

ELLIE MAE INC  
Form PREM14A  
February 27, 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

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under §240.14a-12

**ELLIE MAE, 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):

No fee required.

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

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

34,887,444 shares of Company Common Stock ( Ellie Mae common stock ); options to purchase 1,060,948 shares of Ellie Mae common stock; 1,392,922 shares of Ellie Mae common stock underlying Company RSU awards; 80,455 shares of Ellie Mae common stock underlying Company Restricted Stock Awards; and 87,680 shares of Ellie Mae common stock underlying Company Performance Share Awards.

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

As of the close of business on February 13, 2019, 34,887,444 shares of Ellie Mae common stock;

- (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):

The maximum aggregate value was determined based upon the sum of: (A) 34,887,444 shares of Ellie Mae common stock multiplied by \$99.00 per share; (B) options to purchase 1,060,948 shares of Ellie Mae common stock (the difference between \$99.00 and the weighted average exercise price of \$28.3874 per share); (C) 1,392,922 shares of Ellie Mae common stock underlying Company RSU awards (assuming target achievement of all time-based or performance based vesting criteria with respect to restricted stock subject to time-based vesting or performance based vesting criteria) multiplied by \$99.00; (D) 80,455 shares of Ellie Mae common stock underlying Company Restricted Stock Awards (representing the 2018 performance shares that Ellie Mae expects to be certified at 165% of target achievement) multiplied by \$99.00; and (E) 87,680 shares of Ellie Mae common stock underlying Company Performance Share Awards (assuming target achievement of all performance-based vesting criteria with respect to restricted stock subject to performance-based vesting criteria) multiplied by \$99.00.

- (4) Proposed maximum aggregate value of transaction:

\$ 3,683,317,895.74

- (5) Total fee paid:

\$ 446,418.13

In accordance with Section 14(g) of the Securities Exchange Act of 1934, as amended, the filed fee was determined by multiplying \$3,683,317,895.74 by ..0001212.

Fee paid previously with preliminary materials.

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

- (1) Amount Previously Paid:

- (2) Form, Schedule or Registration Statement No.:
- (3) Filing Party:
- (4) Date Filed:

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**PRELIMINARY PROXY STATEMENT SUBJECT TO COMPLETION**

**Ellie Mae, Inc.**

**4420 Rosewood Drive, Suite 500**

**Pleasanton, CA 94588**

**[ ], 2019**

**Dear Ellie Mae Stockholder:**

You are cordially invited to attend a special meeting (including any adjournments or postponements thereof, the Special Meeting ) of stockholders of Ellie Mae, Inc. ( Ellie Mae or the Company ) to be held on [ ], 2019, at Ellie Mae office, located at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, at [ ], Pacific time.

At the Special Meeting, you will be asked to consider and vote on (i) a proposal to adopt the Agreement and Plan of Merger, dated February 11, 2019 (the Merger Agreement ), by and among Ellie Mae, EM Eagle Purchaser, LLC, a Delaware limited liability company ( Parent ), and EM Eagle Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ( Merger Sub ), (ii) a proposal to approve, on an advisory (non-binding) basis, the compensation that may be paid or become payable to Ellie Mae s named executive officers that is based on or otherwise relates to the Merger Agreement and the transactions contemplated by the Merger Agreement (the Compensation Proposal ), and (iii) a proposal to adjourn the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting. Parent and Merger Sub are entities that are affiliated with Thoma Bravo, LLC, a private equity investment firm. Pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into Ellie Mae and the separate corporate existence of Merger Sub will cease, with Ellie Mae continuing as the surviving corporation (the Merger ).

If the Merger is completed, you will be entitled to receive \$99.00 in cash, less any applicable withholding taxes, for each share of Ellie Mae common stock that you own (unless you have properly exercised your appraisal rights), which represents a premium of approximately: (1) 21% to \$81.92, the closing price of Ellie Mae common stock on February 11, 2019, the last full trading day prior to public announcement of Ellie Mae s entry into the Merger Agreement; (2) 35% to \$73.50, the 30-day volume weighted average price of Ellie Mae common stock ending on February 11, 2019.

The Board of Directors of Ellie Mae (the Board of Directors ), after considering the factors **more fully described in the enclosed proxy statement, has unanimously: (i) determined that it is in the best interests of Ellie Mae and its stockholders, and declared it advisable, to enter into the Merger Agreement and consummate the Merger upon the terms and subject to the conditions set forth in the Merger Agreement; (ii) approved the execution and delivery of the Merger Agreement by Ellie Mae, the performance by Ellie Mae of its covenants and other obligations under the Merger Agreement, and the consummation of the Merger upon the terms and conditions set forth in the Merger Agreement; and (iii) resolved to recommend that Ellie Mae stockholders adopt the Merger Agreement and approve the Merger in accordance with the DGCL. The Board of Directors unanimously recommends that you vote: (1) FOR the adoption of the Merger Agreement; (2) FOR , on an advisory (non-binding) basis, the Compensation Proposal; and (3) FOR the adjournment of the Special**

**Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

The enclosed proxy statement provides detailed information about the Special Meeting, the Merger Agreement and the Merger. A copy of the Merger Agreement is attached as Annex A to the proxy statement.

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The proxy statement also describes the actions and determinations of the Board of Directors in connection with its evaluation of the Merger Agreement and the Merger. You should carefully read and consider the entire enclosed proxy statement and its annexes, including, but not limited to, the Merger Agreement, as they contain important information about, among other things, the Merger and how it affects you.

Whether or not you plan to attend the Special Meeting in person, please sign, date and return, as promptly as possible, the enclosed proxy card in the accompanying prepaid reply envelope or grant your proxy electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card). If you attend the Special Meeting and vote in person by ballot, your vote will revoke any proxy that you have previously submitted.

If you hold your shares in street name, you should instruct your bank, broker or other nominee how to vote your shares in accordance with the voting instruction form that you will receive from your bank, broker or other nominee. Your bank, broker or other nominee cannot vote on any of the proposals, including the proposal to adopt the Merger Agreement, without your instructions.

**Your vote is very important, regardless of the number of shares that you own. We cannot complete the Merger unless the proposal to adopt the Merger Agreement is approved by the affirmative vote of the holders of at least a majority of the outstanding shares of Ellie Mae common stock entitled to vote at the Special Meeting.**

If you have any questions or need assistance voting your shares, please contact our proxy solicitor:

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

On behalf of the Board of Directors, I thank you for your support and appreciate your consideration of this matter.

Sincerely,

Jonathan H. Corr

*President and Chief Executive Officer*

The accompanying proxy statement is dated [ ], 2019 and, together with the enclosed form of proxy card, is first being mailed on or about [ ], 2019.

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**Ellie Mae, Inc.**

**4420 Rosewood Drive, Suite 500**

**Pleasanton, CA 94588**

**[ ], 2019**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON [ ], 2019**

Notice is hereby given that a special meeting of stockholders (including any adjournments or postponements thereof, the Special Meeting ) of Ellie Mae, Inc., a Delaware corporation ( Ellie Mae ), will be held on [ ], 2019, at Ellie Mae s office, located at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, at [ ], Pacific time, for the following purposes:

1. To consider and vote on the proposal to adopt the Agreement and Plan of Merger, dated February 11, 2019, (the Merger Agreement ), by and among Ellie Mae, EM Eagle Purchaser, LLC, a Delaware limited liability company ( Parent ), and EM Eagle Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ( Merger Sub ). Pursuant to the terms of the Merger Agreement, Merger Sub will merge with and into Ellie Mae and the separate corporate existence of Merger Sub will cease, with Ellie Mae continuing as the surviving corporation (the Merger );
2. To consider and vote on the proposal to approve, on an advisory (non-binding) basis, the compensation that may be paid or become payable to Ellie Mae s named executive officers that is based on or otherwise relates to the Merger Agreement and the transactions contemplated by the Merger Agreement (the Compensation Proposal ); and
3. To consider and vote on any proposal to adjourn the Special Meeting to a later date or dates if necessary or appropriate to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

Only Ellie Mae stockholders of record as of the close of business on [ ], 2019, are entitled to notice of the Special Meeting and to vote at the Special Meeting or any adjournment, postponement or other delay thereof.

**The Board of Directors unanimously recommends that you vote: (1) FOR the adoption of the Merger Agreement; (2) FOR , on an advisory (non-binding) basis, the Compensation Proposal; and (3) FOR the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

Whether or not you plan to attend the Special Meeting in person, please sign, date and return, as promptly as possible, the enclosed proxy card in the accompanying prepaid reply envelope or grant your proxy electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card). If you attend the Special Meeting and vote in person by ballot, your vote will revoke any proxy that you have previously submitted. If you hold your shares in street name, you should instruct your bank, broker or other nominee how to vote your shares in accordance with the voting instruction form that you will receive from your bank, broker or other nominee. Your bank, broker or other nominee cannot vote on any of the proposals, including the proposal to adopt the Merger Agreement, without your instructions. **If you sign, date and mail your proxy card without indicating how you wish to vote, your**

**proxy will be counted as a vote FOR the adoption of the Merger Agreement, FOR , on an advisory (non-binding) basis, the Compensation Proposal and FOR the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

By Order of the Board of Directors,

Jonathan H. Corr

*President and Chief Executive Officer*

Dated: [ ], 2019



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**YOUR VOTE IS IMPORTANT**

**WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING IN PERSON, WE ENCOURAGE YOU TO SUBMIT YOUR PROXY AS PROMPTLY AS POSSIBLE: (1) BY TELEPHONE; (2) THROUGH THE INTERNET; OR (3) BY SIGNING AND DATING THE ENCLOSED PROXY CARD AND RETURNING IT IN THE POSTAGE-PAID ENVELOPE PROVIDED.** You may revoke your proxy or change your vote at any time before it is voted at the Special Meeting.

If you hold your shares in street name, you should instruct your bank, broker or other nominee how to vote your shares in accordance with the voting instruction form that you will receive from your bank, broker or other nominee. Your broker or other agent cannot vote on any of the proposals, including the proposal to adopt the Merger Agreement, without your instructions.

If you are an Ellie Mae stockholder of record, voting in person by ballot at the Special Meeting will revoke any proxy that you previously submitted. If you hold your shares through a bank, broker or other nominee, you must obtain a legal proxy in order to vote in person at the Special Meeting.

If you fail to (1) return your proxy card, (2) grant your proxy electronically over the Internet or by telephone or (3) vote by ballot in person at the Special Meeting, your shares will not be counted for purposes of determining whether a quorum is present at the Special Meeting and, if a quorum is present, will have the same effect as a vote AGAINST the proposal to adopt the Merger Agreement but will have no effect on the Compensation Proposal or the adjournment proposal.

You should carefully read and consider the entire accompanying proxy statement and its annexes, including, but not limited to, the Merger Agreement, along with all of the documents incorporated by reference into the accompanying proxy statement, as they contain important information about, among other things, the Merger and how it affects you. If you have any questions concerning the Merger Agreement, the Merger, the Special Meeting or the accompanying proxy statement, would like additional copies of the accompanying proxy statement or need help voting your shares of Ellie Mae common stock, please contact our proxy solicitor:

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

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Annexes

- Annex A The Merger Agreement
- Annex B Opinion of J.P. Morgan Securities LLC
- Annex C Section 262 of the General Corporate Law of Delaware

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*This summary highlights selected information from this proxy statement related to the merger of EM Eagle Merger Sub, Inc. with and into Ellie Mae, Inc. (the Merger), and may not contain all of the information that is important to you. To understand the Merger more fully and for a more complete description of the legal terms of the Merger, you should carefully read and consider this entire proxy statement and the annexes to this proxy statement, including, but not limited to, the Merger Agreement, along with all of the documents to which we refer in this proxy statement, as they contain important information about, among other things, the Merger and how it affects you. You may obtain the information incorporated by reference in this proxy statement without charge by following the instructions under the caption, Where You Can Find More Information. The Merger Agreement (as defined below) is attached as Annex A to this proxy statement. You should carefully read and consider the entire Merger Agreement, which is the legal document that governs the Merger.*

*Except as otherwise specifically noted in this proxy statement, Ellie Mae, we, our, us, the Company and similar words refer to Ellie Mae, Inc. Throughout this proxy statement, we refer to EM Eagle Purchaser, LLC as Parent and EM Eagle Merger Sub, Inc. as Merger Sub. In addition, throughout this proxy statement we refer to the Agreement and Plan of Merger, dated February 11, 2019, by and among Ellie Mae, Parent and Merger Sub, as the Merger Agreement, our common stock, par value \$0.0001 per share as Ellie Mae common stock and the holders of Ellie Mae common stock, as Ellie Mae stockholders. Unless indicated otherwise, any other capitalized term used herein but not otherwise defined herein has the meaning assigned to such term in the Merger Agreement.*

**Parties Involved in the Merger*****Ellie Mae, Inc.***

Headquartered in Pleasanton, California, Ellie Mae is the leading cloud-based platform provider for the mortgage finance industry. Ellie Mae's technology solutions enable lenders to originate more loans, lower origination costs, and reduce the time to close, all while ensuring the highest levels of compliance, quality and efficiency. Ellie Mae common stock is listed on The New York Stock Exchange ( NYSE ) under the symbol ELLI.

***EM Eagle Purchaser, LLC***

Parent was formed on February 11, 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 the transactions contemplated by the Merger Agreement and arranging of the equity financing and any debt financing in connection with the Merger.

***EM Eagle Merger Sub, Inc.***

Merger Sub is a wholly owned subsidiary of Parent and was formed on February 11, 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 the transactions contemplated by the Merger Agreement and arranging of the equity financing and any debt financing in connection with the Merger.

