agreement in an amount in excess of the Damage Cap) and (ii) upon payment of such amounts, no member of the Company Group shall have any further liability or obligation relating to or arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby or thereby; provided, that in no event will Parent and Merger Sub be entitled to (1) payment of monetary damages prior to the termination of this Agreement or in amounts in excess of the amount of the Damage Cap, (2) payment of both monetary damages and the Company Termination Fee in a combined amount in excess of the Damage Cap, or (3) both (x) payment of any monetary damages and/or the Company Termination Fee and (y) a grant of specific performance of this Agreement or any other equitable remedy against the Company that results in the Closing.

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ARTICLE VIII

GENERAL PROVISIONS

Section 8.1. Survival. This Article VIII and the agreements of the Company, Parent and Merger Sub contained in Article II, Section 5.10 (Indemnification; Directors and Officers Insurance) and any other covenant or agreement contained in this Agreement that by its terms applies in whole or in part after the Effective Time shall survive the consummation of the Merger. This Article VIII and the agreements of the Company, Parent and Merger Sub contained in Section 5.9 (*Expenses*) and Section 7.5 (Effect of Termination and Abandonment) and the Confidentiality Agreement, and the agreements of Parent contained in the last sentence of Section 5.13(a) (Financing Cooperation), shall survive the termination of this Agreement. All other representations, warranties, covenants and agreements in this Agreement shall not survive the consummation of the Merger or the termination of this Agreement, as applicable.

Section 8.2. Modification or Amendment. Subject to applicable Law, the parties hereto may modify or amend this Agreement, by written agreement executed and delivered by the duly authorized officers of each of the respective parties; provided, that no amendment shall be made to this Agreement after the Effective Time; provided, further, that after receipt of Stockholder Approval, if any such amendment shall by applicable Law require further approval of the stockholders of the Company, the effectiveness of such amendment shall be subject to the approval of the stockholders of the Company.

Section 8.3. Waiver; Extension. The conditions to each of the parties obligations to consummate the Merger are for the sole benefit of such party and may be waived by such party (without the approval of the stockholders of the Company) in whole or in part to the extent permitted by applicable Law. At any time prior to the Effective Time, the Company or Parent may (i) waive or extend the time for the performance of any of the obligations or other acts of Parent or Merger Sub, in the case of the Company, or the Company, in the case of Parent, or (ii) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant to this Agreement on the part of Parent or Merger Sub, in the case of the Company, or the Company, in the case of Parent. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 8.4. Counterparts. This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

Section 8.5. Governing Law and Venue; Waiver of Jury Trial.

(a) This Agreement and all actions (whether at law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance hereof shall be governed by and construed in accordance with the laws of the State of Delaware without regard to principles of conflicts of law. Each party hereto agrees that it shall bring any Action between the parties or involving any member of the Company Group or Parent Group arising out of or related to this Agreement, the Equity Commitment Letters, any Limited Guarantee or the transactions contained in or contemplated by this Agreement, the Equity Commitment Letters or any Limited Guarantee exclusively in the Delaware Court of Chancery (or, only if the Delaware Court of Chancery lacks or declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) (the Chosen Courts), and with respect to any such Action (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such Action in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto or any member of the Company Group or Parent Group and (iv) agrees that service of process upon such party in any such Action shall be effective if notice is given in accordance with Section 8.6.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE

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TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.5(b).

Section 8.6. Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) if personally delivered, on the date of delivery, (b) if delivered by express courier service of national standing (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if deposited in the United States mail, first-class postage prepaid, on the fifth (5th) Business Day following the date of such deposit, (d) if delivered by email transmission, on the date of such transmission, provided that confirmation of such transmission is received within one (1) Business Day, or (e) if delivered by facsimile transmission, upon confirmation of successful transmission, (i) on the date of such transmission, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient party on a Business Day, on the date of such transmission, and (ii) on the next Business Day following the date of transmission, if such transmission is completed after 5:00 p.m., local time of the recipient party, on the date of such transmission or is transmitted on a day that is not a Business Day. All notices, demands and other communications hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Parent or Merger Sub, to:

Unite Parent Corp.
c/o Hellman & Friedman LLC
415 Mission Street, Suite 5700
San Francisco, California 94105
Attention: Arrie Park
email: apark@hf.com

with a copy (which shall not constitute notice) to:

Simpson Thacher & Bartlett LLP
2475 Hanover Street
Palo Alto, California 94304
Attention: Atif I. Azher
Rich Capelouto
email: AAzher@stblaw.com
RCapelouto@stblaw.com

If to the Company, to:

The Ultimate Software Group, Inc.

2000 Ultimate Way
Weston, Florida 33326
Attention: Robert J. Manne
email: robert_manne@ultimatesoftware.com

with a copy (which shall not constitute notice) to:

Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
Attention: Christopher Doyle
email: cdoyle@stroock.com

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above.

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Section 8.7. Specific Performance.

(a) The parties agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that the parties hereto do not perform the provisions of this Agreement (including failing to take such actions as are required of them in order to consummate the Merger) in accordance with its specified terms or otherwise breach or threaten to breach such provisions. The parties acknowledge and agree that the parties hereto shall be entitled, in addition to any other remedy to which they are entitled at law or in equity, to an injunction, specific performance and other equitable relief to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof, except as expressly provided in Section 8.7(b) or 8.7(c).

(b) Notwithstanding Section 8.7(a), it is acknowledged and agreed that the Company shall be entitled to specific performance of Parent s and Merger Sub s obligations pursuant to the terms of this Agreement and the Equity Commitment Letters to complete the Closing, including to cause, subject to the terms and conditions set forth in the Equity Commitment Letters, the Cash Equity to be funded to fund the Merger and to consummate the Merger, only in the event that (i) all of the conditions set forth in Sections 6.1 and 6.2 have been satisfied or waived (other than those conditions that by their nature are to be satisfied at the Closing, provided that those other conditions would be satisfied if the Closing were on such date), (ii) Parent and Merger Sub fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2, (iii) the Debt Financing has been funded or will be funded at the Closing if the Cash Equity is funded at the Closing, and (iv) the Company has irrevocably confirmed in a written notice to Parent that the Closing will occur if the Cash Equity and Debt Financing are funded and specific performance is granted pursuant to this Section 8.7(b).

(c) Notwithstanding Section 8.7(a), it is acknowledged and agreed that the Company shall be entitled to specific performance requiring Parent and Merger Sub to enforce (x) the terms of the Debt Commitment Letter and (y) the obligations of the Lenders to fund the Debt Financing, only in the event that (i) all of the conditions set forth in Sections 6.1 and 6.2 have been satisfied (other than those conditions that by their nature are to be satisfied at the Closing, provided that those other conditions would be satisfied if the Closing were on such date), (ii) Parent and Merger Sub fail to complete the Closing by the date the Closing is required to have occurred pursuant to Section 1.2, (iii) all of the conditions (other than those conditions that by their nature are to be satisfied at the Closing under the Debt Commitment Letter, provided that those other conditions would be satisfied if the Closing were on such date) to the consummation of the financing provided for in the Debt Commitment Letter have been satisfied, and (iv) the Company has irrevocably confirmed in a written notice to Parent that the Closing will occur if the Cash Equity and Debt Financing are funded and specific performance is granted pursuant to this Section 8.7(c).

(d) Without limiting the foregoing, each of the parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that (i) there is adequate remedy at law or (ii) an award of specific performance is not an appropriate remedy for any reason at law or in equity. Any party seeking an order or injunction to prevent breaches or threatened breaches and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with any such order or injunction.

Section 8.8. Entire Agreement. This Agreement (including any exhibits hereto), the Company Disclosure Schedule, the Parent Disclosure Schedule, the Equity Commitment Letters, the Limited Guarantees and the Confidentiality Agreement and the other instruments and other agreements specifically referred to herein or delivered pursuant hereto constitute the entire agreement among the parties with respect to the subject matter hereof, and supersede all other prior agreements, understandings, representations and warranties, both written and oral, among the parties, with respect to the subject matter hereof.

Section 8.9. Parties in Interest; Financing Parties.