Parent and Merger Sub are each affiliated with Thoma Bravo Fund XIII, L.P. (the Thoma Bravo Fund), and Parent, Merger Sub and the Thoma Bravo Fund are each affiliated with Thoma Bravo, LLC ( Thoma Bravo ). Thoma Bravo is a leading private equity firm focused on the software and technology-enabled services sectors. At the Effective Time, Ellie Mae, as the Surviving Corporation, will be indirectly owned by the Thoma Bravo Fund, Thoma Bravo Fund

XIII-A, L.P. and Thoma Bravo Executive Fund XIII, L.P., each an affiliate of Thoma Bravo.

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In connection with the transactions contemplated by the Merger Agreement, the Thoma Bravo Fund has provided Parent with an equity commitment sufficient to fund the aggregate purchase price required to be paid at the closing of the Merger and to also fund, together with cash on hand at Ellie Mae, certain fees and expenses to be paid at the closing of the Merger, subject to the terms and conditions of the Merger Agreement. For more information, please see the section of this proxy statement captioned "The Merger Financing of the Merger."

## **The Merger**

Upon the terms and subject to the conditions of the Merger Agreement, Merger Sub will merge with and into Ellie Mae and the separate corporate existence of Merger Sub will cease, with Ellie Mae continuing as the surviving corporation and as a wholly owned subsidiary of Parent (the "Surviving Corporation"). As a result of the Merger, Ellie Mae common stock will no longer be publicly traded and will be delisted from NYSE. In addition, Ellie Mae common stock will be deregistered under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Ellie Mae will no longer file periodic reports with the United States Securities and Exchange Commission (the "SEC"). If the Merger is completed, you will not own any shares of the capital stock of the Surviving Corporation. The time at which the Merger will become effective will occur upon the filing of a certificate of merger with the Secretary of State of the State of Delaware in accordance with the applicable provision of the General Corporation Law of the State of Delaware (the "DGCL") (the time of such filing and the acceptance for record by the Secretary of State of the State of Delaware, or such later time as may be agreed in writing by Parent, Merger Sub and Ellie Mae and specified in the certificate of merger, being referred to herein as the "Effective Time").

## **Merger Consideration**

### ***Ellie Mae common stock***

At the Effective Time, each then outstanding share of Ellie Mae common stock (other than shares of Ellie Mae common stock (1) held by Ellie Mae as treasury stock, (2) owned by Parent or Merger Sub, (3) owned by any direct or indirect wholly owned subsidiary of Parent or Merger Sub or (4) owned by Ellie Mae stockholders who have properly and validly exercised their statutory rights of appraisal in respect of such shares of Ellie Mae common stock under Delaware law, collectively, the "Excluded Shares") will be cancelled and extinguished and automatically converted into the right to receive an amount in cash equal to \$99.00, without interest thereon (the "Per Share Merger Consideration"), less any applicable withholding taxes.

At or prior to the Effective Time, Parent will deposit (or cause to be deposited) an amount of cash equal to the aggregate Per Share Merger Consideration with a designated payment agent for payment of each share of Ellie Mae common stock owned by each Ellie Mae stockholder. For more information, please see the section of this proxy statement captioned "Proposal 1: Adoption of the Merger Agreement Exchange and Payment Procedures."

After the Merger is completed, you will have the right to receive the Per Share Merger Consideration, but you will no longer have any rights as a stockholder (except that stockholders who properly exercise their appraisal rights may have the right to receive payment for the "fair value" of their shares determined pursuant to an appraisal proceeding, as contemplated by Delaware law). For more information, please see the section of this proxy statement captioned "The Merger Appraisal Rights."

### ***Treatment of Company Options, Company RSU Awards, Company Restricted Stock Awards and Company Performance Share Awards***

The Merger Agreement provides that equity awards granted under Ellie Mae's equity incentive plans, including options to purchase shares of Ellie Mae common stock, restricted stock unit awards covering shares of Ellie Mae



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common stock, restricted stock awards, and performance share awards that are outstanding and vested as of immediately before the Effective Time will be cancelled and converted into cash consideration equal to \$99.00 multiplied by the number of vested shares subject to the equity award (less the applicable per share exercise price of those vested shares, with respect to any options), subject to any required tax withholdings, payable shortly after the closing of the Merger. Equity awards that are outstanding and unvested as of immediately before the Effective Time will be cancelled and converted into cash consideration (the Cash Replacement Amount) equal to \$99.00 multiplied by the number of unvested shares subject to the equity award (less the applicable per share exercise price of those unvested shares, with respect to any options), subject to any required tax withholdings, which consideration will be subject to generally the same terms as the corresponding, cancelled equity award, including vesting conditions. Any options with a per share exercise price equal to or greater than \$99.00 will be cancelled at the Effective Time for no payment or consideration. Ellie Mae's equity incentive plans will terminate as of the Effective Time. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Merger Consideration Outstanding Company Options, Company RSU Awards, Company Restricted Stock Awards, and Company Performance Share Awards.

***Treatment of Purchase Rights under the Ellie Mae Employee Stock Purchase Plan***

The Merger Agreement generally provides that no new offering periods or purchase periods will begin under Ellie Mae's Employee Stock Purchase Plan (the ESPP) after February 11, 2019, any outstanding offering period will end no later than five days before the Effective Time, and the ESPP will terminate as of the Effective Time. In addition, no new participants will be permitted in the ESPP following February 11, 2019, and with respect to any offering periods in effect on February 11, 2019, as of and following such date, existing participants in the ESPP will not be allowed to increase payroll contribution rates or make separate non-payroll contributions to the ESPP, except as required by applicable law. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Merger Consideration Treatment of Purchase Rights under the Employee Stock Purchase Plan.

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

The receipt of cash by Ellie Mae stockholders in exchange for shares of Ellie Mae common stock in the Merger will be a taxable transaction to Ellie Mae stockholders for U.S. federal income tax purposes. Such receipt of cash by each Ellie Mae stockholder that is a U.S. Holder (as defined under the caption, The Merger Material U.S. Federal Income Tax Consequences of the Merger) generally will result in the recognition of gain or loss in an amount measured by the difference, if any, between the amount of cash that such U.S. Holder receives in the Merger and such U.S. Holder's adjusted tax basis in the shares of Ellie Mae common stock surrendered in the Merger by such stockholder. Backup withholding taxes may also apply to the cash payments made pursuant to the Merger, unless such U.S. Holder complies with certification procedures under the backup withholding rules.

An Ellie Mae stockholder that is a Non-U.S. Holder (as defined under the caption, The Merger Material U.S. Federal Income Tax Consequences of the Merger) generally will not be subject to U.S. federal income tax with respect to the exchange of Ellie Mae common stock for cash in the Merger unless such Non-U.S. Holder has certain connections to the United States, but may be subject to backup withholding tax unless the Non-U.S. Holder complies with certain certification procedures or otherwise establishes a valid exemption from backup withholding tax.

Ellie Mae stockholders should read the section of this proxy statement captioned The Merger Material U.S. Federal Income Tax Consequences of the Merger.

Ellie Mae stockholders should also consult their own tax advisors concerning the U.S. federal income tax consequences relating to the Merger in light of their particular circumstances and any consequences arising under



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U.S. federal estate, gift and other non-income tax laws or the laws of any state, local or non-U.S. taxing jurisdiction.

### **Appraisal Rights**

If the Merger is consummated and certain conditions are met, Ellie Mae stockholders who continuously hold shares of Ellie Mae common stock through the Effective Time, who do not vote in favor of the adoption of the Merger Agreement and who properly demand appraisal of their shares and who do not withdraw their demands or otherwise lose their rights to seek appraisal will be entitled to seek appraisal of their shares in connection with the Merger under Section 262 of the DGCL. This means that Ellie Mae stockholders may be entitled to have their shares of Ellie Mae common stock appraised by the Delaware Court of Chancery, and to receive payment in cash of the fair value of their shares of Ellie Mae common stock, exclusive of any elements of value arising from the accomplishment or expectation of the Merger, together with interest to be paid on the amount determined to be fair value, if any, as determined by the court (or in certain circumstances described in further detail in the section of this proxy statement captioned *The Merger Appraisal Rights*, on the difference between the amount determined to be the fair value and the amount paid by the Surviving Corporation in the Merger to each stockholder entitled to appraisal prior to the entry of judgment in any appraisal proceeding). Due to the complexity of the appraisal process, Ellie Mae stockholders who wish to seek appraisal of their shares are encouraged to seek the advice of legal counsel with respect to the exercise of appraisal rights.

Ellie Mae stockholders considering seeking appraisal should be aware that the fair value of their shares as determined pursuant to Section 262 of the DGCL could be more than, the same as or less than the value of the consideration that they would receive pursuant to the Merger Agreement if they did not seek appraisal of their shares of Ellie Mae common stock.

To exercise appraisal rights, Ellie Mae stockholders must: (1) submit a written demand for appraisal to Ellie Mae before the vote is taken on the proposal to adopt the Merger Agreement; (2) not submit a proxy or otherwise vote in favor of the proposal to adopt the Merger Agreement; (3) continue to hold shares of Ellie Mae common stock of record through the Effective Time; and (4) strictly comply with all other procedures for exercising appraisal rights under the DGCL. Failure to follow exactly the procedures specified under the DGCL may result in the loss of appraisal rights. In addition, the Delaware Court of Chancery will dismiss appraisal proceedings in respect of Ellie Mae unless certain stock ownership conditions are satisfied by the Ellie Mae stockholders seeking appraisal. The DGCL requirements for exercising appraisal rights are described in further detail in this proxy statement, which is qualified in its entirety by Section 262 of the DGCL, the relevant section of the DGCL regarding appraisal rights. A copy of Section 262 of the DGCL is reproduced in Annex C to this proxy statement. If you hold your shares of Ellie Mae common stock through a bank, broker or other nominee and you wish to exercise appraisal rights, you should consult with your bank, broker or other nominee to determine the appropriate procedures for the making of a demand for appraisal on your behalf by your bank, broker or other nominee. For more information, please see the section of this proxy statement captioned *The Merger Appraisal Rights*.

### **Regulatory Approvals Required for the Merger**

Under the Merger Agreement, the Merger cannot be completed until the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the *HSR Act*), has expired or been terminated. For more information, please see the section of this proxy captioned *The Merger Regulatory Approvals Required for the Merger*.

Ellie Mae and Thoma Bravo Fund XIII-A, L.P. made the filings required under the HSR Act on February 21, 2019.



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### **Closing Conditions**

The obligations of Ellie Mae, Parent and Merger Sub, as applicable, to consummate the Merger are subject to the satisfaction or waiver of customary conditions, including (among other conditions), the following:

the absence of any laws or court orders making the Merger illegal or otherwise prohibiting the Merger;

the adoption of the Merger Agreement by the requisite affirmative vote of stockholders;

the expiration or termination of the applicable waiting period under the HSR Act;

in the case of Parent and Merger Sub, the absence of any continuing change, event, violation, inaccuracy, effect or circumstance at Ellie Mae that, individually or in the aggregate, generally: (1) is or would reasonably be expected to be materially adverse to Ellie Mae's business, financial condition or results of operations, taken as a whole; or (2) would reasonably be expected to prevent or materially impair the consummation of the Merger prior to the Termination Date;

the accuracy of the representations and warranties of Ellie Mae, Parent and Merger Sub in the Merger Agreement, subject to materiality qualifiers, as of the Effective Time or the date in respect of which such representation or warranty was specifically made; and

the performance in all material respects by Ellie Mae, Parent and Merger Sub of their respective obligations required to be performed by them under the Merger Agreement at or prior to the Effective Time.

### **Financing of the Merger**

The obligation of Parent and Merger Sub to consummate the Merger is not subject to any financing condition. We anticipate that the total amount of funds necessary to complete the Merger and the related transactions, and to pay the fees and expenses required to be paid at the closing of the Merger by Parent and Merger Sub under the Merger Agreement, will be approximately \$3.6 billion in cash. This amount includes funds needed to: (1) pay Ellie Mae stockholders the amounts due under the Merger Agreement and (2) make payments in respect of our outstanding equity-based awards payable at closing of the Merger pursuant to the Merger Agreement. In connection with the financing of the Merger, the Thoma Bravo Fund and Parent have entered into an equity commitment letter, dated as of February 11, 2019 (the "Equity Commitment Letter"), pursuant to which the Thoma Bravo Fund has agreed to provide Parent with an equity commitment sufficient to fund the aggregate purchase price required to be paid at the closing of the Merger and to also fund, together with cash on hand at Ellie Mae, certain fees and expenses to be paid at the closing of the Merger, contemplated by, and subject to the terms and conditions of, the Merger Agreement. Ellie Mae has a contractual right to enforce the foregoing Equity Commitment Letter against the Thoma Bravo Fund, and under the terms of the Merger Agreement, Ellie Mae has the unqualified right to specifically enforce Parent's obligation to consummate the Merger upon receipt of the proceeds of the foregoing equity commitment.

Pursuant to the limited guaranty delivered by the Thoma Bravo Fund in favor of Ellie Mae, dated as of February 11, 2019 (the Guaranty), the Thoma Bravo Fund has agreed to guarantee the payment of the liabilities and obligations of Parent or Merger Sub under the Merger Agreement, which are subject to an aggregate cap equal to \$258 million, including amounts in respect of certain reimbursement and indemnification obligations of Parent and Merger Sub for certain costs, expenses or losses incurred or sustained by Ellie Mae, as specified in the Merger Agreement. For more information, please see the section of this proxy statement captioned The Merger Financing of the Merger.

### **Required Stockholder Approval**

The affirmative vote of the holders of a majority of the outstanding shares of Ellie Mae common stock is required to adopt the Merger Agreement. As of the Record Date, [ ] votes constitute a majority of the outstanding shares

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of Ellie Mae common stock. Approval of the proposal to approve, on an advisory (non-binding) basis, the compensation that may be paid or become payable to Ellie Mae's named executive officers that is based on or otherwise relates to the Merger Agreement and the transactions contemplated by the Merger Agreement (the Compensation Proposal) and the proposal to adjourn the Special Meeting (the adjournment proposal), whether or not a quorum is present, requires the affirmative vote of a majority of the shares of Ellie Mae common stock present in person or represented by proxy at the Special Meeting and entitled to vote on the subject matter. The approval of the Compensation Proposal is advisory (non-binding) and is not a condition to the completion of the Merger.

As of the Record Date, our directors and executive officers beneficially owned and were entitled to vote, in the aggregate, [ ] shares of Ellie Mae common stock, representing approximately [ ]% of the shares of Ellie Mae common stock outstanding as of the Record Date (and approximately [ ]% of the shares of Ellie Mae common stock outstanding when taking into account Company Options, Company RSU Awards, Company Restricted Stock Awards, and Company Performance Share Awards held, in the aggregate, by our directors and executive officers).

Our directors and executive officers have informed us that they currently intend to vote all of their respective shares of Ellie Mae common stock: (1) **FOR** the adoption of the Merger Agreement; (2) **FOR**, on an advisory (non-binding) basis, the Compensation Proposal; and (3) **FOR** the adjournment proposal.

## **The Special Meeting**

### ***Date, Time and Place***

A special meeting of Ellie Mae stockholders to consider and vote on the proposal to adopt the Merger Agreement will be held on [ ], 2019, at Ellie Mae's offices, located at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, at [ ], Pacific time (the Special Meeting).

### ***Record Date; Shares Entitled to Vote***

You are entitled to vote at the Special Meeting if you owned shares of Ellie Mae common stock at the close of business on [ ], 2019 (the Record Date). Each holder of Ellie Mae common stock shall be entitled to one (1) vote for each such share owned at the close of business on the Record Date.

### ***Quorum***

As of the Record Date, there were [ ] shares of Ellie Mae common stock outstanding and entitled to vote at the Special Meeting. The holders of a majority of the shares of Ellie Mae common stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, will constitute a quorum at the Special Meeting.

## **Recommendation of the Ellie Mae Board of Directors**

The Board of Directors has unanimously: (1) determined that it is in the best interests of Ellie Mae and its stockholders, and declared it advisable, to enter into the Merger Agreement and consummate the Merger upon the terms and subject to the conditions set forth in the Merger Agreement; (2) approved the execution and delivery of the Merger Agreement by Ellie Mae, the performance by Ellie Mae of its covenants and other obligations under the Merger Agreement, and the consummation of the Merger upon the terms and conditions set forth in the Merger Agreement; and (3) resolved to recommend that Ellie Mae stockholders adopt the Merger Agreement and approve the Merger in accordance with the DGCL.





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The Board of Directors unanimously recommends that you vote: (1) **FOR** the adoption of the Merger Agreement; (2) **FOR** , on an advisory (non-binding) basis, the Compensation Proposal; and (3) **FOR** the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

Prior to the adoption of the Merger Agreement by Ellie Mae stockholders, under certain circumstances, the Board of Directors may withdraw or change the foregoing recommendation if it determines in good faith (after consultation with its financial advisor and its outside legal counsel) that failure to do so would be inconsistent with the Board of Directors' fiduciary duties to stockholders under applicable law. However, the Board of Directors cannot withdraw or change the foregoing recommendation unless it complies with certain procedures in the Merger Agreement, including, but not limited to, negotiating with Parent and its representatives in good faith over a two business day period so that a failure to make a Company Board Recommendation Change (as defined in the section of this proxy statement captioned "Proposal 1: Adoption of the Merger Agreement The Board of Directors' Recommendation; Company Board Recommendation Change") would no longer be inconsistent with the Board of Directors' fiduciary duties to stockholders under applicable law. The termination of the Merger Agreement by Ellie Mae following the Board of Directors' authorization for Ellie Mae to enter into a definitive agreement to consummate an alternative transaction contemplated by a Superior Proposal will result in the payment by Ellie Mae of a termination fee of either (1) \$55 million if the Merger Agreement had been terminated prior to the No Shop Period Start Date (other than with respect to a Restricted Party) or (2) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date. For more information, please see the section of this proxy statement captioned "Proposal 1: Adoption of the Merger Agreement The Board of Directors' Recommendation; Company Board Recommendation Change."

**Opinion of J.P. Morgan Securities LLC**

Pursuant to an engagement letter dated December 28, 2018, Ellie Mae retained J.P. Morgan Securities LLC ( "J.P. Morgan") as its financial advisor in connection with a possible acquisition of Ellie Mae and to deliver a fairness opinion in connection with the proposed Merger, based on its J.P. Morgan's qualifications, expertise, reputation and knowledge of Ellie Mae's business and the industry in which Ellie Mae operates.

At the meeting of the Board of Directors on February 11, 2019, J.P. Morgan rendered its oral opinion to the Board of Directors that, as of such date and based upon and subject to the factors and assumptions set forth in its opinion, the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger was fair, from a financial point of view, to such holders. J.P. Morgan confirmed its February 11, 2019 oral opinion by delivering its written opinion to the Board of Directors, dated February 11, 2019 (the "Opinion"), that, as of the date of the Opinion, the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger was fair, from a financial point of view, to such holders.

The full text of the Opinion, dated February 11, 2019, which sets forth the assumptions made, matters considered and limits on the review undertaken, is attached as Annex B to this proxy statement and is incorporated herein by reference. The summary of the Opinion set forth in this proxy statement is qualified in its entirety by reference to the full text of the Opinion. Ellie Mae stockholders are urged to read the Opinion in its entirety.

The Opinion was addressed to the Board of Directors (in its capacity as such) in connection with and for the purposes of its evaluation of the proposed Merger, was directed only to the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger and did not address any other aspect of the Merger. J.P. Morgan expressed no opinion as to the fairness of the Per Share Merger Consideration to the holders of any other class of securities, creditors or other constituencies of Ellie Mae or as to the underlying



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decision by Ellie Mae to engage in the proposed Merger. The issuance of the Opinion was approved by a fairness committee of J.P. Morgan. The Opinion does not constitute a recommendation to any Ellie Mae stockholder as to how such stockholder should vote with respect to the proposed Merger or any other matter.

For more information, see the section of this proxy statement captioned *The Merger Opinion of J.P. Morgan Securities LLC*.

## **Interests of Ellie Mae's Directors and Executive Officers in the Merger**

When considering the foregoing recommendation of the Board of Directors that you vote to approve the proposal to adopt the Merger Agreement, Ellie Mae stockholders should be aware that Ellie Mae's directors and executive officers may have interests in the Merger that are different from, or in addition to, Ellie Mae stockholders more generally. In (1) evaluating and negotiating the Merger Agreement, (2) approving the Merger Agreement and the Merger and (3) recommending that the Merger Agreement be adopted by stockholders, the Board of Directors was aware of and considered these interests, among other matters, to the extent that these interests existed at the time. These interests include:

at the Effective Time of the Merger, each Company Option, Company RSU Award, Company Restricted Stock Award, and Company Performance Share Award will receive the treatment described in the section of this proxy statement captioned *The Merger Interests of Ellie Mae's Directors and Executive Officers in the Merger Treatment of Company Options, Company RSU Awards, Company Restricted Stock Awards, and Company Performance Share Awards* ;

continued eligibility of Ellie Mae's executive officers to receive severance payments and benefits (including equity award vesting acceleration) under their employment agreement or change in control severance agreement, as applicable, with Ellie Mae, as described in more detail in the section of this proxy statement captioned *The Merger Interests of Ellie Mae's Directors and Executive Officers in the Merger Payments Upon Termination At or Following Change in Control* ;

at the Effective Time, each unvested equity award held by Ellie Mae's non-employee directors will become fully vested and, as applicable, exercisable pursuant to the terms of Ellie Mae's Non-Employee Director Equity Compensation Policy; and

continued indemnification and directors' and officers' liability insurance to be provided by the Surviving Corporation.

If the proposal to adopt the Merger Agreement is approved, the shares of Ellie Mae common stock held by Ellie Mae directors and executive officers will be treated in the same manner as outstanding shares of Ellie Mae common stock held by all other stockholders. For more information, see the section of this proxy statement captioned *The Merger Interests of Ellie Mae's Directors and Executive Officers in the Merger*.

## **Alternative Acquisition Proposals**

### ***The Go Shop Period Solicitation of Other Acquisition Proposals***

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Under the Merger Agreement, from the date of the Merger Agreement until 12:00 p.m., Pacific time on March 18, 2019 (the No Shop Period Start Date ), Ellie Mae has the right to: (1) solicit, initiate, propose or induce or knowingly encourage, facilitate or assist any inquiries regarding any Acquisition Proposal and (2) engage in discussions or negotiations with, or provide any non-public information to, any person relating to, an Acquisition Proposal (as defined in the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement The Go Shop Period Solicitation of Other Offers ).

The termination of the Merger Agreement by Ellie Mae following the Board of Directors authorization for Ellie Mae to enter into a definitive agreement to consummate an alternative transaction contemplated by a Superior

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Proposal will result in the payment by Ellie Mae of a termination fee of either (1) \$55 million if the Merger Agreement had been terminated prior to the No Shop Period Start Date (other than with respect to a Restricted Party) or (2) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement The Board of Directors Recommendation; Company Board Recommendation Change.

***The No Shop Period No Solicitation of Other Acquisition Proposals***

Under the Merger Agreement, from the No Shop Period Start Date until the Effective Time, Ellie Mae may not: (1) solicit, initiate, propose or induce or knowingly encourage, facilitate or assist any inquiries regarding any Acquisition Proposal or (2) engage in discussions or negotiations with, or provide any non-public information to, any person relating to, an Acquisition Proposal.

Notwithstanding the foregoing restrictions, under specified certain circumstances, from the No Shop Period Start Date until the adoption of the Merger Agreement by Ellie Mae stockholders, Ellie Mae may provide information to, and engage or participate in negotiations or substantive discussions with, a person in respect of an Acquisition Proposal, and otherwise facilitate such Acquisition Proposal or assist such person (and its Representatives and financing sources) with such Acquisition Proposal (in each case, if requested by such person and such Acquisition Proposal did not result from any material breach of Ellie Mae's obligations, as described in the immediately preceding paragraph) if (and only if) the Board of Directors (or a committee thereof) determines in good faith (after consultation with its financial advisor and its outside legal counsel) that such Acquisition Proposal either constitutes a Superior Proposal or is reasonably likely to lead to a Superior Proposal, and, in each case, the failure to act in respect of such Acquisition Proposal would be inconsistent with the Board of Directors' fiduciary duties to stockholders under applicable law. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement The No Shop Period No Solicitation of Other Offers.

After the No Shop Period Start Date but prior to the adoption of the Merger Agreement by Ellie Mae stockholders, Ellie Mae is entitled to terminate the Merger Agreement for the purpose of entering into an agreement in respect of a Superior Proposal if it complies with certain procedures in the Merger Agreement, including, but not limited to, negotiating with Parent in good faith over a two business day period in an effort to amend the terms and conditions of the Merger Agreement, so that such Superior Proposal no longer constitutes a Superior Proposal relative to the transactions contemplated by the Merger Agreement, as amended pursuant to such negotiations.

**The termination of the Merger Agreement by Ellie Mae following the Board of Directors' authorization for Ellie Mae to enter into a definitive agreement to consummate an alternative transaction contemplated by a Superior Proposal will result in the payment by Ellie Mae of a termination fee of either (1) \$55 million if the Merger Agreement had been terminated prior to the No Shop Period Start Date (other than with respect to a Restricted Party) or (2) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement The Board of Directors' Recommendation; Company Board Recommendation Change.**

**Termination of the Merger Agreement**

In addition to the circumstances described above, Parent and Ellie Mae have certain rights to terminate the Merger Agreement under customary circumstances, including by mutual agreement, the imposition of laws or



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non-appealable court orders that make the Merger illegal or otherwise prohibit the Merger, an uncured breach of the Merger Agreement by the other party, if the Merger has not been consummated by 11:59 p.m., Pacific time, on August 11, 2019, or if Ellie Mae stockholders fail to adopt the Merger Agreement at the Special Meeting (or any adjournment or postponement thereof). Under some circumstances, (1) Ellie Mae is required to pay Parent a termination fee equal to either \$55 million or \$110 million; and (2) Parent is required to pay Ellie Mae a termination fee equal to \$256 million. Please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Termination Fee.

**Effect on Ellie Mae if the Merger is Not Completed**

If the Merger Agreement is not adopted by Ellie Mae stockholders, or if the Merger is not completed for any other reason:

- i. the stockholders will not be entitled to, nor will they receive, any payment for their respective shares of Ellie Mae common stock pursuant to the Merger Agreement;
- ii. (a) Ellie Mae will remain an independent public company; (b) Ellie Mae common stock will continue to be listed and traded on NYSE and registered under the Exchange Act; and (c) Ellie Mae will continue to file periodic reports with the SEC; and
- iii. under certain specified circumstances, Ellie Mae will be required to pay Parent a termination fee of either \$55 million or \$110 million upon the termination of the Merger Agreement. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Termination Fee.

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**QUESTIONS AND ANSWERS**

The following questions and answers address some commonly asked questions regarding the Merger, the Merger Agreement and the Special Meeting. These questions and answers may not address all questions that are important to you. You should carefully read and consider the more detailed information contained elsewhere in this proxy statement and the annexes to this proxy statement, including, but not limited to, the Merger Agreement, along with all of the documents we refer to in this proxy statement, as they contain important information about, among other things, the Merger and how it affects you. You may obtain the information incorporated by reference in this proxy statement without charge by following the instructions under the caption, **Where You Can Find More Information**.

**Q: Why am I receiving these materials?**

A: The Board of Directors is furnishing this proxy statement and form of proxy card to the holders of shares of Ellie Mae common stock in connection with the solicitation of proxies to be voted at the Special Meeting.

**Q: When and where is the Special Meeting?**

A: The Special Meeting will take place on [ ], 2019, at Ellie Mae's offices, located at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, at [ ], Pacific time.