(a) Each of Parent, Merger Sub and the Company hereby agrees that their respective representations, warranties and covenants set forth herein are solely for the benefit of the other parties hereto, in accordance with and subject to the terms of this Agreement, and this Agreement is not intended to, and does not, confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein; provided, however, that (i) (x) the Persons referred to in the last sentence of Section 5.13(a) (*Financing Cooperation*) and Section 7.5 (*Effect of Termination and Abandonment*) and (y) the Financing Parties referred to in Section 7.5(e) (*Effect of Termination and Abandonment*) and

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Section 8.9(b) (*Parties in Interest; Financing Parties*) shall, in each case, be third party beneficiaries of, and shall be entitled to rely on, such sections, (ii) if the Effective Time occurs, the holders of Shares shall be third party beneficiaries of, and shall be entitled to rely on, Article II, (iii) if the Effective Time occurs, the Indemnified Parties shall be third party beneficiaries of, and shall be entitled to rely on, Section 5.10 (*Indemnification; Directors and Officers Insurance*), (iv) if the Effective Time occurs, the holders of Company Equity Awards shall be third party beneficiaries of, and shall be entitled to rely on, Article II and (v) subject to the limitations set forth in Section 7.5(e), the holders of Shares and Company Equity Awards shall be entitled to pursue after the termination of this Agreement claims for monetary damages from Parent (including monetary damages based on the loss of the economic benefits of the Merger, including the loss of the premium offered to such holders) for a Willful Breach by Parent or Merger Sub of its obligations under this Agreement; provided, that the rights granted pursuant to this clause (v) shall be enforceable on behalf of holders of Shares and Company Equity Awards only by the Company, in its sole and absolute discretion, and any amounts received by the Company in connection therewith may be retained by the Company and shall be deemed to be damages of the Company; provided, further, that in no event will any holder of Shares or Company Equity Awards or the Company on behalf of any such holder be entitled to (and in no event shall Parent have any liability or obligation with respect to) any payment of monetary damages either prior to the termination of this Agreement or in amounts that, together with all other amounts of monetary damages for Willful Breach of this Agreement and the Parent Termination Fee, in each case paid by or on behalf of Parent, exceed the amount of the Damage Cap, and (y) upon termination of this Agreement and payment of such amounts, no member of the Parent Group shall have any further liability or obligation to any holder of Shares or Company Equity Awards or the Company on behalf of such holders relating to or arising out of this Agreement, the Commitment Letters or each Limited Guarantee, or the transactions contemplated hereby or thereby.

(b) Notwithstanding anything in this Agreement to the contrary, the Company on behalf of itself, its Subsidiaries and each of its controlled Affiliates hereby: (i) agrees that any Action, whether in law or in equity, whether in contract or in tort or otherwise, involving the Financing Parties, arising out of or relating to, this Agreement, the Debt Financing or any of the agreements (including the Debt Commitment Letter) entered into in connection with the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder shall be subject to the exclusive jurisdiction of any federal or state court in the Borough of Manhattan, New York, New York, so long as such forum is and remains available, and any appellate court thereof and each party hereto irrevocably submits itself and its property with respect to any such Action to the exclusive jurisdiction of such court, and such Action (except to the extent relating to the interpretation of any provisions in this Agreement (including any provision in the Debt Commitment Letters or in any definitive documentation related to the Debt Financing that expressly specifies that the interpretation of such provisions shall be governed by and construed in accordance with the law of the State of the Delaware)) shall be governed by the laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the laws of another jurisdiction) (ii) agrees not to bring or support or permit any of its controlled Affiliates to bring or support any Action of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against any Financing Party in any way arising out of or relating to, this Agreement, the Debt Financing, the Debt Commitment Letter or any of the transactions contemplated hereby or thereby or the performance of any services thereunder in any forum other than any federal or state court in the Borough of Manhattan, New York, New York, (iii) agrees that service of process upon the Company, its Subsidiaries or its controlled Affiliates in any such Action or proceeding shall be effective if notice is given in accordance with Section 8.6, (iv) irrevocably waives, to the fullest extent that it may effectively do so, the defense of an inconvenient forum to the maintenance of such Action in any such court, (v) knowingly, intentionally and voluntarily waives to the fullest extent permitted by applicable Law trial by jury in any Action brought against the Financing Parties in any way arising out of or relating to, this Agreement, the Debt Financing, the Debt Commitment Letter or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, (vi) agrees that none of the Financing Parties will have any liability to the Company or any of its Subsidiaries or any of their respective controlled Affiliates or Representatives (in each case, other than Parent, Merger Sub and their respective Subsidiaries) relating to or arising out of this Agreement, the Debt Financing, the Debt Commitment Letter,

any of the agreements entered into in connection with the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, whether in law or in equity, whether in contract or in tort or otherwise (provided that, notwithstanding the foregoing, nothing herein shall affect the rights of the Surviving Corporation against the Financing Parties with respect to the Debt Financing or any of the transactions contemplated thereby or the any

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services thereunder following the Merger), (vii) agrees that it shall not and shall not permit any of its affiliates or any of their respective officers, directors, or employees to seek any action for specific performance against any of the Financing Parties relating to or in any way arising out of this Agreement, the Debt Financing, the Debt Commitment Letter, any of the agreements entered into in connection with the Debt Financing or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, (viii) agrees that Parent and Merger Sub may assign their respective rights and obligations hereunder (while remaining liable for their obligations hereunder) to the Financing Parties pursuant to the terms of the Financing for purposes of creating a security interest herein or otherwise assigning as collateral in respect of the Debt Financing and (ix) agrees that the Financing Parties are express third party beneficiaries of, and may enforce, any of the provisions in this Agreement reflecting the foregoing agreements in Section 7.5(e) and this Section 8.9(b) and such provisions and the definition of Financing Parties shall not be amended in any way adverse to the Financing Parties without the prior written consent of the Financing Entities.

Section 8.10. Definitions; Construction.

(a) Definitions. As used herein:

Acquisition Proposal means any inquiry, proposal or offer from any Person (other than Parent and its Subsidiaries) relating to, in a single transaction or series of transactions, (a) a merger, consolidation, dissolution, liquidation, recapitalization, share exchange, business combination or similar transaction involving the Company as a result of which the stockholders of the Company immediately prior to such transaction would cease to own at least 80% of the total voting power of the Company or any surviving entity (or any direct or indirect parent company thereof) immediately following such transaction, (b) the acquisition by any Person or group of Persons of more than 20% of the total voting power represented by the outstanding voting securities of the Company or any of its Subsidiaries if such voting power represents assets that constitute over 20% of the fair market value of the consolidated assets of the Company and its Subsidiaries, (c) a tender offer or exchange offer or other transaction which, if consummated, would result in a direct or indirect acquisition by any Person or group of Persons of more than 20% of the total voting power represented by the outstanding voting securities of the Company or any of its Subsidiaries if such voting power represents assets that constitute over 20% of the fair market value of the consolidated assets of the Company and its Subsidiaries, or (d) the acquisition in any manner, directly or indirectly, of over 20% of the fair market value of the consolidated assets of the Company and its Subsidiaries, in each case other than the transactions contemplated by this Agreement.

Action means any claim, charge, complaint, demand, action, litigation, arbitration, suit in equity or at law, administrative, regulatory or quasi-judicial proceeding, or other proceeding, in each case by or before a Governmental Entity.

Affiliate means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person, and for purposes of this definition, the term control (including the correlative terms controlling, 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.

Business Day means any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized by Law to close in New York, New York.

Company Benefit Plan means each employee benefit plan (as defined in Section 3(3) of ERISA), whether or not such plan is subject to ERISA, and each other employment (excluding offer letters entered into in the ordinary course of business consistent with past practice and that do not provide for any severance benefits), change in control, retention,

bonus, defined benefit or defined contribution, pension, profit sharing, deferred compensation, stock ownership, stock purchase, stock option, stock appreciation, restricted stock, restricted stock unit, phantom stock or other equity-based, retirement, vacation, severance, termination, disability, death benefit, medical, dental, or other employee benefit plan, program, agreement or arrangement (i) that the Company or any of its Subsidiaries sponsors, maintains or contributes to for the benefit of any current or former director, officer, or employee of the Company or any of its Subsidiaries or (ii) to which the Company or any ERISA Affiliate has any liability, in each case, other than any Multiemployer Plan.

Company Intellectual Property means Intellectual Property owned by the Company and its Subsidiaries.