**Q: What am I being asked to vote on at the Special Meeting?**

A: You are being asked to vote on the following proposals:

to adopt the Merger Agreement pursuant to which Merger Sub will merge with and into Ellie Mae, and Ellie Mae will become a wholly owned subsidiary of Parent;

to approve, on an advisory (non-binding) basis, the Compensation Proposal; and

to approve the adjournment of the Special Meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

**Q: Who is entitled to vote at the Special Meeting?**

A:



Stockholders as of the Record Date are entitled to notice of the Special Meeting and to vote at the Special Meeting. Each holder of Ellie Mae common stock shall be entitled to cast one (1) vote on each matter properly brought before the Special Meeting for each such share owned at the close of business on the Record Date.

**Q: May I attend the Special Meeting and vote in person?**

A: Yes. All stockholders as of the Record Date may attend the Special Meeting and vote in person. Seating will be limited. Stockholders will need to present proof of ownership of shares of Ellie Mae common stock, such as a bank or brokerage account statement, and a form of personal identification to be admitted to the Special Meeting. No cameras, recording equipment, electronic devices, large bags, briefcases or packages will be permitted in the Special Meeting.

Even if you plan to attend the Special Meeting in person, to ensure that your shares will be represented at the Special Meeting, we encourage you to sign, date and return the enclosed proxy card in the accompanying prepaid reply envelope or grant your proxy electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card). If you attend the Special Meeting and vote in person by ballot, your vote will revoke any proxy previously submitted.

If you hold your shares in street name, you should instruct your bank, broker or other nominee how to vote your shares in accordance with the voting instruction form that you will receive from your bank, broker or other nominee. Your broker or other agent cannot vote on any of the proposals, including the proposal to adopt the Merger Agreement, without your instructions. If you hold your shares in street name, you may not vote your shares in person at the Special Meeting unless you obtain a legal proxy from your bank, broker or other nominee.

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**Q: What will I receive if the Merger is completed?**

A: Upon completion of the Merger, you will be entitled to receive the Per Share Merger Consideration of \$99.00 in cash, less any applicable withholding taxes, for each share of Ellie Mae common stock that you own, unless you have properly exercised and not withdrawn your appraisal rights under the DGCL. For example, if you own 100 shares of Ellie Mae common stock, you will receive \$9,900 in cash in exchange for your shares of Ellie Mae common stock, less any applicable withholding taxes.

**Q: What vote is required to adopt the Merger Agreement?**

A: The affirmative vote of the holders of a majority of the outstanding shares of Ellie Mae common stock is required to adopt the Merger Agreement.

If a quorum is present at the Special Meeting, the failure of any stockholder of record to: (1) submit a signed proxy card; (2) grant a proxy over the Internet or by telephone (using the instructions provided in the enclosed proxy card); or (3) vote in person by ballot at the Special Meeting will have the same effect as a vote **AGAINST** the proposal to adopt the Merger Agreement. If you hold your shares in street name and a quorum is present at the Special Meeting, the failure to instruct your bank, broker or other nominee how to vote your shares will have the same effect as a vote **AGAINST** the proposal to adopt the Merger Agreement. If a quorum is present at the Special Meeting, abstentions will have the same effect as a vote **AGAINST** the proposal to adopt the Merger Agreement. Each broker non-vote will also count as a vote **AGAINST** the proposal to adopt the Merger Agreement but will have no effect on the Compensation Proposal or any proposal to adjourn the Special Meeting to a later date or dates to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting. **If you properly sign your proxy card but do not mark the boxes showing how your shares should be voted on a matter, the shares represented by your properly signed proxy will be voted: (1) FOR the adoption of the Merger Agreement; (2) FOR , on an advisory (non-binding) basis, the Compensation Proposal; and (3) FOR the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

**Q: What happens if the Merger is not completed?**

A: If the Merger Agreement is not adopted by stockholders or if the Merger is not completed for any other reason, stockholders will not receive any payment for their shares of Ellie Mae common stock. Instead, Ellie Mae will remain an independent public company, Ellie Mae common stock will continue to be listed and traded on the NYSE and registered under the Exchange Act, and we will continue to file periodic reports with the SEC. Under specified circumstances, Ellie Mae will be required to pay Parent a termination fee of either \$55 million or \$110 million upon the termination of the Merger Agreement, as described in the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Termination Fee.

**Q: Why are the stockholders being asked to cast an advisory (non-binding) vote to approve the Compensation Proposal?**

A: The Exchange Act and applicable SEC rules thereunder require Ellie Mae to seek an advisory (non-binding) vote with respect to certain payments that could become payable to its named executive officers in connection with the Merger.

**Q: What vote is required to approve the Compensation Proposal?**

A: The affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the Special Meeting and entitled to vote on the subject matter is required for approval of the Compensation Proposal.

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**Q: What will happen if the stockholders do not approve the Compensation Proposal at the Special Meeting?**

A: Approval of the Compensation Proposal is not a condition to the completion of the Merger. The vote with respect to the Compensation Proposal is an advisory vote and will not be binding on Ellie Mae. Therefore, if the other requisite stockholder approvals are obtained and the Merger is completed, the amounts payable under the Compensation Proposal will continue to be payable to Ellie Mae's named executive officers in accordance with the terms and conditions of the applicable agreements.

**Q: What do I need to do now?**

A: You should carefully read and consider this entire proxy statement and the annexes to this proxy statement, including, but not limited to, the Merger Agreement, along with all of the documents that we refer to in this proxy statement, as they contain important information about, among other things, the Merger and how it affects you. Then sign, date and return, as promptly as possible, the enclosed proxy card in the accompanying reply envelope, or grant your proxy electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card), so that your shares can be voted at the Special Meeting, unless you wish to seek appraisal. If you hold your shares in street name, please refer to the voting instruction forms provided by your bank, broker or other nominee to vote your shares.

**Q: Should I surrender my book-entry shares now?**

A: No. After the Merger is completed, the payment agent will send each holder of record a letter of transmittal and written instructions that explain how to exchange shares of Ellie Mae common stock represented by such holder's book-entry shares for merger consideration.

**Q: What happens if I sell or otherwise transfer my shares of Ellie Mae common stock after the Record Date but before the Special Meeting?**

A: The Record Date for the Special Meeting is earlier than the date of the Special Meeting and the date the Merger is expected to be completed. If you sell or transfer your shares of Ellie Mae common stock after the Record Date but before the Special Meeting, unless special arrangements (such as provision of a proxy) are made between you and the person to whom you sell or otherwise transfer your shares and each of you notifies Ellie Mae in writing of such special arrangements, you will transfer the right to receive the Per Share Merger Consideration, if the Merger is completed, to the person to whom you sell or transfer your shares, but you will retain your right to vote those shares at the Special Meeting. **Even if you sell or otherwise transfer your shares of Ellie Mae common stock after the Record Date, we encourage you to sign, date and return the enclosed proxy card in the accompanying reply envelope or grant your proxy electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card).**

**Q: What is the difference between holding shares as a stockholder of record and as a beneficial owner?**

A: If your shares are registered directly in your name with our transfer agent, Equiniti Group (formerly Wells Fargo Shareowner Services), you are considered, with respect to those shares, to be the stockholder of record. In this case, this proxy statement and your proxy card have been sent directly to you by Ellie Mae.

If your shares are held through a bank, broker or other nominee, you are considered the beneficial owner of shares of Ellie Mae common stock held in street name. In that case, this proxy statement has been forwarded to you by your bank, broker or other nominee who is considered, with respect to those shares, to be the stockholder of record. As the beneficial owner, you have the right to direct your bank, broker or other nominee how to vote your shares by following their instructions for voting. You are also invited to attend the Special Meeting. However, because you are not the stockholder of record, you may not vote your shares in person at the Special Meeting unless you obtain a legal proxy from your bank, broker or other nominee.

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**Q: How may I vote?**

A: If you are a stockholder of record (that is, if your shares of Ellie Mae common stock are registered in your name with Equiniti Group (formerly Wells Fargo Shareowner Services), our transfer agent), there are four ways to vote:

by signing, dating and returning the enclosed proxy card in the accompanying prepaid reply envelope;

by visiting the Internet at the address on your proxy card;

by calling toll-free (within the U.S. or Canada) at the phone number on your proxy card; or

by attending the Special Meeting and voting in person by ballot.

A control number, located on your proxy card, is designed to verify your identity and allow you to vote your shares of Ellie Mae common stock, and to confirm that your voting instructions have been properly recorded when voting electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card). Please be aware that, although there is no charge for voting your shares, if you vote electronically over the Internet or by telephone, you may incur costs such as Internet access and telephone charges for which you will be responsible.

Even if you plan to attend the Special Meeting in person, you are strongly encouraged to vote your shares of Ellie Mae common stock by proxy. If you are a record holder or if you obtain a legal proxy to vote shares that you beneficially own, you may still vote your shares of Ellie Mae common stock in person by ballot at the Special Meeting even if you have previously voted by proxy. If you are present at the Special Meeting and vote in person by ballot, your previous vote by proxy will not be counted.

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

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

A: No. Your bank, broker or other nominee is permitted to vote your shares on any proposal currently scheduled to be considered at the Special Meeting only if you instruct your bank, broker or other nominee how to vote. You should follow the procedures provided by your bank, broker or other nominee to vote your shares. Without instructions, your shares will not be voted on such proposals, which will have the same effect as if you voted against adoption of the Merger Agreement but will have no effect on the adjournment proposal.

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

A: Yes. If you are a stockholder of record, you may change your vote or revoke your proxy at any time before it is voted at the Special Meeting by:

signing another proxy card with a later date and returning it to us prior to the Special Meeting;

submitting a new proxy electronically over the Internet or by telephone after the date of the earlier submitted proxy;

delivering a written notice of revocation to the Corporate Secretary of Ellie Mae; or

attending the Special Meeting and voting in person by ballot.

If you hold your shares of Ellie Mae common stock in street name, you should contact your bank, broker or other nominee for instructions regarding how to change your vote. You may also vote in person at the Special Meeting if you obtain a legal proxy from your bank, broker or other nominee.

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**Q: What is a proxy?**

A: A proxy is your legal designation of another person to vote your shares of Ellie Mae common stock. The written document describing the matters to be considered and voted on at the Special Meeting is called a proxy statement. The document used to designate a proxy to vote your shares of Ellie Mae common stock is called a proxy card. Jonathan Corr, our President and Chief Executive Officer, and Dan Madden, our Executive Vice President and Chief Financial Officer, are the proxy holders for the Special Meeting, with full power of substitution and re-substitution.

**Q: If a stockholder gives a proxy, how are the shares voted?**

A: Regardless of the method you choose to vote, the individuals named on the enclosed proxy card, or your proxies, will vote your shares in the way that you indicate. When completing the Internet or telephone process or the proxy card, you may specify whether your shares should be voted for or against or to abstain from voting on all, some or none of the specific items of business to come before the Special Meeting.

**If you properly sign your proxy card but do not mark the boxes showing how your shares should be voted on a matter, the shares represented by your properly signed proxy will be voted: (1) FOR the adoption of the Merger Agreement; (2) FOR , on an advisory (non-binding) basis, the Compensation Proposal; and (3) FOR the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

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

A: Please sign, date and return (or grant your proxy electronically over the Internet or by telephone using the instructions provided in the enclosed proxy card) each proxy card and voting instruction card that you receive. You may receive more than one set of voting materials, including multiple copies of this proxy statement and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a stockholder of record and your shares are registered in more than one name, you will receive more than one proxy card.

**Q: Where can I find the voting results of the Special Meeting?**

A: Ellie Mae intends to publish final voting results in a Current Report on Form 8-K to be filed with the SEC following the Special Meeting. All reports that Ellie Mae files with the SEC are publicly available when filed. For more information, please see the section of this proxy statement captioned Where You Can Find More Information.



**Q: When do you expect the Merger to be completed?**

A: We are working toward completing the Merger as quickly as possible and currently expect to complete the Merger in the second or third calendar quarter of 2019. However, the exact timing of completion of the Merger cannot be predicted because the Merger is subject to the closing conditions specified in the Merger Agreement, many of which are outside of our control.

**Q: Who can help answer my questions?**

A: If you have any questions concerning the Merger, the Special Meeting or the accompanying proxy statement, would like additional copies of the accompanying proxy statement or need help voting your shares of Ellie Mae common stock, please contact our proxy solicitor:

MacKenzie Partners, Inc.

1407 Broadway, 27th Floor

New York, NY 10018

(212) 929-5500 (Call Collect)

Call Toll-free: (800) 322-2885

[proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com)

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**FORWARD-LOOKING STATEMENTS**

This proxy statement, and any documents to which Ellie Mae refers to in this proxy statement, contains not only historical information, but also forward-looking statements made pursuant to the safe-harbor provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements represent Ellie Mae's current expectations or beliefs concerning future events, including but not limited to the expected completion and timing of the proposed transaction, expected benefits and costs of the proposed transaction, management plans and other information relating to the proposed transaction, strategies and objectives of Ellie Mae for future operations and other information relating to the proposed transaction. Without limiting the foregoing, the words believes, anticipates, plans, expects, intend, forecasts, should, estimates, contemplate, future, goal, potential, predict, project, projection, target, could, would, assuming, depend and similar expressions are intended to identify forward-looking statements. Stockholders are cautioned that any forward-looking statements are not guarantees of future performance and may involve significant risks and uncertainties, and that actual results may vary materially from those in the forward-looking statements. These risks and uncertainties include, but are not limited to, the risks detailed in our filings with the SEC, including in our most recent filings on Forms 10-K and 10-Q, factors and matters described or incorporated by reference in this proxy statement, and the following factors:

the inability to complete the Merger due to the failure to obtain stockholder approval or failure to satisfy the other conditions to the completion of the Merger, including, but not limited to, receipt of required regulatory approvals;

the risk that the Merger Agreement may be terminated in certain circumstances that require us to pay Parent a termination fee of either \$55 million or \$110 million;

the outcome of any legal proceedings that may be instituted against us and others related to the Merger Agreement;

risks that the proposed Merger disrupts our current operations or affects our ability to retain or recruit key employees;

the fact that receipt of the all-cash Per Share Merger Consideration would be taxable to Ellie Mae stockholders that are treated as U.S. Holders (as defined under the caption "The Merger Material U.S. Federal Income Tax Consequences of the Merger") for U.S. federal income tax purposes;

the fact that, if the Merger is completed, stockholders will forgo the opportunity to realize the potential long-term value of the successful execution of Ellie Mae's current strategy as an independent public company;

the fact that under the terms of the Merger Agreement, Ellie Mae is unable to solicit other Acquisition Proposals after the No Shop Period Start Date;

the effect of the announcement or pendency of the Merger on our business relationships, operating results and business generally;

the amount of the costs, fees, expenses and charges related to the Merger Agreement or the Merger;

risks related to the Merger diverting management's or employees' attention from ongoing business operations;

risks that our stock price may decline significantly if the Merger is not completed; and

risks related to obtaining the requisite consents to the Merger, including the timing and receipt of regulatory approvals from various governmental entities, including any conditions, limitations or restrictions placed on these approvals, and the risk that one or more governmental entities may deny approval.