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Company Material Adverse Effect means any fact, circumstance, change, event, occurrence or effect that (x) has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the financial condition, business or results of operations of the Company and its Subsidiaries, taken as a whole or (y) materially impairs, materially delays or prevents, or would reasonably be expected to materially impair, materially delay or prevent, the Company from consummating the Merger; provided, that for purposes of clause (x), none of the following, and no effect arising out of, relating to or resulting from the following, shall constitute or be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect :

(i) any facts, circumstances, changes, events, occurrences or effects generally affecting (A) the industries in which the Company and its Subsidiaries operate or (B) the economy, credit, debt, securities or financial or capital markets in the United States or elsewhere in the world, including changes in interest or exchange rates or deterioration in the credit markets generally;

(ii) any facts, circumstances, changes, events, occurrences or effects to the extent arising out of, resulting from or attributable to (A) changes or prospective changes in Law, in GAAP or in accounting standards, or any changes or prospective changes in the interpretation or enforcement of any of the foregoing, (B) entry into and consummation and performance of this Agreement and the transactions contemplated hereby and the public announcement thereof, including the impact thereof on relationships, contractual or otherwise, with customers, suppliers, distributors, partners, employees, regulators or other third parties (except that this clause (B) shall not apply to the representations and warranties made in Section 3.5 (and to the extent related to Section 3.5, the condition in Section 6.2(a))), (C) acts of war (whether or not declared) or any outbreak of hostilities, sabotage or terrorism, or any escalation or worsening of any such acts of war (whether or not declared), outbreak of hostilities, sabotage or terrorism, (D) weather, pandemics, earthquakes, hurricanes, tornados, natural disasters, climatic conditions or other force majeure events, whether or not weather-related, (E) regulatory and political conditions or developments, (F) any change resulting or arising from the identity of, or any facts or circumstances relating to, Parent, Merger Sub or their respective Affiliates, (G) any legal proceedings made or brought by any of the current or former stockholders of the Company (on their own behalf or on behalf of the Company), but in any event only in their capacities as current or former stockholders, or otherwise under the DGCL or other applicable Law, or other litigation (except that clause (G), solely with respect to such other litigation, shall not apply to the representations and warranties made in Section 3.5 (and to the extent related to Section 3.5, the condition in Section 6.2(a))), arising out of or related to this Agreement or any of the transactions contemplated hereby, (H) actions or omissions of the Company or any of its Subsidiaries requested or consented to in writing by Parent or expressly required by this Agreement, (I) any decline in the market price, or change in trading volume, of the Common Stock (or the volatility thereof), or (J) any failure to meet any internal or public projections, forecasts or estimates of revenue, earnings, cash flow or cash position, or other metrics; or

(iii) any item or matter disclosed in the Company Disclosure Schedule;

provided, that (x) facts, circumstances, changes, events, occurrences or effects set forth in clauses (i), (ii)(A), (ii)(C), (ii)(D) and (ii)(E) above may be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect to the extent such facts, circumstances, changes, events, occurrences or effects have a disproportionate adverse effect on the Company and its Subsidiaries, taken as a whole, in relation to others in the industries of the Company and its Subsidiaries (provided, that only the incremental disproportionate adverse effects of such facts, circumstances, changes, events, occurrences or effects may be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect), and (y) that the underlying cause of any decline, change or failure referred to in clause (ii)(I) or (ii)(J) may be taken into account in determining whether there has been, or would reasonably be expected to be, a Company Material Adverse Effect unless such underlying cause is otherwise excluded hereby.

Company Termination Fee means an amount equal to $331,000,000.

Contract means any note, bond, mortgage, indenture, lease, license, franchise, contract, agreement, commitment, or other legally binding obligation.

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Environmental Laws means any Law regulating or relating to natural resources or the environment, including Laws relating to contamination and the use, generation, management, handling, transport, treatment, disposal, storage, release of, or exposure to, Materials of Environmental Concern.

Equity Investor means each of: (i) Hellman & Friedman Capital Partners VIII, L.P., Hellman & Friedman Capital Partners VIII (Parallel), L.P., HFCP VIII (Parallel-A), L.P., H&F Executives VIII, L.P., and H&F Associates VIII, L.P., (ii) Hellman & Friedman Capital Partners IX, L.P., Hellman & Friedman Capital Partners IX (Parallel), L.P., HFCP IX (Parallel-A), L.P., H&F Executives IX, L.P., H&F Executives IX-A, L.P. and H&F Associates IX 2019, L.P., (iii) Blackstone Capital Partners VII L.P., Blackstone Capital Partners VII.2 L.P., Blackstone Family Investment Partnership VII - ESC L.P. and BTAS Q Holdings L.L.C., (iv) Vencap Holdings (1987) Pte. Ltd., (v) Canada Pension Plan Investment Board, (vi) JMI Equity Fund IX-A, L.P. and JMI Equity Fund IX-B, L.P. and (vii) H&F Unite Partners II, L.P.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

ERISA Affiliate means, with respect to any entity, trade or business, any other entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the Code or Section 4001(b)(1) of ERISA that includes or included the first entity, trade or business, or that is, or was at the relevant time, a member of the same controlled group as the first entity, trade or business pursuant to Section 4001(a)(14) of ERISA.

Exchange Act means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

Excluded Party means any Person from whom the Company or any of its Representatives has received a written bona fide Acquisition Proposal after the execution of this Agreement and prior to the No-Shop Period Start Date, which written Acquisition Proposal the Company Board has determined in good faith prior to the start of the No-Shop Period Start Date (after consultation with its outside counsel and its financial advisor) is or would reasonably be expected to lead to a Superior Proposal; provided, however, that a Person shall immediately cease to be an Excluded Party (and the provisions of this Agreement applicable to Excluded Parties shall cease to apply with respect to such Person) if (A) such Acquisition Proposal made by such Person prior to the start of the No-Shop Period Start Date is withdrawn or (B) such Acquisition Proposal, in the good faith determination of the Company Board (after consultation with its outside counsel and its financial advisor), no longer is or would no longer be reasonably expected to lead to a Superior Proposal.

Financing Entities has the meaning set forth in the definition of Financing Parties.

Financing Parties means entities that have committed to provide or arrange or otherwise entered into agreements pursuant to the Debt Commitment Letter or in connection with all or any part of the Debt Financing, or to purchase securities from or place securities or arrange or provide loans for Parent in lieu of the Debt Financing under the Debt Commitment Letter, in connection with the Merger, including the Lenders and the other the parties to the Debt Commitment Letter and any joinder agreements or credit agreements relating thereto (the Financing Entities) and their respective Affiliates and their and their respective Affiliates former, current or future officers, directors, managers, members, employees, controlling persons, general or limited partners, direct or indirect shareholders or equityholders, agents and representatives and their respective successors and assigns; provided that neither Parent nor any Affiliate of Parent shall be a Financing Party.

Financing Sources means entities that have committed to provide or arrange or otherwise entered into agreements in connection with debt financing for an Acquisition Proposal, including the parties to any debt commitment letter and any joinder agreements or credit agreements relating thereto and their respective Affiliates and their and their

respective Affiliates officers, directors, employees, agents and representatives and their respective successors and assigns.

Governmental Entity means any federal, state, local or foreign government, any court, tribunal, administrative agency or commission or other governmental or other regulatory authority or agency, whether federal, state, local, foreign or supranational, any arbitral body, or NASDAQ.

Guarantor means each of: (i) Hellman & Friedman Capital Partners VIII, L.P., Hellman & Friedman Capital Partners VIII (Parallel), L.P., HFCP VIII (Parallel-A), L.P., H&F Executives VIII, L.P., and H&F Associates VIII, L.P., (ii) Hellman & Friedman Capital Partners IX, L.P., Hellman & Friedman Capital Partners

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IX (Parallel), L.P., HFCP IX (Parallel-A), L.P., H&F Executives IX, L.P., H&F Executives IX-A, L.P. and H&F Associates IX 2019, L.P., (iii) Blackstone Capital Partners VII L.P., Blackstone Capital Partners VII.2 L.P., Blackstone Family Investment Partnership VII - ESC L.P. and BTAS Q Holdings L.L.C., (iv) Vencap Holdings (1987) Pte. Ltd., and (v) Canada Pension Plan Investment Board, (vi) JMI Equity Fund IX-A, L.P. and JMI Equity Fund IX-B, L.P.

HSR Act means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

Intellectual Property means intellectual property rights recognized by applicable Law, including in trademarks, trade names, service marks, service names, mark registrations and applications, trade dress, logos, domain names, URLs, social media identifiers and the goodwill in any of the foregoing; registered and unregistered copyrights and patents and patent applications; trade secrets and know-how; and computer programs, software, data and databases.

Intervening Event means a material event, occurrence, development or change in circumstances with respect to the Company and its Subsidiaries, taken as a whole, that occurred or arose after the date of this Agreement, which was unknown to, nor reasonably foreseeable by, the Company Board as of the date of this Agreement and becomes known to or by the Company Board prior to the time the Stockholder Approval is obtained; provided, however that none of the following will constitute, or be considered in determining whether there has been, an Intervening Event: (i) the receipt, existence of or terms of an Inquiry or Acquisition Proposal or any matter relating thereto or consequence thereof and (ii) changes in the market price or trading volume of the Shares or the fact that the Company meets or exceeds internal or published projections, budgets, forecasts or estimates of revenues, earnings or other financial results for any period (provided, however, that the underlying causes of such change or fact shall not be excluded by this clause (ii)).

Knowledge means (i) with respect to the Company, the actual knowledge of those persons set forth in Section 8.10(b) of the Company Disclosure Schedule, and (ii) with respect to Parent, the actual knowledge of those persons set forth in Section 8.10(b) of the Parent Disclosure Schedule.

Law means any Order or any federal, state, local, foreign, supranational or international law, statute, treaty, convention or ordinance, common law, or any rule, regulation, standard, directive, requirement, policy, license or permit of any Governmental Entity.