Consequently, all of the forward-looking statements that we make in this proxy statement are qualified by the information contained or incorporated by reference herein, including: (1) the information contained under this

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caption; and (2) the information contained under the caption Risk Factors, and information in our consolidated financial statements and notes thereto included in our most recent filings on Forms 10-K and 10-Q. No assurance can be given that these are all of the factors that could cause actual results to vary materially from the forward-looking statements.

Except as required by applicable law, we undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise. Stockholders are advised to consult any future disclosures that we make on related subjects as may be detailed in our other filings made from time to time with the SEC.

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**THE SPECIAL MEETING**

The enclosed proxy is solicited on behalf of the Board of Directors for use at the Special Meeting.

**Date, Time and Place**

We will hold the Special Meeting on [ ], 2019, at Ellie Mae's principal offices, located at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, at [ ], Pacific time.

**Purpose of the Special Meeting**

At the Special Meeting, we will ask stockholders to vote on proposals to: (1) adopt the Merger Agreement; (2) approve, on an advisory (non-binding) basis, the Compensation Proposal; and (3) adjourn the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

**Record Date; Shares Entitled to Vote; Quorum**

Only stockholders of record as of the Record Date are entitled to notice of the Special Meeting and to vote at the Special Meeting. A list of stockholders entitled to vote at the Special Meeting will be available at our principal executive offices located at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, during regular business hours for a period of no less than 10 days before the Special Meeting and at the place of the Special Meeting during the meeting.

As of the Record Date, there were [ ] shares of Ellie Mae common stock outstanding and entitled to vote at the Special Meeting.

The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, will constitute a quorum at the Special Meeting. In the event that a quorum is not present at the Special Meeting, it is expected that the meeting will be adjourned to solicit additional proxies.

**Vote Required; Abstentions and Broker Non-Votes**

The affirmative vote of the holders of a majority of the outstanding shares of Ellie Mae common stock is required to adopt the Merger Agreement. As of the Record Date, [ ] votes constitute a majority of the outstanding shares of Ellie Mae common stock. Adoption of the Merger Agreement by stockholders is a condition to the closing of the Merger.

The affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the Special Meeting and entitled to vote on the subject matter is required to approve, on an advisory (non-binding) basis, the Compensation Proposal.

Approval of the proposal to adjourn the Special Meeting, whether or not a quorum is present, requires the affirmative vote of a majority of the shares present in person or represented by proxy at the Special Meeting and entitled to vote on the subject matter.

If a stockholder abstains from voting, that abstention will have the same effect as if the stockholder voted **AGAINST** the proposal to adopt the Merger Agreement and **AGAINST** the proposal to approve, on an advisory (non-binding) basis, the Compensation Proposal. For stockholders who attend the meeting or are represented by proxy and abstain

from voting, the abstention will have the same effect as if the stockholder voted **AGAINST** any proposal to adjourn the Special Meeting to a later date to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

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Each broker non-vote will also count as a vote **AGAINST** the proposal to adopt the Merger Agreement but will have no effect on the Compensation Proposal or any proposal to adjourn the Special Meeting to a later date or dates to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting. A broker non-vote generally occurs when a bank, broker or other nominee holding shares on your behalf does not vote on a proposal because the bank, broker or other nominee has not received your voting instructions and lacks discretionary power to vote the shares. Broker non-votes, if any, will be counted for the purpose of determining whether a quorum is present.

### **Shares Held by Ellie Mae's Directors and Executive Officers**

As of the Record Date, our directors and executive officers beneficially owned and were entitled to vote, in the aggregate, [ ] shares of Ellie Mae common stock, representing approximately [ ]% of the shares of Ellie Mae common stock outstanding on the Record Date (and approximately [ ]% of the total shares of Ellie Mae common stock outstanding when taking into account Company Options, Company RSU Awards, Company Restricted Stock Awards, and Company Performance Share Awards held, in the aggregate, by our directors and executive officers).

Our directors and executive officers have informed us that they currently intend to vote all of their respective shares of Ellie Mae common stock (1) **FOR** the adoption of the Merger Agreement, (2) **FOR**, on an advisory (non-binding) basis, the Compensation Proposal, and (3) **FOR** the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

### **Voting of Proxies**

If your shares are registered in your name with our transfer agent, Equiniti Group (formerly Wells Fargo Shareowner Services), you may cause your shares to be voted by returning a signed and dated proxy card in the accompanying prepaid envelope, or you may vote in person at the Special Meeting. Additionally, you may grant a proxy electronically over the Internet or by telephone (using the instructions provided in the enclosed proxy card). You must have the enclosed proxy card available and follow the instructions on the proxy card in order to grant a proxy electronically over the Internet or by telephone. Based on your proxy cards or Internet and telephone proxies, the proxy holders will vote your shares according to your directions.

If you plan to attend the Special Meeting and wish to vote in person, you will be given a ballot at the Special Meeting. If your shares are registered in your name, you are encouraged to vote by proxy even if you plan to attend the Special Meeting in person. If you attend the Special Meeting and vote in person by ballot, your vote will revoke any previously submitted proxy.

Voting instructions are included on your proxy card. All shares represented by properly signed and dated proxies received in time for the Special Meeting will be voted at the Special Meeting in accordance with the instructions of the stockholder. Properly signed and dated proxies that do not contain voting instructions will be voted: (1) **FOR** adoption of the Merger Agreement; (2) **FOR**, on an advisory (non-binding) basis, the Compensation Proposal; and (3) **FOR** the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.

If your shares are held in street name through a bank, broker or other nominee, you may vote through your bank, broker or other nominee by completing and returning the voting form provided by your bank, broker or other nominee or attending the Special Meeting and voting in person with a legal proxy from your bank, broker or other nominee. If such a service is provided, you may vote over the Internet or telephone through your bank, broker or other nominee by

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following the instructions on the voting form provided by your bank, broker or other nominee. If you do not return your bank's, broker's or other nominee's voting form, do not vote via the Internet



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or telephone through your bank, broker or other nominee, if possible, or do not attend the Special Meeting and vote in person with a legal proxy from your bank, broker or other nominee, it will have the same effect as if you voted

**AGAINST** the proposal to adopt the Merger Agreement but will not have any effect on the Compensation Proposal or the adjournment proposal.

## **Revocability of Proxies**

If you are a stockholder of record, you may change your vote or revoke your proxy at any time before it is voted at the Special Meeting by:

signing another proxy card with a later date and returning it to us prior to the Special Meeting;

submitting a new proxy electronically over the Internet or by telephone after the date of the earlier submitted proxy;

delivering a written notice of revocation to our Corporate Secretary; or

attending the Special Meeting and voting in person by ballot.

If you have submitted a proxy, your appearance at the Special Meeting will not have the effect of revoking your prior proxy; provided that you do not vote in person or submit an additional proxy or revocation, which, in each case, will have the effect of revoking your proxy.

If you hold your shares of Ellie Mae common stock in street name, you should contact your bank, broker or other nominee for instructions regarding how to change your vote. You may also vote in person at the Special Meeting if you obtain a legal proxy from your bank, broker or other nominee.

Any adjournment, postponement or other delay of the Special Meeting, including for the purpose of soliciting additional proxies, will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use at the Special Meeting as adjourned, postponed or delayed.

## **Board of Directors Recommendation**

The Board of Directors has unanimously: (1) determined that it is in the best interests of Ellie Mae and its stockholders, and declared it advisable, to enter into the Merger Agreement and consummate the Merger upon the terms and subject to the conditions set forth in the Merger Agreement; (2) approved the execution and delivery of the Merger Agreement by Ellie Mae, the performance by Ellie Mae of its covenants and other obligations under the Merger Agreement, and the consummation of the Merger upon the terms and conditions set forth in the Merger Agreement; and (3) resolved to recommend that Ellie Mae stockholders adopt the Merger Agreement and approve the Merger in accordance with the DGCL.

**The Board of Directors unanimously recommends that you vote: (1) FOR the adoption of the Merger Agreement; (2) FOR , on an advisory (non-binding) basis, the Compensation Proposal; and (3) FOR the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are**

**insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

**Solicitation of Proxies**

The expense of soliciting proxies will be borne by Ellie Mae. We have retained MacKenzie Partners, Inc. ( MacKenzie ), a proxy solicitation firm, to solicit proxies in connection with the Special Meeting at a cost of approximately \$17,500 plus expenses. We will also indemnify MacKenzie against losses arising out of its provisions of these services on our behalf. In addition, we may reimburse banks, brokers and other nominees representing beneficial owners of shares for their expenses in forwarding soliciting materials to such beneficial owners. Proxies may also be solicited by our directors, officers and employees, personally or by telephone, email, fax, over the Internet or other means of communication. No additional compensation will be paid for such services.

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### **Anticipated Date of Completion of the Merger**

Assuming timely satisfaction of necessary closing conditions, including the approval by stockholders of the proposal to adopt the Merger Agreement, we anticipate that the Merger will be consummated in the second or third calendar quarter of 2019.

### **Appraisal Rights**

If the Merger is consummated, stockholders who continuously hold shares of Ellie Mae common stock through the Effective Time, who do not vote in favor of the adoption of the Merger Agreement and who properly demand appraisal of their shares and do not withdraw their demands or otherwise lose their rights to seek appraisal will be entitled to seek appraisal of their shares in connection with the Merger under Section 262 of the DGCL. This means that holders of shares of Ellie Mae common stock who perfect their appraisal rights, who do not thereafter withdraw their demand for appraisal, and who follow the procedures in the manner prescribed by Section 262 of the DGCL may be 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 Ellie Mae common stock, exclusive of any elements of value arising from the accomplishment or expectation of the Merger, as determined by the Delaware Court of Chancery, together with interest to be paid on the amount determined to be fair value, if any, (or in certain circumstances described in further detail in the section of this proxy statement captioned *The Merger Appraisal Rights*, on the difference between the amount determined to be the fair value and the amount paid by the Surviving Corporation in the Merger to each stockholder entitled to appraisal prior to the entry of judgment in any appraisal proceeding). Due to the complexity of the appraisal process, stockholders who wish to seek appraisal of their shares are encouraged to review Section 262 of the DGCL carefully and to seek the advice of legal counsel with respect to the exercise of appraisal rights.

**Stockholders considering seeking appraisal should be aware that the fair value of their shares as determined pursuant to Section 262 of the DGCL could be more than, the same as or less than the value of the consideration that they would receive pursuant to the Merger Agreement if they did not seek appraisal of their shares.**

To exercise your appraisal rights, you must: (1) submit a written demand for appraisal to Ellie Mae before the vote is taken on the adoption of the Merger Agreement; (2) not submit a proxy or otherwise vote in favor of the proposal to adopt the Merger Agreement; (3) continue to hold your shares of Ellie Mae common stock of record through the Effective Time; and (4) strictly comply with all other procedures for exercising appraisal rights under Section 262 of the DGCL. Your failure to follow exactly the procedures specified under Section 262 of the DGCL may result in the loss of your appraisal rights. In addition, the Delaware Court of Chancery will dismiss appraisal proceedings in respect of the Merger unless certain stock ownership conditions are satisfied by the stockholders seeking appraisal. The DGCL requirements for exercising appraisal rights are described in further detail in the section of this proxy statement captioned *The Merger Appraisal Rights*, which is qualified in its entirety by Section 262 of the DGCL, the relevant section of the DGCL regarding appraisal rights. A copy of Section 262 of the DGCL is reproduced and attached as Annex C to this proxy statement and incorporated herein by reference. If you hold your shares of Ellie Mae common stock through a bank, brokerage firm or other nominee and you wish to exercise appraisal rights, you should consult with your bank, brokerage firm or other nominee to determine the appropriate procedures for the making of a demand for appraisal by such bank, brokerage firm or nominee.

### **Delisting and Deregistration of Ellie Mae common stock**

If the Merger is completed, the shares of Ellie Mae common stock will be delisted from NYSE and deregistered under the Exchange Act, and shares of Ellie Mae common stock will no longer be publicly traded.



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### **Other Matters**

At this time, we know of no other matters to be voted on at the Special Meeting. If any other matters properly come before the Special Meeting, your shares of Ellie Mae common stock will be voted in accordance with the discretion of the appointed proxy holders.

### **Important Notice Regarding the Availability of Proxy Materials for the Stockholder Meeting to be Held on [ ], 2019**

The proxy statement is available at *investor.elliemae.com* and clicking on the link titled SEC Filings .

### **Householding of Special Meeting Materials**

Unless we have received contrary instructions, we may send a single copy of this proxy statement to any household at which two or more stockholders reside if we believe the stockholders are members of the same family. Each stockholder in the household will continue to receive a separate proxy card. This process, known as householding, reduces the volume of duplicate information received at your household and helps to reduce our expenses.