Lien means any mortgage, pledge, assignment, title defect, claim, adverse ownership interest, transfer restriction, security interest, encumbrance, lien or charge.

Marketing Period means the first period of fifteen (15) consecutive Business Days commencing on or after the No-Shop Period Start Date throughout which (i) Parent shall have the Required Financial Information (which shall be the same information throughout the period), (ii) the conditions set forth in Section 6.1 and Section 6.2 shall have been satisfied (other than Section 6.1(a) and those conditions that by their nature are to be satisfied at the Closing), assuming that the Closing Date were to be scheduled for any time during such fifteen (15) consecutive Business Day period, or (to the extent permitted by applicable Law) waived, and (iii) during the last three (3) Business Days of such fifteen (15) consecutive Business Day period, the conditions set forth in Section 6.1(a) shall have been satisfied; provided, however, that (1) July 5, 2019 shall not constitute a Business Day for purposes of such fifteen (15) consecutive Business Day period (provided that, for the avoidance of doubt, such exclusions shall not restart such period), and (2) the Marketing Period shall be deemed not to have commenced if, after the date hereof and prior to the completion of such fifteen (15) consecutive Business Day period, (A) the independent auditors of the Company shall have withdrawn their audit opinion with respect to any year-end audited financial statements of the Company and its Subsidiaries included in the Required Financial Information, in which case the Marketing Period shall be deemed not

to commence unless and until such independent auditors or another nationally recognized independent accounting firm reasonably acceptable to Parent have issued an unqualified audit opinion with respect to such financial statements or (B) any of the financial statements of the Company and its Subsidiaries included in the Required Financial Information shall have been restated or the Company shall have determined or publicly announced that a restatement of any financial statements of the Company and its Subsidiaries included in the Required Financial Information is required, in which case the Marketing Period shall be deemed not to commence unless and until such restatement has been completed and the Required Financial Information has subsequently been amended and delivered to Parent or the Company has determined in writing or publicly announced, as applicable, that no such restatement

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shall be required; provided further, that if the Company shall in good faith reasonably believe that it has provided the Required Financial Information, it may deliver to Parent a written notice to that effect (stating the date upon which it believes it completed such delivery or provided such access to Required Financial Information), in which case (subject to satisfaction of any other conditions, and compliance with the terms of each other provision, of this definition (including the requirement that Required Financial Information be the same information throughout the period)) such fifteen (15) consecutive Business Day period referred to above shall be deemed to have commenced on the date such notice is delivered to Parent unless Parent in good faith reasonably believes the Company has not provided the Required Financial Information or that clauses (ii) or (iii) of this definition have not been satisfied and, within three (3) Business Days after the giving of such notice by the Company, gives a written notice to the Company to that effect (stating with specificity any elements of noncompliance and/or nonsatisfaction). Notwithstanding anything in this definition to the contrary, the Marketing Period shall end on any date earlier than the date indicated in the definition above if the Debt Financing is consummated and the full proceeds thereof received on such earlier date.

Materials of Environmental Concern means any substance or material defined, identified or regulated as toxic or hazardous or as a pollutant or contaminant or words of similar meaning or effect under any Environmental Law, including asbestos, asbestos-containing materials, polychlorinated biphenyls, petroleum and petroleum products.

Multiemployer Plan means any multiemployer plan within the meaning of Section 4001(a)(3) of ERISA.

NASDAQ means the NASDAQ Global Select Market.

Non-Objection means the failure of the SEC and/or its staff to provide to the Company or its outside counsel any comments, objections or requests with respect to the Company s preliminary Proxy Statement within 10 calendar days after such preliminary Proxy Statement is filed by the Company with the SEC.

Order means any order, judgment, writ, stipulation, settlement, award, injunction, decree, arbitration award or finding of any Governmental Entity.

Parent Termination Fee means an amount equal to $550,000,000.

Permitted Liens means (i) zoning restrictions, easements, rights-of-way or other restrictions on the use of real property (provided, that such liens and restrictions do not materially and adversely impair the Company s current business operations at such location), (ii) pledges or deposits by the Company or any of its Subsidiaries under workmen s compensation Laws, unemployment insurance Laws or similar legislation, or good faith deposits in connection with bids, tenders or Contracts to which such entity is a party, or deposits to secure public or statutory obligations of such entity or to secure surety or appeal bonds to which such entity is a party, or deposits as security for contested Taxes, in each case incurred or made in the ordinary course of business, (iii) Liens imposed by Law, including carriers , warehousemen s, landlords and mechanics liens, in each case incurred in the ordinary course of business and for sums not yet due or being contested in good faith by appropriate proceedings, (iv) statutory Liens for Taxes, assessments or other governmental charges not yet due and payable or which are being contested in good faith by appropriate proceedings, (v) Liens or imperfections of title that do not materially impair the ownership or use of the assets to which they relate, (vi) non-exclusive licenses granted to third parties in the ordinary course of business by the Company or its Subsidiaries and (vii) Liens in respect of the indebtedness of the Company or its Subsidiaries in existence as of the date hereof and set forth on Section 8.10(a) of the Company Disclosure Schedule, or incurred as permitted under this Agreement (including in compliance with Section 5.1(b)(viii)), in each case as security for such indebtedness.

Person means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or

nature.

Record Holder means, with respect to any Shares, a Person who was, immediately prior to the Effective Time, the holder of record of such Shares.

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Regulatory Law means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, and all other foreign or domestic Laws that are designed or intended to prohibit, restrict or regulate (i) foreign investment, (ii) foreign exchange or currency controls or (iii) actions having the purpose or effect of monopolization, restraint of trade or lessening of competition.

Rights Plan means the Amended and Restated Rights Agreement, dated as of October 19, 2018, by and between the Company and Computer Trust Company, N.A. (as amended, restated, supplemented or otherwise modified from time to time).

SEC means the United States Securities and Exchange Commission.

Securities Act means the United States Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

Significant Subsidiary of any Person means a Subsidiary of such Person that would constitute a significant subsidiary of such Person within the meaning of Rule 1-02(w) of Regulation S-X as promulgated by the SEC.

Subsidiary means, with respect to any Person, any other Person of which at least a majority of the securities or ownership interests having by their terms ordinary voting power to elect a majority of the board of directors or other persons performing similar functions (or, in the case of a partnership, a majority of the general partnership interests) is directly or indirectly owned or controlled by such Person or by one or more of its Subsidiaries.

Superior Proposal means a bona fide written Acquisition Proposal that the Company Board has determined in its good faith judgment, after consultation with its financial advisor and outside legal counsel, and taking into consideration, among other things, all legal, financial, regulatory, timing and other aspects and risks of the proposal (including required conditions) and the Person making the proposal and all of the other terms, conditions and other aspects of such Acquisition Proposal and this Agreement that the Company Board deems relevant, to be more favorable to the Company s stockholders from a financial point of view than the transactions contemplated by this Agreement (including, if applicable, any revisions to this Agreement made or proposed in writing by Parent in accordance with Section 5.2); provided, that for purposes of the definition of Superior Proposal, the references to 20% and 80% in the definition of Acquisition Proposal shall be deemed to be references to 50%.

Tax (including, with correlative meaning, the term Taxes) means (a) all U.S. federal, state, local and non-U.S. income, profits, franchise, gross receipts, environmental, customs duty, capital stock, severance, stamp, payroll, sales, employment, unemployment, disability, use, ad valorem, real or personal property, withholding, excise, production, value added, goods and services, transfer, license, occupation, premium, windfall profits, social security (or similar), registration, alternative or add-on minimum, estimated, occupancy and other taxes, duties, fees, or other assessments imposed by any Governmental Entity responsible for the administration of Taxes, and (b) any interest, penalties and additions with respect to any of the foregoing.

Tax Return means all returns, reports, elections, declarations, disclosures, schedules, claims for refund, statements, estimates, information returns and other similar documents filed or required to be filed with any Governmental Entity responsible for the administration of Taxes, including any attachments thereto and any amendments thereof.

Willful Breach means a breach that is a consequence of an intentional act or intentional failure to act undertaken by the breaching party with actual knowledge that such party s act or failure to act would, or would reasonably be expected to, result in or constitute a material breach.

(b) Construction. The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Where a reference in this Agreement is made to a Section or Exhibit, such reference shall be to a Section of or Exhibit to this Agreement unless otherwise indicated. Whenever the words include, includes or including are used in this Agreement, they shall be deemed to be followed by the words without limitation. The words hereof, herein and hereunder and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any

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particular provision of this Agreement. The word or shall be deemed to mean and/or. Terms defined in the text of this Agreement as having a particular meaning have such meaning throughout this Agreement, except as otherwise indicated in this Agreement. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any statute defined or referred to herein means such statute as from time to time amended, modified or supplemented, including by succession of comparable successor statutes. This Agreement shall not be interpreted or construed to require any Person to take any action, or fail to take any action, if to do so would violate any applicable Law. All references to dollar amounts in this Agreement shall be references to U.S. dollars unless otherwise expressly set forth herein. For purposes of this Agreement, the term made available , with respect to any document or item required to be made available to Parent or Merger Sub as of the date of this Agreement, shall mean such document or item has been provided directly to Parent or its Representatives or made available to Parent or its Representatives in the electronic data room maintained by the Company, in either case on or before the day immediately prior to the date of this Agreement, or is included in the Company SEC Documents publicly available on or before the day that is two (2) Business Days prior to the date of this Agreement.

Section 8.11. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is determined by a court of competent jurisdiction to be invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction; provided, that the parties intend that the remedies and limitations thereon (including provisions that the payment of the Parent Termination Fee or the Company Termination Fee shall be the sole and exclusive remedy of the recipient thereof, limitations on specific performance and other equitable remedies in Section 8.7 and the limitation on liabilities of any member of the Parent Group and any member of the Company Group) contained in Article VII and this Article VIII be construed as an integral provision of this Agreement and that such remedies and limitations shall not be severable in any manner that increases a party s liability or obligations hereunder or under the Financing.

Section 8.12. Assignment. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other parties. No assignment by any party hereto shall relieve such party of any of its obligations hereunder. Subject to the foregoing, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective permitted successors and assigns. Notwithstanding the foregoing, Parent and Merger Sub may assign their respective rights and obligations hereunder to a wholly owned Subsidiary of Parent without such consent; provided, that no such assignment shall (a) adversely impact the Company or the holders of Shares or Company Equity Awards or (b) relieve Parent or Merger Sub of their respective obligations under this Agreement.

Section 8.13. Headings. The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

Section 8.14. Delivery by Facsimile or Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by e-mail delivery of a .pdf format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or e-mail delivery of a .pdf format data file to deliver a signature to this Agreement or any amendment or consent hereto or thereto or the fact that any signature or

agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a .pdf format data file as a defense to the formation of a contract and each party hereto forever waives any such defense.

[Signature Pages Follow]

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

Company

THE ULTIMATE SOFTWARE GROUP, INC.

By: /s/ Scott Scherr
Name: Scott Scherr
Title: President and Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

Parent

UNITE PARENT CORP.

By: /s/ Benjamin A. Farkas
Name: Benjamin A. Farkas
Title: Vice President

[Signature Page to Agreement and Plan of Merger]

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties hereto as of the date first written above.

Merger Sub

UNITE MERGER SUB CORP.

By: /s/ Benjamin A. Farkas
Name: Benjamin A. Farkas
Title: Vice President

[Signature Page to Agreement and Plan of Merger]

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Annex B

200 West Street | New York, NY 10282-2198
Tel: 212-902-1000 | Fax: 212-902-3000

PERSONAL AND CONFIDENTIAL

February 3, 2019

Board of Directors
The Ultimate Software Group, Inc.
2000 Ultimate Way
Weston, FL 33326

Gentlemen:

You have requested our opinion as to the fairness from a financial point of view to the holders (other than Unite Parent Corp. (Parent) and its affiliates) of the outstanding shares of common stock, par value $0.01 per share (the Shares), of The Ultimate Software Group, Inc. (the Company) of the $331.50 in cash per Share to be paid to such holders pursuant to the Agreement and Plan of Merger, dated as of February 3, 2019 (the Agreement), by and among the Company, Parent and Unite Merger Sub Corp., an indirect wholly owned subsidiary of Parent.

Goldman Sachs & Co. LLC and its affiliates are engaged in advisory, underwriting and financing, principal investing, sales and trading, research, investment management and other financial and non-financial activities and services for various persons and entities. Goldman Sachs & Co. LLC and its affiliates and employees, and funds or other entities they manage or in which they invest or have other economic interests or with which they co-invest, may at any time purchase, sell, hold or vote long or short positions and investments in securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments of the Company, Parent, and any of their respective affiliates and third parties, including Hellman & Friedman LLC (H&F), Blackstone Management Partners, L.L.C. (Blackstone), Canada Pension Plan Investment Board (CPPIB), GIC Special Investments Pte. Ltd (GIC) and JMI Management, Inc. (JMI), each an affiliate of Parent, and their respective affiliates and portfolio companies, or any currency or commodity that may be involved in the transactions contemplated by the Agreement (the Transaction). We have acted as financial advisor to the Company in connection with, and have participated in certain of the negotiations leading to, the Transaction. We expect to receive fees for our services in connection with the Transaction, all of which are contingent upon consummation of the Transaction, and the Company has agreed to reimburse certain of our expenses arising, and indemnify us against certain liabilities that may arise, out of our engagement. We have provided certain financial advisory and/or underwriting services to H&F and/or its affiliates from time to time for which our Investment Banking Division has received, and may receive, compensation, including having acted as joint bookrunner with respect to the public offering by Change Healthcare Holdings Inc., a portfolio company of funds affiliated with H&F, of its 5.750% Senior Unsecured Notes due 2025 (aggregate principal amount $1,000,000,000) in February 2017; as joint lead arranger with respect to a bank loan (aggregate principal amount $3,186,000,000) for Pharmaceutical Product Development, Inc., a portfolio company of funds affiliated with H&F, in May 2017; as financial advisor to Verisure Holdings AB (Verisure), a portfolio company of funds affiliated with H&F, with respect to its divestiture in August 2017; as joint bookrunner with respect to the public offering by Multiplan, Inc. (Multiplan), a portfolio company of funds affiliated with H&F, of its 8.500% Senior PIK Notes due 2022 (aggregate principal amount $1,300,000,000) in November 2017; as joint bookrunner with respect to the public offering by Hellman & Friedman (UK), an affiliate of H&F, of its Floating Notes due 2025 and Floating Notes due 2023

(aggregate principal amount $1,847,000,000) in March 2018; and as joint lead agent with respect to a bank loan (aggregate principal amount $800,000,000) for Verisure in November 2018. We have also provided certain financial advisory and/or underwriting services to Blackstone and/or its affiliates from time to time for which our Investment Banking Division has received, and may receive, compensation, including having acted as joint lead arranger with respect to a bank loan (aggregate principal amount $2,270,000,000) for Michaels Stores, Inc., a portfolio company of funds affiliated with Blackstone, in March 2017; as joint lead agent with respect to a bank loan (aggregate principal amount $2,925,000,000) for Avaya Inc., a portfolio company of funds affiliated with Blackstone, in December 2017; as lender with respect to the collateralized mortgage back securities (aggregate principal amount $1,400,000,000) for Blackstone Real Estate Advisors LP, an affiliate of Blackstone, in February 2018; as joint bookrunner with respect to the public offering by Hilton Domestic Operating Company Inc., a portfolio company of funds affiliated with Blackstone, of its 5.125% Senior Notes due 2026 (aggregate principal amount

Securities and Investment Services Provided by Goldman Sachs & Co. LLC

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$1,500,000,000) in April 2018; as financial advisor to Ipreo Holdings LLC, a portfolio company of funds affiliated with Blackstone, with respect to its sale in August 2018; and as financial advisor to Gianni Versace SpA, a portfolio company of funds affiliated with Blackstone, with respect to its sale in December 2018. We have also provided certain financial advisory and/or underwriting services to CPPIB and/or its affiliates from time to time for which our Investment Banking Division has received, and may receive, compensation, including having acted as joint bookrunner with respect to the public offering by Quintiles IMS Holdings, Inc., a portfolio company of funds affiliated with CPPIB, of its 2.875% Notes due 2025 (aggregate principal amount $500,000,000) in September 2017; as co-manager with respect to the public offering by CPPIB of its 2.750% Notes due 2027 (aggregate principal amount $1,000,000,000) in October 2017; as joint bookrunner with respect to the public offering by Cablevision Systems Corporation, an affiliate of Altice USA, Inc. (Altice), a portfolio company of funds affiliated with CPPIB, of its 5.375% Notes due 2028 (aggregate principal amount $1,000,000,000) in January 2018; as joint lead agent with respect to a bank loan (aggregate principal amount $9,250,000,000) for Refinitiv, a portfolio company of funds affiliated with CPPIB, in September 2018; as joint lead agent with respect to a bank loan (aggregate principal amount $1,275,000,000) for Altice in October 2018; and as financial advisor to Altamira Asset Management Holdings, a portfolio company of funds affiliated with CPPIB, with respect to the sale of a stake in Altamira in December 2018. We have also provided certain financial advisory and/or underwriting services to GIC and/or its affiliates from time to time for which our Investment Banking Division has received, and may receive, compensation, including having acted as lead agent/arranger with respect to a bank loan (aggregate principal amount $1,709,000,000) for eircom Group plc (Eircom), a portfolio company of funds affiliated with GIC, in March 2017; as lead agent/arranger with respect to a bank loan (aggregate principal amount $3,165,000,000) for Multiplan, a portfolio company of funds affiliated with GIC, in June 2017; as book manager with respect to the public offering by Multiplan of its 8.500% Senior PIK Notes (aggregate principal amount $1,300,000,000) in November 2017; as financial advisor to Eircom with respect to its sale in December 2017; as book manager with respect to the public offering by FirstEnergy Corporation, a portfolio company of funds affiliated with GIC, of its 4.100% Senior Unsecured Notes (aggregate principal amount $1,709,000,000) in May 2018; and as lead agent/arranger with respect to a bank loan (aggregate principal amount $275,000,000) for U.S. Anesthesia Partners, Inc., a portfolio company of funds affiliated with GIC, in November 2018. We have also provided certain financial advisory and/or underwriting services to the Republic of Singapore, the parent of GIC, and or its agencies, and instrumentalities and their respective affiliates from time to time for which our Investment Banking Division has received, and may receive, compensation. We may also in the future provide financial advisory and/or underwriting services to the Company, Parent and their respective affiliates, H&F, Blackstone, CPPIB, GIC, the Republic of Singapore and its agencies and instrumentalities and JMI and their respective affiliates and portfolio companies for which our Investment Banking Division may receive compensation. Affiliates of Goldman Sachs & Co. LLC also may have co-invested with H&F, Blackstone, CPPIB, GIC or JMI or their respective affiliates from time to time and may have invested in limited partnership units of affiliates of H&F, Blackstone, CPPIB, GIC or JMI from time to time and may do so in the future.