If you would like to receive your own set of our disclosure documents this year or in future years, please contact us using the instructions set forth below. Similarly, if you share an address with another stockholder and together both of you would like to receive only a single set of our disclosure documents, please contact us using the instructions set forth below.

If you are a stockholder of record, you may contact us by writing to Ellie Mae Investor Relations at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588. Eligible stockholders of record receiving multiple copies of this proxy statement can request householding by contacting us in the same manner. If a bank, broker or other nominee holds your shares, please contact your bank, broker or other nominee directly.

### **Questions and Additional Information**

If you have any questions concerning the Merger, the Special Meeting or the accompanying proxy statement, would like additional copies of the accompanying proxy statement or need help voting your shares of Ellie Mae common stock, please contact our proxy solicitor:

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



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**THE MERGER**

This discussion of the Merger is qualified in its entirety by reference to the Merger Agreement, which is attached to this proxy statement as Annex A and incorporated into this proxy statement by reference. You should carefully read and consider the entire Merger Agreement, which is the legal document that governs the Merger, because this document contains important information about the Merger and how it affects you.

**Parties Involved in the Merger**

***Ellie Mae, Inc.***

4420 Rosewood Drive, Suite 500

Pleasanton, CA 94588

(925) 227-7000

Headquartered in Pleasanton, California, Ellie Mae is the leading cloud-based platform provider for the mortgage finance industry. Ellie Mae's technology solutions enable lenders to originate more loans, lower origination costs, and reduce the time to close, all while ensuring the highest levels of compliance, quality and efficiency. Ellie Mae common stock is listed on The NYSE Global Market ( NYSE ) under the symbol ELLI .

***EM Eagle Purchaser, LLC***

c/o Thoma Bravo, LLC

600 Montgomery Street, 20th Floor

San Francisco, CA 94111

(415) 263-3660

Parent was formed on February 11, 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 the transactions contemplated by the Merger Agreement and arranging of the equity financing and any debt financing in connection with the Merger.

***EM Eagle Merger Sub, Inc.***

c/o Thoma Bravo, LLC

600 Montgomery Street, 20th Floor

San Francisco, CA 94111

(415) 263-3660

Merger Sub is a wholly owned subsidiary of Parent and was formed on February 11, 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 the transactions contemplated by the Merger Agreement and arranging of the equity financing and any debt financing in connection with the Merger.

Parent and Merger Sub are each affiliated with Thoma Bravo Fund XIII, L.P. (the Thoma Bravo Fund ), and Parent, Merger Sub and the Thoma Bravo Fund are each affiliated with Thoma Bravo, LLC ( Thoma Bravo ). Thoma Bravo is a leading private equity investment firm focused on the software and technology-enabled services sectors. At the Effective Time, Ellie Mae, as the Surviving Corporation, will be indirectly owned by the Thoma Bravo Fund, Thoma Bravo Fund XIII-A, L.P. and Thoma Bravo Executive Fund XIII, L.P., each an affiliate of Thoma Bravo.

In connection with the transactions contemplated by the Merger Agreement, the Thoma Bravo Fund has provided Parent with an equity commitment sufficient to fund the aggregate purchase price required to be paid at the closing of the Merger and to also fund, together with cash on hand at Ellie Mae, certain fees and expenses to be paid at the closing of the Merger, contemplated by, and subject to the terms and conditions of, the Merger



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Agreement. For more information, please see the section of this proxy statement captioned Financing of the Merger.

### **Effect of the Merger**

Upon the terms and subject to the conditions of the Merger Agreement, Merger Sub will merge with and into Ellie Mae and the separate corporate existence of Merger Sub will cease, with Ellie Mae continuing as the Surviving Corporation. As a result of the Merger, Ellie Mae will become a wholly owned subsidiary of Parent, and Ellie Mae common stock will no longer be publicly traded and will be delisted from NYSE. In addition, Ellie Mae common stock will be deregistered under the Exchange Act, and we will no longer file periodic reports with the SEC. If the Merger is completed, you will not own any shares of the capital stock of the Surviving Corporation.

The Effective Time will occur upon the filing of a certificate of merger with the Secretary of State of the State of Delaware (or at such later time as we, Parent and Merger Sub may agree and specify in the certificate of merger).

### **Effect on Ellie Mae if the Merger is Not Completed**

If the Merger Agreement is not adopted by stockholders, or if the Merger is not completed for any other reason:

- i. the stockholders will not be entitled to, nor will they receive, any payment for their respective shares of Ellie Mae common stock pursuant to the Merger Agreement;
- ii. (a) Ellie Mae will remain an independent public company; (b) Ellie Mae common stock will continue to be listed and traded on NYSE and registered under the Exchange Act; and (c) Ellie Mae will continue to file periodic reports with the SEC;
- iii. we anticipate that (a) management will operate the business in a manner similar to that in which it is being operated today and (b) stockholders will be subject to similar types of risks and uncertainties as those to which they are currently subject, including, but not limited to, risks and uncertainties with respect to Ellie Mae's business, prospects and results of operations, as such may be affected by, among other things, the highly competitive industry in which Ellie Mae operates and economic conditions;
- iv. the price of Ellie Mae common stock may decline significantly, and if that were to occur, it is uncertain when, if ever, the price of Ellie Mae common stock would return to the price at which it trades as of the date of this proxy statement;
- v. the Board of Directors will continue to evaluate and review Ellie Mae's business operations, strategic direction and capitalization, among other things, and will make such changes as are deemed appropriate; irrespective of these efforts, it is possible that no other transaction acceptable to the Board of Directors will be offered or that Ellie Mae's business, prospects and results of operations will be adversely impacted; and
- vi.

under specified circumstances, Ellie Mae will be required to pay Parent a termination fee of either \$55 million or \$110 million upon the termination of the Merger Agreement, as described in the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Termination Fee.

**Merger Consideration**

At the Effective Time, each share of Ellie Mae common stock (other than Excluded Shares, which include, for example, shares of Ellie Mae common stock owned by stockholders who have properly and validly exercised their statutory rights of appraisal in accordance with Section 262 of the DGCL) outstanding as of immediately prior to the Effective Time will be cancelled and automatically converted into the right to receive the Per Share Merger Consideration, less any applicable withholding taxes.

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After the Merger is completed, you will have the right to receive the Per Share Merger Consideration in respect of each share of Ellie Mae common stock that you own (less any applicable withholding taxes), but you will no longer have any rights as a stockholder (except that stockholders who properly exercise their appraisal rights will have a right to receive payment of the fair value of their shares as determined pursuant to an appraisal proceeding, as contemplated by Delaware law). For more information, please see the section of this proxy statement captioned Appraisal Rights.

## **Background of the Merger**

The Board of Directors, with Ellie Mae senior management and outside advisors, regularly and in the ordinary course of business, reviews and assesses Ellie Mae's then existing long-term strategy, financial performance and operations in light of developments in Ellie Mae's business and overall developments in the industry in which it operates, taking into account the overall performance of the market and the mortgage industry generally. As part of this ongoing review and assessment, the Board of Directors considers various alternatives to Ellie Mae's long-term strategy, including alternatives involving the continuation of Ellie Mae's long-term business plan, possible strategic acquisitions to expand the markets that Ellie Mae serves or increase the service offerings in its existing markets, and the possible sale of Ellie Mae to a third party.

From time to time, members of Ellie Mae senior management have had high level discussions with market participants, including financial sponsors and strategic parties, regarding potential strategic transactions in order to assist the Board of Directors in understanding market developments and how these developments may impact long-term strategy. Since January 2016 and prior to the discussions below, none of these customary business discussions progressed beyond a preliminary stage with respect to a sale of Ellie Mae nor did Ellie Mae execute a confidentiality or standstill agreement outside the ordinary course of business with such parties other than as discussed below.

Starting in October 2018, representatives of Thoma Bravo and two other financial sponsors (referred to as Party A and Party B, respectively) each independently requested meetings with Jonathan Corr, Ellie Mae's Chief Executive Officer. Promptly after receiving these inquiries, Mr. Corr provided updates to, and discussed overall communication strategy in response to this outreach with, certain members of the Board of Directors, and, following these discussions, Mr. Corr deferred substantive meetings with these financial sponsors until after the next regularly scheduled meeting of the Board of Directors.

On October 31, 2018, as part of his role in gauging the market to assist the Board of Directors in understanding market developments, Mr. Corr responded to the inquiry from Party A to facilitate a meeting following the regularly scheduled meeting of the Board of Directors on November 14, 2018.

On November 3, 2018, Mr. Corr had a preliminary meeting with representatives of Party A (at an event that both parties attended) and briefly discussed Party A's general interests in exploring a strategic transaction.

On November 7, 2018, Mr. Corr scheduled a December meeting with representatives of Party B.

On November 14, 2018, a representative of Thoma Bravo contacted Mr. Corr to request a meeting regarding Thoma Bravo's interest in pursuing a strategic transaction with Ellie Mae.

On that same day, the Board of Directors held a regularly scheduled meeting at Ellie Mae's headquarters with members of Ellie Mae senior management and representatives of Cooley LLP (Cooley), Ellie Mae's outside legal counsel. In light of the recent discussions with Party A and the overall performance of the mortgage industry and its impact on stockholder value, the Board of Directors invited representatives of two financial advisors, including J.P. Morgan, to

provide an overview of Ellie Mae's performance and the overall market dynamics in order to inform the Board of Directors' ongoing assessment of Ellie Mae's long-term strategy. One of the financial advisors presented an overview of the state of the financial markets, including recent market trends in acquisitions of publicly traded SaaS companies by financial sponsors, and J.P. Morgan presented on the

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state of the capital markets as a potential means for Ellie Mae to fund acquisitions as part of Ellie Mae's long-term strategic stand-alone plan. The Board of Directors then considered a range of alternatives presented by these financial advisors to enhance stockholder value in light of the overall performance of the mortgage industry and the inbound inquiries from Party A, Party B and Thoma Bravo to meet with Ellie Mae management, as well as the increased likelihood for inbound and unsolicited proposals from other third parties to discuss strategic alternatives due to Ellie Mae's recent earnings announcement and forecast. Representatives of Cooley advised the Board of Directors with respect to fiduciary duties attendant to addressing inbound inquiries and any strategic transaction process, should such activity materialize. The Board of Directors then discussed the utilization of a strategic transaction committee (the Transaction Committee), in order to ensure that the Board of Directors could evaluate and manage an appropriate process on an expedited basis in the event that any third party prompted a strategic discussion with Ellie Mae. At the conclusion of this discussion, the Board of Directors established the Transaction Committee and designated Craig Davis, Karen Blasing and Robert Levin as members of the Transaction Committee due to their independence, experience with strategic transactions, existing roles on the Board of Directors, and willingness to serve on the Transaction Committee. Craig Davis agreed to serve as Chairperson for the Transaction Committee. The Board of Directors delegated to the Transaction Committee the authority to evaluate and make recommendations to the Board of Directors regarding any indications of interest, to review and recommend that the Board of Directors approve the engagement of potential financial advisors to assist in any strategic transaction process, and to advise and oversee Ellie Mae senior management in the review and negotiation of any strategic alternatives, noting that such utilization was for convenience only and not to address any conflicts of interest. The Board of Directors specifically requested that the Transaction Committee meet with select investment banking teams, following discussion with management, to present qualifications to the Transaction Committee in preparation for any inbound strategic interest and the need to utilize financial advisory services on an expedited basis. In addition, the Board of Directors authorized senior management to have preliminary discussions with Thoma Bravo, Party A and Party B to explore each party's interest in pursuing a strategic discussion.

Following the direction of the Board of Directors, Mr. Corr contacted three potential financial advisors, as recommended by members of the Board of Directors, to present to the Transaction Committee on November 26, 2018. Similarly, Mr. Corr contacted representatives from each of Thoma Bravo and Party A to set up preliminary meetings in response to prior outreach. Mr. Corr did not schedule a meeting with Party B as he had a preexisting event scheduled with Party B in December.

On November 26, 2018, the Transaction Committee and representatives of Cooley met with representatives of three potential financial advisors, including J.P. Morgan, in order to assess their respective qualifications to assist Ellie Mae with any potential strategic alternatives. The financial advisors were invited to provide an overall market assessment, analysis of potential participants in any potential strategic process, viewpoints on the likelihood and benefits of a strategic transaction, and potential conflicts of interest related to the potential process participants. The Transaction Committee actively participated in each meeting and asked pertinent questions regarding the qualifications of each of the potential financial advisors. The Transaction Committee then separately considered the relative qualifications of the potential financial advisors with respect to each advisor's reputation in the marketplace, experience with strategic transactions involving software companies and overall familiarity with the mortgage industry. In light of these considerations and due to J.P. Morgan's familiarity with Ellie Mae's business from prior representation, its reputation in the marketplace, its experience in negotiating similar strategic transactions and its familiarity with the mortgage industry (including the importance of having an advisor understand the unique cyclical nature of the mortgage industry), the Transaction Committee recommended that J.P. Morgan serve as the exclusive financial advisor in connection with any potential strategic transaction, subject to the review of engagement letter terms and related conflicts disclosure from J.P. Morgan. In making this recommendation, the Transaction Committee was aware of Ellie Mae's existing, long-term commercial agreements, which were developed in the ordinary course with commercial terms substantially similar to those for similar customers and ongoing commercial discussions, in each case, with

affiliates of J.P. Morgan with mortgage-lending businesses but did not consider these arrangements a conflict of interest in connection with the advisory engagement as they were unrelated to, and independent of, any potential strategic transactions.