In connection with this opinion, we have reviewed, among other things, the Agreement; annual reports to stockholders and Annual Reports on Form 10-K of the Company for the five years ended December 31, 2017; certain interim reports to stockholders and Quarterly Reports on Form 10-Q of the Company; certain other communications from the Company to its stockholders; certain publicly available research analyst reports for the Company; and certain internal financial analyses and forecasts for the Company prepared by its management, as approved for our use by the Company (the Forecasts). We have also held discussions with members of the senior management of the Company

regarding their assessment of the past and current business operations, financial condition and future prospects of the Company; reviewed the reported price and trading activity for the Shares; compared certain financial and stock market information for the Company with similar information for certain other companies the securities of which are publicly traded; reviewed the financial terms of certain recent business combinations in the software industry and in other industries; and performed such other studies and analyses, and considered such other factors, as we deemed appropriate.

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For purposes of rendering this opinion, we have, with your consent, relied upon and assumed the accuracy and completeness of all of the financial, legal, regulatory, tax, accounting and other information provided to, discussed with or reviewed by, us, without assuming any responsibility for independent verification thereof. In that regard, we have assumed with your consent that the Forecasts have been reasonably prepared on a basis reflecting the best currently available estimates and judgments of the management of the Company. We have not made an independent evaluation or appraisal of the assets and liabilities (including any contingent, derivative or other off-balance-sheet assets and liabilities) of the Company or any of its subsidiaries and we have not been furnished with any such evaluation or appraisal. We have assumed that all governmental, regulatory or other consents and approvals necessary for the consummation of the Transaction will be obtained without any adverse effect on the expected benefits of the Transaction in any way meaningful to our analysis. We have assumed that the Transaction will be consummated on the terms set forth in the Agreement, without the waiver or modification of any term or condition the effect of which would be in any way meaningful to our analysis.

Our opinion does not address the underlying business decision of the Company to engage in the Transaction, or the relative merits of the Transaction as compared to any strategic alternatives that may be available to the Company; nor does it address any legal, regulatory, tax or accounting matters. We were not requested to solicit, and did not solicit, interest from other parties with respect to an acquisition of, or other business combination with, the Company or any other alternative transaction. This opinion addresses only the fairness from a financial point of view to the holders (other than Parent and its affiliates) of Shares, as of the date hereof, of the $331.50 in cash per Share to be paid to such holders pursuant to the Agreement. We do not express any view on, and our opinion does not address, any other term or aspect of the Agreement or Transaction or any term or aspect of any other agreement or instrument contemplated by the Agreement or entered into or amended in connection with the Transaction, the fairness of the Transaction to, or any consideration received in connection therewith by the holders of any other class of securities, creditors, or other constituencies of the Company; nor as to the fairness of the amount or nature of any compensation to be paid or payable to any of the officers, directors or employees of the Company, or class of such persons, in connection with the Transaction, whether relative to the $331.50 per Share in cash to be paid to the holders (other than Parent and its affiliates) of Shares pursuant to the Agreement or otherwise. We are not expressing any opinion as to the impact of the Transaction on the solvency or viability of the Company or Parent or the ability of the Company or Parent to pay their respective obligations when they come due. Our opinion is necessarily based on economic, monetary, market and other conditions as in effect on, and the information made available to us as of, the date hereof and we assume no responsibility for updating, revising or reaffirming this opinion based on circumstances, developments or events occurring after the date hereof. Our advisory services and the opinion expressed herein are provided for the information and assistance of the Board of Directors of the Company in connection with its consideration of the Transaction and such opinion does not constitute a recommendation as to how any holder of Shares should vote with respect to such Transaction or any other matter. This opinion has been approved by a fairness committee of Goldman Sachs & Co. LLC.

Based upon and subject to the foregoing, it is our opinion that, as of the date hereof, the $331.50 in cash per Share to be paid to the holders (other than Parent and its affiliates) of Shares pursuant to the Agreement is fair from a financial point of view to such holders.

Very truly yours,

/s/ Goldman Sachs & Co. LLC
(GOLDMAN SACHS & CO. LLC)

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Annex C

Section 262 of the General Corporation Law of the State of Delaware

§ 262. Appraisal rights.

(a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to subsection (d) of this section with respect to such shares, who continuously holds such shares through the effective date of the merger or consolidation, who has otherwise complied with subsection (d) of this section and who has neither voted in favor of the merger or consolidation nor consented thereto in writing pursuant to § 228 of this title shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder s shares of stock under the circumstances described in subsections (b) and (c) of this section. As used in this section, the word stockholder means a holder of record of stock in a corporation; the words stock and share mean and include what is ordinarily meant by those words; and the words depository receipt mean a receipt or other instrument issued by a depository representing an interest in 1 or more shares, or fractions thereof, solely of stock of a corporation, which stock is deposited with the depository.

(b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consolidation to be effected pursuant to § 251 (other than a merger effected pursuant to § 251(g) of this title), § 252, § 254, § 255, § 256, § 257, § 258, § 263 or § 264 of this title:

(1) Provided, however, that, except as expressly provided in § 363(b) of this title, no appraisal rights under this section shall be available for the shares of any class or series of stock, which stock, or depository receipts in respect thereof, at the record date fixed to determine the stockholders entitled to receive notice of the meeting of stockholders to act upon the agreement of merger or consolidation (or, in the case of a merger pursuant to § 251(h), as of immediately prior to the execution of the agreement of merger), were either: (i) listed on a national securities exchange or (ii) held of record by more than 2,000 holders; and further provided that no appraisal rights shall be available for any shares of stock of the constituent corporation surviving a merger if the merger did not require for its approval the vote of the stockholders of the surviving corporation as provided in § 251(f) of this title.

(2) Notwithstanding paragraph (b)(1) of this section, appraisal rights under this section shall be available for the shares of any class or series of stock of a constituent corporation if the holders thereof are required by the terms of an agreement of merger or consolidation pursuant to §§ 251, 252, 254, 255, 256, 257, 258, 263 and 264 of this title to accept for such stock anything except:

a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect thereof;

b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts in respect thereof) or depository receipts at the effective date of the merger or consolidation will be either listed on a national securities exchange or held of record by more than 2,000 holders;

c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a. and b. of this section; or

d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts described in the foregoing paragraphs (b)(2)a., b. and c. of this section.

(3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under § 253 or § 267 of this title is not owned by the parent immediately prior to the merger, appraisal rights shall be available for the shares of the subsidiary Delaware corporation.

(4) In the event of an amendment to a corporation s certificate of incorporation contemplated by § 363(a) of this title, appraisal rights shall be available as contemplated by § 363(b) of this title, and the procedures of this section, including those set forth in subsections (d) and (e) of this section, shall apply as nearly as practicable, with the word amendment substituted for the words merger or consolidation, and the word corporation substituted for the words constituent corporation and/or surviving or resulting corporation.

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(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the shares of any class or series of its stock as a result of an amendment to its certificate of incorporation, any merger or consolidation in which the corporation is a constituent corporation or the sale of all or substantially all of the assets of the corporation. If the certificate of incorporation contains such a provision, the provisions of this section, including those set forth in subsections (d), (e), and (g) of this section, shall apply as nearly as is practicable.

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, shall notify each of its stockholders who was such on the record date for notice of such meeting (or such members who received notice in accordance with § 255(c) of this title) with respect to shares for which appraisal rights are available pursuant to subsection (b) or (c) of this section that appraisal rights are available for any or all of the shares of the constituent corporations, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Each stockholder electing to demand the appraisal of such stockholder s shares shall deliver to the corporation, before the taking of the vote on the merger or consolidation, a written demand for appraisal of such stockholder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such stockholder s shares. A proxy or vote against the merger or consolidation shall not constitute such a demand. A stockholder electing to take such action must do so by a separate written demand as herein provided. Within 10 days after the effective date of such merger or consolidation, the surviving or resulting corporation shall notify each stockholder of each constituent corporation who has complied with this subsection and has not voted in favor of or consented to the merger or consolidation of the date that the merger or consolidation has become effective; or

(2) If the merger or consolidation was approved pursuant to § 228, § 251(h), § 253, or § 267 of this title, then either a constituent corporation before the effective date of the merger or consolidation or the surviving or resulting corporation within 10 days thereafter shall notify each of the holders of any class or series of stock of such constituent corporation who are entitled to appraisal rights of the approval of the merger or consolidation and that appraisal rights are available for any or all shares of such class or series of stock of such constituent corporation, and shall include in such notice a copy of this section and, if 1 of the constituent corporations is a nonstock corporation, a copy of § 114 of this title. Such notice may, and, if given on or after the effective date of the merger or consolidation, shall, also notify such stockholders of the effective date of the merger or consolidation. Any stockholder entitled to appraisal rights may, within 20 days after the date of mailing of such notice or, in the case of a merger approved pursuant to § 251(h) of this title, within the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days after the date of mailing of such notice, demand in writing from the surviving or resulting corporation the appraisal of such holder s shares. Such demand will be sufficient if it reasonably informs the corporation of the identity of the stockholder and that the stockholder intends thereby to demand the appraisal of such holder s shares. If such notice did not notify stockholders of the effective date of the merger or consolidation, either (i) each such constituent corporation shall send a second notice before the effective date of the merger or consolidation notifying each of the holders of any class or series of stock of such constituent corporation that are entitled to appraisal rights of the effective date of the merger or consolidation or (ii) the surviving or resulting corporation shall send such a second notice to all such holders on or within 10 days after such effective date; provided, however, that if such second notice is sent more than 20 days following the sending of the first notice or, in the case of a merger approved pursuant to § 251(h) of this title, later than the later of the consummation of the offer contemplated by § 251(h) of this title and 20 days following the sending of the first notice, such second notice need only be sent to each stockholder who is entitled to appraisal rights and who has demanded appraisal of such holder s shares in accordance with this subsection. An affidavit of the secretary or assistant secretary or of the transfer agent of the corporation that is required to give either notice that such notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of determining the stockholders entitled to receive either notice, each constituent corporation may fix, in advance, a

record date that shall be not more than 10 days prior to the date the notice is given, provided, that if the notice is given on or after

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the effective date of the merger or consolidation, the record date shall be such effective date. If no record date is fixed and the notice is given prior to the effective date, the record date shall be the close of business on the day next preceding the day on which the notice is given.

(e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder who has complied with subsections (a) and (d) of this section hereof and who is otherwise entitled to appraisal rights, may commence an appraisal proceeding by filing a petition in the Court of Chancery demanding a determination of the value of the stock of all such stockholders. Notwithstanding the foregoing, at any time within 60 days after the effective date of the merger or consolidation, any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party shall have the right to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation. Within 120 days after the effective date of the merger or consolidation, any stockholder who has complied with the requirements of subsections (a) and (d) of this section hereof, upon written request, shall be entitled to receive from the corporation surviving the merger or resulting from the consolidation a statement setting forth the aggregate number of shares not voted in favor of the merger or consolidation (or, in the case of a merger approved pursuant to § 251(h) of this title, the aggregate number of shares (other than any excluded stock (as defined in § 251(h)(6)d. of this title)) that were the subject of, and were not tendered into, and accepted for purchase or exchange in, the offer referred to in § 251(h)(2)), and, in either case, with respect to which demands for appraisal have been received and the aggregate number of holders of such shares. Such written statement shall be mailed to the stockholder within 10 days after such stockholder s written request for such a statement is received by the surviving or resulting corporation or within 10 days after expiration of the period for delivery of demands for appraisal under subsection (d) of this section hereof, whichever is later. Notwithstanding subsection (a) of this section, a person who is the beneficial owner of shares of such stock held either in a voting trust or by a nominee on behalf of such person may, in such person s own name, file a petition or request from the corporation the statement described in this subsection.

(f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting corporation, which shall within 20 days after such service file in the office of the Register in Chancery in which the petition was filed a duly verified list containing the names and addresses of all stockholders who have demanded payment for their shares and with whom agreements as to the value of their shares have not been reached by the surviving or resulting corporation. If the petition shall be filed by the surviving or resulting corporation, the petition shall be accompanied by such a duly verified list. The Register in Chancery, if so ordered by the Court, shall give notice of the time and place fixed for the hearing of such petition by registered or certified mail to the surviving or resulting corporation and to the stockholders shown on the list at the addresses therein stated. Such notice shall also be given by 1 or more publications at least 1 week before the day of the hearing, in a newspaper of general circulation published in the City of Wilmington, Delaware or such publication as the Court deems advisable. The forms of the notices by mail and by publication shall be approved by the Court, and the costs thereof shall be borne by the surviving or resulting corporation.

(g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have become entitled to appraisal rights. The Court may require the stockholders who have demanded an appraisal for their shares and who hold stock represented by certificates to submit their certificates of stock to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings; and if any stockholder fails to comply with such direction, the Court may dismiss the proceedings as to such stockholder. If immediately before the merger or consolidation the shares of the class or series of stock of the constituent corporation as to which appraisal rights are available were listed on a national securities exchange, the Court shall dismiss the proceedings as to all holders of such shares who are otherwise entitled to appraisal rights unless (1) the total number of shares entitled to appraisal exceeds 1% of the outstanding shares of the class or series eligible for appraisal, (2) the value of the consideration provided in the merger or consolidation for such total number of shares exceeds $1 million, or (3) the merger was approved pursuant to § 253 or § 267 of this title.

(h) After the Court determines the stockholders entitled to an appraisal, the appraisal proceeding shall be conducted in accordance with the rules of the Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value,

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the Court shall take into account all relevant factors. Unless the Court in its discretion determines otherwise for good cause shown, and except as provided in this subsection, interest from the effective date of the merger through the date of payment of the judgment shall be compounded quarterly and shall accrue at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during the period between the effective date of the merger and the date of payment of the judgment. At any time before the entry of judgment in the proceedings, the surviving corporation may pay to each stockholder entitled to appraisal an amount in cash, in which case interest shall accrue thereafter as provided herein only upon the sum of (1) the difference, if any, between the amount so paid and the fair value of the shares as determined by the Court, and (2) interest theretofore accrued, unless paid at that time. Upon application by the surviving or resulting corporation or by any stockholder entitled to participate in the appraisal proceeding, the Court may, in its discretion, proceed to trial upon the appraisal prior to the final determination of the stockholders entitled to an appraisal. Any stockholder whose name appears on the list filed by the surviving or resulting corporation pursuant to subsection (f) of this section and who has submitted such stockholder s certificates of stock to the Register in Chancery, if such is required, may participate fully in all proceedings until it is finally determined that such stockholder is not entitled to appraisal rights under this section.

(i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corporation to the stockholders entitled thereto. Payment shall be so made to each such stockholder, in the case of holders of uncertificated stock forthwith, and the case of holders of shares represented by certificates upon the surrender to the corporation of the certificates representing such stock. The Court s decree may be enforced as other decrees in the Court of Chancery may be enforced, whether such surviving or resulting corporation be a corporation of this State or of any state.

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances. Upon application of a stockholder, the Court may order all or a portion of the expenses incurred by any stockholder in connection with the appraisal proceeding, including, without limitation, reasonable attorney s fees and the fees and expenses of experts, to be charged pro rata against the value of all the shares entitled to an appraisal.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in subsection (d) of this section shall be entitled to vote such stock for any purpose or to receive payment of dividends or other distributions on the stock (except dividends or other distributions payable to stockholders of record at a date which is prior to the effective date of the merger or consolidation); provided, however, that if no petition for an appraisal shall be filed within the time provided in subsection (e) of this section, or if such stockholder shall deliver to the surviving or resulting corporation a written withdrawal of such stockholder s demand for an appraisal and an acceptance of the merger or consolidation, either within 60 days after the effective date of the merger or consolidation as provided in subsection (e) of this section or thereafter with the written approval of the corporation, then the right of such stockholder to an appraisal shall cease. Notwithstanding the foregoing, no appraisal proceeding in the Court of Chancery shall be dismissed as to any stockholder without the approval of the Court, and such approval may be conditioned upon such terms as the Court deems just; provided, however that this provision shall not affect the right of any stockholder who has not commenced an appraisal proceeding or joined that proceeding as a named party to withdraw such stockholder s demand for appraisal and to accept the terms offered upon the merger or consolidation within 60 days after the effective date of the merger or consolidation, as set forth in subsection (e) of this section.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted had they assented to the merger or consolidation shall have the status of authorized and unissued shares of the surviving or resulting corporation.