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On December 3, 2018, the Transaction Committee held a telephonic meeting with Ellie Mae senior management and representatives of J.P. Morgan and reviewed potential participants deemed most likely to actively participate in any strategic discussion, including financial sponsors and strategic parties. With the assistance of its advisors, including representatives of Cooley and J.P. Morgan, the Transaction Committee considered various approaches to strategic alternatives, as well as the fiduciary duties of the Board of Directors in connection with such activities. In particular, the Transaction Committee addressed the need to be proactive and in control of any potential strategic process in light of the meaningful strategic interest conveyed by the three financial sponsors to Mr. Corr. The Transaction Committee was also keenly focused on balancing market rumors or other disruptions to the business, given the Board of Directors then-current commitment to Ellie Mae's standalone long-term plan. Following discussion, the Transaction Committee concluded that it was not in the best interests of Ellie Mae for J.P. Morgan to initiate a full market canvass of potential partners in a strategic transaction process. However, the Transaction Committee did believe that it was in the best interests of stockholders for the Transaction Committee to have a more complete understanding of whether the alternative paths presented an opportunity to enhance stockholder value under existing market conditions. Accordingly, the Transaction Committee directed Mr. Corr to engage in preliminary meetings with each of Party A, Party B and Thoma Bravo to more fully gauge the strategic interest of each party.

On December 7, 2018, Ellie Mae entered into a confidentiality agreement with Thoma Bravo that contained a standstill obligation with a "don't ask, don't waive" (prohibiting the signatory from, publicly or privately, requesting a waiver of the standstill) provision but allowed Thoma Bravo to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.

On December 12, 2018 and December 14, 2018, in response to their respective inbound inquiries, Mr. Corr met with Party A and Thoma Bravo, respectively, to provide a high level overview of Ellie Mae's business and to explore the potential for a strategic transaction. Following these discussions, Party A and Thoma Bravo verbally indicated that they would like to receive detailed due diligence and continue discussions regarding a potential acquisition of Ellie Mae, and both parties verbally indicated that they could potentially offer a "substantial premium" to Ellie Mae's existing trading price.

On December 17, 2018, the Transaction Committee and representatives of Cooley held a telephonic meeting to review the status of the strategic discussions, and Mr. Corr provided an overview of his discussions with Party A and Thoma Bravo to date, including the strong desire communicated by each party to continue discussions and receive detailed business and legal due diligence in order to facilitate a formal offer to acquire Ellie Mae at a "substantial premium." Representatives of Cooley then advised the Transaction Committee of fiduciary obligations in the context of continuing discussions with potential parties in a strategic alternatives process. Based on these discussions and the preliminary, yet strong, interest expressed by Party A and Thoma Bravo, the Transaction Committee determined that it was in Ellie Mae's best interest to formally engage J.P. Morgan at that time. Mr. Corr summarized the engagement letter negotiations to date, and Cooley summarized the conflicts disclosure provided by J.P. Morgan. Following discussion, the Transaction Committee authorized management to continue its discussions with Party A and Thoma Bravo, and Mr. Davis agreed to convey such authorization to the other members of the Board of Directors at the next meeting of the Board of Directors to be tentatively held on December 18, 2018.

That evening at a previously scheduled social event, Mr. Corr met with a representative of Party B to discuss Party B's interest in exploring a potential strategic transaction with Ellie Mae.

On December 18, 2018, Ellie Mae entered into a confidentiality agreement with Party A that contained a standstill obligation with a "don't ask, don't waive" provision but allowed Party A to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.





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On the same day, the Board of Directors held a telephonic meeting with members of Ellie Mae senior management and representatives of Cooley. The members of the Transaction Committee and Mr. Corr reviewed the strategic discussions with Thoma Bravo, Party A and Party B. In addition, the Board of Directors reviewed the proposed final terms of engagement with J.P Morgan (including conflicts disclosure), and consistent with its previous conditional approval, formally approved the engagement of J.P. Morgan as Ellie Mae's financial advisor.

On that same day, Mr. Corr met with a representative of Party A to discuss preliminary diligence regarding Ellie Mae's high-level financial plan.

On December 19, 2018, a representative of Party A had a meeting with Mr. Corr to preview its general interest in a potential strategic transaction, noting specifically that it believed it would be able to offer a significant premium to Ellie Mae's existing trading price and trading price prior to Ellie Mae's third quarter earnings announcement on October 25, 2018. Party A requested fulsome business and financial diligence prior to submitting a formal offer.

On that same day, representatives from Thoma Bravo had a meeting with Mr. Corr to discuss interest in pursuing a strategic transaction and noted the ability to pay a substantial premium subject to additional financial diligence.

On December 21, 2018, representatives of a fourth financial sponsor ( Party C ) requested a meeting with Mr. Corr. Due to the travel schedules of representatives of Party C, the parties were not able to schedule this meeting until later in January.

On December 27, 2018, the Transaction Committee held a telephonic meeting, including representatives of each of J.P. Morgan and Cooley. Mr. Corr and representatives of J.P. Morgan summarized the discussions to date with Thoma Bravo, Party A and Party B. The Transaction Committee discussed alternative methods for next steps in any potential strategic transaction process, with the goal of maximizing stockholder value. The Transaction Committee specifically reviewed the choice to limit discussions to those financial sponsors that proactively requested discussions with Ellie Mae and had engaged in preliminary due diligence as compared to a broader solicitation of interest from additional financial sponsors and strategic parties. A representative of J.P. Morgan discussed the considerations attendant to a broader or more limited outreach. Representatives of Cooley provided the Transaction Committee with an overview of general fiduciary considerations, as well as regulatory risks inherent to each potential party related to each of the alternative outreach choices, and discussed the potential for using a go-shop provision to conduct an additional market check following the announcement of any strategic transaction. In these discussions, the Transaction Committee, with the assistance of representatives of J.P. Morgan and Cooley, weighed these alternatives and discussed whether the benefits of a broader outreach (including a more fulsome market check) outweighed the benefits of a more limited strategic process (including the potential loss of leverage with financial sponsors keen to make preemptive moves (offers early in the strategic discussions with strong valuations), loss of momentum in any prolonged process and the risk of market rumors or leaks). Ultimately, the Transaction Committee determined that limiting the preliminary process to those financial sponsors that initiated inbound inquiries would both reduce the rumor and distraction risk to Ellie Mae, while also potentially providing the Transaction Committee with an assessment of the potential market value available to Ellie Mae stockholders. The Transaction Committee believed this additional activity would further inform subsequent strategic decisions. The Transaction Committee acknowledged that some form of additional market check would need to be available to maximize stockholder value in the event the Transaction Committee and Board of Directors decided to formally pursue strategic alternatives but that such an outcome could be achieved with either a broader pre-signing solicitation or a post-signing go-shop mechanic. The Transaction Committee then directed Mr. Corr to further pursue strategic transaction discussions with Thoma Bravo, Party A and Party B and to provide such parties with additional information that they had requested regarding Ellie Mae's business, results of operations, financial conditions and product strategies.



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On January 3, 2019, Mr. Corr had an additional meeting with representatives of Thoma Bravo to discuss considerations related to the sponsor's internal post-acquisition financial plan.

On January 4, 2019, Mr. Corr met with representatives of Party A, as requested, to discuss the potential strategic vision for Ellie Mae and Party A following any potential strategic transaction.

On that same day, representatives from Party B sent representatives of J.P. Morgan a list of diligence items that it required prior to the submission of a formal offer. Representatives of J.P. Morgan also coordinated a management presentation with members of senior management the following week to discuss diligence generally.

On January 10, 2019, Ellie Mae entered into a confidentiality agreement with Party B that contained a standstill obligation with a "don't ask, don't waive" provision, which obligation would automatically terminate upon Ellie Mae's execution of a definitive agreement to be acquired by a third party, and also allowed Party B to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.

Also on January 10, 2019, Mr. Corr and representatives of J.P. Morgan held separate management presentations with Thoma Bravo and Party B. Attendees discussed Ellie Mae's business model, competitive landscape, strategy and historical financial results.

On January 11, 2019, Mr. Corr and representatives of J.P. Morgan held a similar presentation with Party A.

During the week following these management presentations, members of Ellie Mae senior management and representatives of J.P. Morgan had additional meetings with each of Party A, Party B, and Thoma Bravo to address business due diligence following management presentations. During the respective follow-up meetings, each financial sponsor confirmed its commitment to submitting more formal acquisition proposals in the near future but continued to signal a "preemptive" position relative to Ellie Mae's recent trading price and the trading price prior to Ellie Mae's third quarter earnings announcement.

On January 17, 2019, Ellie Mae received a non-binding proposal from Party A for an all-cash offer of \$93.50 per share (the "Party A January 17 Proposal"). This proposal, which was subject to customary conditions, provided for an acquisition of Ellie Mae, a customary "go-shop" provision, Party A's commitment to deliver customary equity and debt commitments at signing to fund the acquisition, and no financing contingencies to closing. The anticipated period for Party A to complete its remaining diligence procedures was two weeks.

Later on January 17, 2019, the Transaction Committee held a telephonic meeting with representatives of Cooley and J.P. Morgan. Mr. Corr and representatives of J.P. Morgan discussed the status of the Party A January 17 Proposal and anticipated proposals from Thoma Bravo and Party B. Members of the Transaction Committee discussed their initial reactions that the Party A January 17 Proposal undervalued Ellie Mae, but the Transaction Committee elected to withhold a formal response to Party A until it could assess additional proposals anticipated on or about January 22, 2019.

On the same day, representatives of J.P. Morgan contacted representatives of Party C to coordinate an initial management presentation with Party C and stressed timing as an important factor in the event Party C wanted to engage in the strategic process.

On January 18, 2019, Party A delivered a draft of a merger agreement, which contemplated the provisions outlined in the Party A January 17 Proposal as well as the following terms: (i) a customary 30-day "go-shop" period for Ellie Mae

to solicit and consider superior proposals with a related 1.5% termination fee; (ii) a 3% termination fee for a superior proposal accepted after the go-shop period; (iii) a limitation on Party A's liability in connection with the proposed acquisition of Ellie Mae equal to 6% of the equity value of Ellie Mae; (iv) a

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customary reasonable best efforts covenant from both parties to secure regulatory approval of the transaction without a hell or high water required divestiture provision; and (v) acceleration of all equity incentives outstanding immediately prior to the merger.

Later on January 18, 2019, Ellie Mae received non-binding proposals from Thoma Bravo and Party B. Thoma Bravo's proposal included a valuation range of \$87.00-\$92.00 per share, and Party B's proposal included a valuation range of \$88.00-\$92.00 per share.

Later on January 18, 2019, the Board of Directors held a telephonic meeting with members of Ellie Mae senior management, representatives of Cooley and J.P Morgan. Representatives of J.P. Morgan and Mr. Corr reviewed the recent proposals from, and the status of the discussions with, Party A, Party B and Thoma Bravo. Members of the Board of Directors engaged in active discussion and ultimately concluded that a strategic acquisition at these valuations would not be compelling enough to warrant further negotiation and would not be in the best interests of stockholders relative to the standalone long-term plan of Ellie Mae. After additional discussions, the Board of the Directors, in connection with a recommendation from representatives of J.P. Morgan, determined that each of Party A, Party B and Thoma Bravo should understand that the respective proposals undervalued Ellie Mae and that each sponsor was invited to reconsider a new submission at a price per share higher than previous indications of interest. The Board of Directors instructed representatives of J.P. Morgan to conduct outreach to each party accordingly. The Board of Directors also reviewed and discussed management's preliminary 2019 financial plan and related assumptions in the plan. The Board of Directors approved the 2019 financial plan and directed management and J.P. Morgan to share the plan with bidders, as appropriate, in relevant diligence discussions. The Board of Directors also instructed management to construct a five-year company financial plan for purposes of any valuation review in consultation with Ellie Mae's advisors, as well as additional diligence follow-up with engaged parties to date, if applicable.

On January 22, 2019, the Transaction Committee held a meeting with Mr. Corr and representatives of J.P. Morgan and Cooley, to preview J.P. Morgan's preliminary assessment of the proposals received to date, with a specific focus on how, if at all, specific parties could be encouraged to review and increase proposed offers. The Transaction Committee underscored the Board of Directors' instruction to J.P. Morgan to solicit each party to submit a proposal higher than previous indications of interest and in the triple digits. The Transaction Committee also reviewed and discussed the preliminary preparation of management's five-year financial plan as requested by the Board of Directors. Following discussion and related questions, management agreed to continue work on the five-year financial plan and report an update to the plan at the next appropriate meeting of the Board of Directors.

Later on January 22, 2019, representatives of J.P. Morgan held discussions with representatives of Party A as instructed by the Board of Directors. Party A indicated that it would consider a \$100 per share valuation, however; it would need to conduct additional diligence on Ellie Mae's long-term financial plan and product and technical diligence with members of Ellie Mae senior management.

On January 23, 2019, Party A discussed with representatives of J.P. Morgan the request to engage co-investors to serve as equity partners.

On January 24, 2019, the Transaction Committee held a telephonic meeting with Ellie Mae senior management and representatives of J.P. Morgan and Cooley to review the current status of the strategic process. Representatives of J.P. Morgan informed the Transaction Committee that Party A was highly likely to increase its offer and this offer may be as high as \$100 per share, subject to review of the long-term financial plan, additional due diligence and obtaining appropriate co-investor support. At the request of the Transaction Committee, J.P. Morgan gave a preliminary overview of valuation metrics that would be useful to the committee in assessing the relative proposals to date.

Following discussion, the Transaction Committee authorized Ellie Mae senior management and J.P. Morgan to engage with potential financial sponsors that could serve as co-investors, subject to negotiation of appropriate confidentiality agreements. The Transaction Committee also

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reviewed and discussed management's updated five-year plan, specifically the assumptions made in the plan and relative comparison to investor expectations and the 2019 financial plan. Following review, the Transaction Committee approved the five-year plan in the form provided and agreed to recommend it for approval and distribution to relevant strategic parties, as applicable, at the next meeting of the Board of Directors.