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Annex D

AMENDMENT NO. 1 TO AMENDED AND RESTATED RIGHTS AGREEMENT

This Amendment No. 1, dated as of February 3, 2019 (this "Amendment"), by and between The Ultimate Software Group, Inc., a Delaware corporation (the "Company"), and Computershare Trust Company, N.A., successor rights agent to BankBoston N.A. (the "Rights Agent"), amends the Amended and Restated Rights Agreement, dated as of October 19, 2018, by and between the Company and the Rights Agent (the "Rights Agreement"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Merger Agreement (as defined below).

WHEREAS, the Company, Unite Parent Corp., a Delaware corporation ("Parent"), and Unite Merger Sub Corp., a Delaware corporation and an indirect wholly-owned subsidiary of Parent ("Merger Sub"), intend to enter into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which, among other things, (i) Merger Sub shall merge with and into the Company (the "Merger"), with the Company continuing as the Surviving Corporation and (ii) each outstanding share of Common Stock shall be cancelled and converted into a right to receive the Merger Consideration;

WHEREAS, the Board of Directors of the Company (the "Board") has approved the Merger and has adopted the Merger Agreement;

WHEREAS, the Board desires to render the Rights Agreement inapplicable to the Merger Agreement and the transactions contemplated thereby; and

WHEREAS, pursuant to Section 27 of the Rights Agreement, the Board has determined that this Amendment to the Rights Agreement is necessary and desirable in order to reflect the foregoing, and the Company and the Rights Agent desire to evidence such amendment in writing.

Accordingly, in consideration of the premises and the mutual agreements herein set forth, the parties hereto hereby agree to amend the Rights Agreement as follows, in each case effective as of immediately prior to the entry into the Merger Agreement:

1. Section 1(a) of the Rights Agreement is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, neither Parent nor Merger Sub, nor any Equity Financing Source, nor any Affiliates or Associates of Parent or Merger Sub or any Equity Financing Source, individually or collectively, shall be deemed to be an Acquiring Person as a result of (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of the other transactions contemplated by the Merger Agreement or (iv) the acquisition of Beneficial Ownership of any Common Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement.

2. Section 1(d) of the Rights Agreement is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, neither Parent nor Merger Sub, nor any Equity Financing Source, nor any Affiliates or Associates of Parent or Merger Sub or any Equity Financing Source, individually or collectively, shall be deemed to be a Beneficial Owner of, to Beneficially Own, or to have Beneficial Ownership of, any securities of the Company as a result of (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of the other transactions contemplated by the Merger Agreement or (iv) the acquisition of Beneficial Ownership of any Common

Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement.

3. Section 1 of the Rights Agreement is hereby amended by adding the following definition as subsection (n) and all subsequent subsections of Section 1 are hereby renumbered accordingly, and all cross-references to such renumbered subsections are changed to refer to such subsections as if renumbered:

(n) Equity Financing Sources shall mean shall mean: (i) Hellman & Friedman Capital Partners VIII, L.P., Hellman & Friedman Capital Partners VIII (Parallel), L.P., HFCP VIII (Parallel-A), L.P.,

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H&F Executives VIII, L.P., and H&F Associates VIII, L.P., (ii) Hellman & Friedman Capital Partners IX, L.P., Hellman & Friedman Capital Partners IX (Parallel), L.P., HFCP IX (Parallel-A), L.P., H&F Executives IX, L.P., H&F Executives IX-A, L.P. and H&F Associates IX 2019, L.P., (iii) Blackstone Capital Partners VII L.P., Blackstone Capital Partners VII.2 L.P., Blackstone Family Investment Partnership VII - ESC L.P. and BTAS Q Holdings L.L.C., (iv) Vencap Holdings (1987) Pte. Ltd., (v) Canada Pension Plan Investment Board, (vi) JMI Equity Fund IX-A, L.P. and JMI Equity Fund IX-B, L.P., and (vii) H&F Unite Partners, L.P. and H&F Unite Partners II, L.P.

4. Section 1(r) of the Rights Agreement is hereby renumbered as Section 1(s) and is hereby replaced in its entirety by the following definition:

(s) Expiration Date shall mean the earlier of (i) the Close of Business on October 22, 2021 or (ii) immediately prior to the Effective Time (as defined in the Merger Agreement).

5. Section 1 of the Rights Agreement is hereby amended by adding the following definitions as subsections (t), (u) and (v) and all subsequent subsections of Section 1 are hereby renumbered accordingly, and all cross-references to such renumbered subsections are changed to refer to such subsections as if renumbered:

(t) Merger shall mean the merger of Merger Sub with and into the Company pursuant to the terms and conditions of the Merger Agreement.

(u) Merger Agreement shall mean the Agreement and Plan of Merger by and between Parent, Merger Sub and the Company, dated as of February 3, 2019, as the same may be amended from time to time.

(v) Merger Sub shall mean Unite Merger Sub Corp.

6. Section 1 of the Rights Agreement is hereby amended by adding the following definition as subsection (z) and all subsequent subsections of Section 1 are hereby renumbered accordingly, and all cross-references to such renumbered subsections are changed to refer to such subsections as if renumbered:

(z) Parent shall mean Unite Parent Corp.

7. Section 1(mm) of the Rights Agreement is hereby renumbered as Section 1(ss) and is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, a Stock Acquisition Date will not occur as a result of (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of the other transactions contemplated by the Merger Agreement or (iv) the acquisition of Beneficial Ownership of any Common Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement.

8. Section 3(a) of the Rights Agreement is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, a Distribution Date will not occur as a result of (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of any of the other transactions contemplated by the Merger Agreement or (iv) the acquisition of Beneficial Ownership of any Common Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement.

9. Section 11(a) of the Rights Agreement is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of the other transactions contemplated by the Merger Agreement or (iv) the acquisition of

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Beneficial Ownership of any Common Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement, in each case shall not be deemed to be any event described in this Section 11(a) and shall not cause the Rights to be adjusted or exercisable in accordance with this Section 11.

10. Section 13 of the Rights Agreement is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of the other transactions contemplated by the Merger Agreement or (iv) the acquisition of Beneficial Ownership of any Common Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement, in each case shall not be deemed to be any event described in this Section 13 and shall not cause the Rights to be adjusted or exercisable in accordance with this Section 13.

11. Section 30 of the Rights Agreement is hereby amended by adding the following sentence at the end thereof:

Notwithstanding anything in this Rights Agreement to the contrary, nothing in this Rights Agreement shall be construed to give any holder of Rights or any other Person any legal or equitable rights, remedies or claims under this Rights Agreement by virtue of (i) the announcement, approval, execution, performance or delivery of the Merger Agreement, (ii) the consummation of the Merger, (iii) the consummation of the other transactions contemplated in the Merger Agreement or (iv) the acquisition of Beneficial Ownership of any Common Share by Parent, Merger Sub, any Equity Financing Source or any of their respective Affiliates or Associates pursuant to the Merger or the Merger Agreement.

12. Effectiveness. This Amendment shall be deemed effective as of the date hereof. Except as amended hereby, the Rights Agreement shall remain in full force and effect and shall be otherwise unaffected hereby. Any future reference to the Rights Agreement shall be deemed to be a reference to the Rights Agreement as amended hereby. In the event of a conflict or inconsistency between this Amendment and the Rights Agreement, the provisions of this Amendment will govern.

13. Severability. If any term, provision, covenant or restriction of this Amendment is held by a court of competent jurisdiction or other authority to be invalid, null and void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Amendment shall remain in full force and effect and shall in no way be affected, impaired or invalidated; provided, however, that if such excluded provision shall affect the rights, immunities, duties or obligations of the Rights Agent, the Rights Agent shall be entitled to resign immediately.

14. Governing Law. This Amendment shall be deemed to be a contract made under the laws of the State of Delaware and for all purposes shall be governed by and construed in accordance with the laws of such State applicable to contracts to be made and performed entirely within such State.

15. Counterparts. This Amendment may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument. A signature to this Amendment executed and/or transmitted electronically shall have the same authority, effect and enforceability as an original signature.

[Signature page follows.]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be properly completed and duly executed and attested, all as of the day and year first above written.

THE ULTIMATE SOFTWARE GROUP, INC.

By: /s/ Scott Scherr
Name: Scott Scherr
Title: President and Chief Executive Officer

COMPUTERSHARE TRUST COMPANY, N.A.

By: /s/ Dennis V. Moccia
Name: Dennis V. Moccia
Title: Manager, Contract Administration

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