Later on January 24, 2019, the Board of Directors held a telephonic meeting with Ellie Mae senior management and representatives of J.P. Morgan and Cooley. Mr. Corr and Dan Madden, Ellie Mae's Chief Financial Officer, presented the five-year financial plan as approved by the Transaction Committee, including key variables that management considered in preparing the plan. Key variables included the potential for a recession, the overall performance of the mortgage industry generally, and the ability of Ellie Mae to increase its loan origination system market share, as well as a sensitivity analysis on how these various assumptions could increase or decrease Ellie Mae's financial performance. During this presentation, the Board of Directors engaged in active discussion and inquired into the impact of the various assumptions. Following this discussion, the Board of Directors determined that the projections were the most current and predictive forecasts of the future financial performance of Ellie Mae and approved the five-year financial plan (the "Five-Year Projections"). In connection with this approval, the Board of Directors also approved J.P. Morgan's use of the Five-Year Projections for any related financial analysis and instructed J.P. Morgan and Cooley to share a subset of the Five-Year Projections with Party A and other parties as appropriate. For more information regarding such projections, see the section titled "The Merger Management Projections." Also at this meeting, at the request of the Board of Directors, J.P. Morgan provided a preliminary overview of valuation metrics that would be useful to the Board of Directors in assessing the relative proposals to date. The Board of Directors in executive session (without representatives of J.P. Morgan or Ellie Mae senior management) discussed the current acquisition proposals as compared to Ellie Mae's existing long-term strategic plan as a stand-alone company. Particular attention was focused on market and industry risks over time, including the rate at which mortgage loan volumes would grow over time and the ability of Ellie Mae to continue to grow its loan-origination system market share. During this discussion, representatives of Cooley counseled the Board of Directors regarding fiduciary duties in connection with the decision to pursue any of the strategic proposals. Following discussion, the Board of Directors affirmed the continuing strategy to press for additional value from each party engaged to date, and directed Mr. Davis to convey to J.P. Morgan the instruction to solicit revised proposals from each applicable party.

Following these instructions, representatives of J.P. Morgan contacted three additional financial sponsors to potentially serve as co-investors (referred to as "Party D," "Party E" and "Party F") with Party A or potentially pursue strategic discussions on a stand-alone basis in the case of Party E and Party F.

Also on January 24, 2019, Ellie Mae entered into a confidentiality agreement with Party D that contained a standstill obligation with a "don't ask, don't waive" provision, which obligation would automatically terminate upon Ellie Mae's execution of a definitive agreement to be acquired by a third party, and also allowed Party D to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.

On the same day, Ellie Mae also entered into a confidentiality agreement with Party E that contained a standstill obligation with a "don't ask, don't waive" provision but allowed Party E to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.

On the same day, at the direction of the Transaction Committee, representatives of J.P. Morgan instructed each party participating prior to January 25, 2019 to submit final proposals no later than January 29, 2019.

On January 25, 2019, Ellie Mae entered into a confidentiality agreement with Party F that contained a standstill obligation with a "don't ask, don't waive" provision, which obligation would automatically terminate upon Ellie Mae's

execution of a definitive agreement to be acquired by a third party, and allowed Party F to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.



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On that same day, Party B, with two co-investors, provided a revised, all-cash written proposal to acquire Ellie Mae for \$91 per share by February 4, 2019, subject to customary diligence. The offer was conditioned on providing Party B with customary diligence, and the offer expired automatically should Party B not receive such diligence in accordance with its outlined plan.

Between January 25, 2019 and January 31, 2019, Ellie Mae entered into confidentiality agreements with two additional financial sponsors that could serve as co-investors (in addition to the possibility of Party E or Party F serving in such role) with Party A (such additional sponsors referred to as Party G and Party H, respectively). The confidentiality agreements with Party G and Party H contained standstill obligations with a don't ask, don't waive provision but allowed the counterparty to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals, and some of such agreements contained an automatic termination of the standstill obligations upon Ellie Mae's execution of a definitive agreement to be acquired by a third party. During this period, members of Ellie Mae senior management and representatives of J.P. Morgan held management presentations and/or shared due diligence information with each of Party A, Party B, Party C, Party D, Party E, Party F, Party G and Party H, as well as Thoma Bravo, in each case following such party's execution of the confidentiality agreements described herein.

On January 26, 2019, Ellie Mae entered into a confidentiality agreement with Party C that contained a standstill obligation with a don't ask, don't waive provision, which obligation would automatically terminate upon Ellie Mae's execution of a definitive agreement to be acquired by a third party, and also allowed Party C to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals.

On January 27, 2019, Party A sent a written proposal to acquire Ellie Mae for \$100 per share (the Party A January 27 Proposal), consistent with the deal terms previously proposed in connection with the Party A January 17 Proposal, conditioned upon Ellie Mae entering into an exclusivity agreement with Party A through the projected signing date of February 11, 2019. Party A also conditioned its offer on satisfactory commitments by a selection of one or more equity partners by February 4, 2019.

On January 28, 2019, Thoma Bravo provided a revised written proposal for an all-cash offer of \$94.75 per share and indicated that it would require a period of two weeks to complete diligence and consummate a strategic acquisition.

Later that day, Party D and Party F each separately provided a written proposal to participate as co-investors with Party A at the \$100 per share valuation.

That afternoon, the Transaction Committee held a meeting with representatives of J.P. Morgan and Cooley to review and assess the proposals received to date. Representatives of J.P. Morgan reviewed the proposals and the strategic process to date and noted that (i) Party F was in the preliminary stages of diligence and indicated that it could serve as a co-investor for Party A to meet the accelerated timeline, but to potentially submit an independent proposal for a strategic transaction, it would require additional time; and (ii) Party E advised that it would not be able to participate as a co-investor in connection with the Party A January 27 Proposal as it would not be able to meet the proposed valuation or timing. Based on these discussions, J.P. Morgan did not anticipate any offer superior to the Party A January 27 Proposal from parties in the strategic process to date. Moreover, J.P. Morgan advised that the amount of time needed for Party F to complete due diligence and assess a potential offer could significantly undermine Ellie Mae's current leverage with Party A and its interest in submitting a preemptive offer. The Transaction Committee, which then moved to executive session, discussed the proposals in detail, as well as the input from its advisors. In particular, the Transaction Committee focused on the premium of the Party A January 27 Proposal, the relative ease with which the Company could satisfy Party A's closing conditions and the comparison of the Party A January 27

Proposal to Ellie Mae's long-term strategic plan as a stand-alone company that was previously reviewed with Ellie Mae senior management and the Board of Directors.

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Accordingly, the Transaction Committee resolved to recommend to the Board of Directors that Ellie Mae enter into an exclusivity agreement with Party A.

Later that day, the Board of Directors held a telephonic meeting with Ellie Mae senior management and representatives of J.P. Morgan and Cooley. The Transaction Committee advised the Board of Directors of its prior discussion, considerations and recommendation regarding the Party A January 27 Proposal and, specifically, the proposed exclusivity arrangement. The Board of Directors discussed the rationale and recommendation of the Transaction Committee, asked J.P. Morgan its views of the competitive landscape among parties in discussions to date, and discussions ensued. The Board of Directors considered the premium provided by the Party A January 27 Proposal, the time sensitive nature of the offer, as well as the ability of the Board of Directors to perform an additional post-signing go-shop market check with other parties (subject to a customary termination fee during such period). Taking into account the risks inherent in Ellie Mae's stand-alone plan, the market and industry volatility generally, the Board of Directors' independent view that other bidders would be unlikely to offer the same price as Party A, and the risk of losing the Party A January 27 Proposal without swift action, the Board of Directors ultimately agreed to enter into an exclusivity arrangement with Party A. The Board of Directors, concerned about the duration of the proposed 14-day exclusivity, conditioned approval of the exclusivity arrangement on Party A reconfirming the \$100 per share offer price by February 4, 2019. Following this call and pursuant to the instruction of the Board of Directors, Ellie Mae entered into the exclusivity arrangement with Party A on January 28, 2019 for a period of seven days, subject to price confirmation on February 4, 2019 and Ellie Mae's option to terminate exclusivity absent such confirmation by 11:59 p.m. Pacific Time on February 4, 2019 or to continue exclusivity absent such termination through February 11, 2019. On January 29, 2018, Ellie Mae granted representatives of Party A access to its virtual data room.

During the period between January 29, 2019 and February 4, 2019, representatives and outside counsel for Party A (including Party D, Party G and Party H as potential co-investors) and Ellie Mae negotiated the terms of the proposed merger agreement and other transaction documents, and conducted a series of due diligence sessions.

On January 30, 2019, Party C indicated that its valuation would not exceed the low-to-mid \$90s per share.

On February 1, 2019, the DealReporter published an article (without Ellie Mae's input or comment) that stated that Ellie Mae had engaged a financial advisor other than J.P. Morgan to explore a sale of Ellie Mae (referred to as the DealReporter Article).

Later that day, representatives of Party A requested an extension to affirm its offer price until February 5, 2019.

On February 4, 2019, a representative from a strategic acquiror (referred to as Party I) requested further information from representatives of J.P. Morgan as well as a call with Mr. Corr regarding the DealReporter Article.

On February 4, 2019, the Transaction Committee held a telephonic meeting with representatives of J.P. Morgan and Cooley. Representatives of J.P. Morgan reviewed the status of negotiations with Party A, including that the identity and commitments from the co-investors remained open and diligence with these parties was progressing. Representatives of J.P. Morgan also discussed the inquiry from Party I. Given the nature of the specific party, and competitively sensitive dynamics with such party, including the view, supported by outside counsel, that certain regulatory issues would make a transaction with Party I extremely challenging to consummate, management did not immediately engage with Party I subject to review of the inquiry by the Transaction Committee and the Board of Directors.

On February 5, 2019, following ongoing due diligence and negotiations, Party A called representatives of J.P. Morgan and advised that it could not confirm the \$100 per share offer price and revised its proposal to \$95 per share. On the

same call, Party A also indicated that Party D and Party G would serve as co-investors for this revised offer.

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Later that day, the Transaction Committee and the Board of Directors held telephonic meetings with representatives of J.P. Morgan and Cooley to discuss the revised proposal from Party A. During both meetings, Cooley advised the Transaction Committee and the Board of Directors, respectively, of the fiduciary duties attendant to an assessment of the revised proposal, as well as a summary of the status of negotiations with Party A on the definitive agreements. Based on prior discussions with representatives of Party B and Thoma Bravo, J.P. Morgan recommended that Ellie Mae terminate exclusivity with Party A and then engage in further discussions with each of Party A, Party B and Thoma Bravo to assess whether or not any of the parties could match the previous proposal of \$100 per share or increase their prior offers. J.P. Morgan reiterated its belief that Party F might have the capacity to make a proposal similar in valuation to the Party A January 27 Proposal, but that Ellie Mae should also weigh the significant time required for Party F to accelerate its due diligence process and general assessment of the opportunity. The Board of Directors discussed overall timing of the strategic transaction process in light of Party F's diligence status but ultimately determined that the risk of carrying on the strategic process past Ellie Mae's upcoming scheduled earnings announcement (previously scheduled on February 14, 2019) could have adverse consequences on Ellie Mae due to (i) the DealReporter Article and related impact of market rumors and destabilization of the trading price of Ellie Mae's common stock, (ii) the chilling effect that any delay could cause on the willingness of Party A, Party B or Thoma Bravo to consummate a transaction, (iii) the uncertainty that Party F or another potential participant in the strategic transaction process would submit a superior proposal, and (iv) the potential opportunity for Ellie Mae to continue soliciting a superior proposal for a period of time after signing a definitive merger agreement pursuant to a go-shop provision, as was included in Party A's proposal and that, based on prior discussions of the Board of Directors, Thoma Bravo and Party B would be likely to provide. The Board of Directors also discussed the inquiry from Party I and determined not to pursue discussions with Party I due to regulatory and confidentiality concerns and the view, supported by outside counsel, that regulatory issues would subject any transaction with Party I to extreme regulatory closing risk. The Transaction Committee then recommended, and the Board of Directors approved, terminating exclusivity with Party A and for J.P. Morgan and Ellie Mae senior management to continue discussions with each of Party A (including potential co-investors of Party A), Party B, Party F and Thoma Bravo.

Later that day, the exclusivity arrangement with Party A was terminated.

Also that day, representatives of J.P. Morgan informed Thoma Bravo, Party A (including certain of the potential co-investors of Party A) and Party B that the existing proposals represented insufficient value for Ellie Mae's stockholders and that revisions to previous proposals would be required in order to keep the Board of Directors interested in any strategic process. Representatives of each of Thoma Bravo and Party B confirmed an interest in re-assessing their previous respective proposals. Following such discussion, Ellie Mae granted representatives of each of Thoma Bravo and Party B access to its virtual data room.

On February 6, 2019, representatives of J.P. Morgan received an unsolicited inbound inquiry from a financial sponsor (referred to as Party J), and on February 7, 2019, Ellie Mae entered into a confidentiality agreement with such party that contained a standstill obligation with a don't ask, don't waive provision, which obligation would automatically terminate upon Ellie Mae's execution of a definitive agreement to be acquired by a third party, and also allowed Party J to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals. Following this, Party J indicated that it would need a number of weeks to complete diligence and did not request additional information or discussions with Ellie Mae prior to the signing of the Merger Agreement.

From February 6 through February 11, 2019, representatives of Ellie Mae senior management conducted due diligence sessions and related follow-up with representatives of each of Thoma Bravo, Party A (including Party D and other potential co-investors of Party A) and Party B.

On February 7, 2019, the Transaction Committee held a telephonic meeting with Ellie Mae senior management and representatives of J.P. Morgan and Cooley, and discussed the status of discussions with, and progress of due

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diligence by, each of Thoma Bravo, Party A, Party B and Party D (as the lead co-investor for Party A). Members of the Transaction Committee considered the potential benefit of allowing additional time for Party F or Party J to conduct further due diligence as compared to the potential market risk and business disruptions attendant to a protracted strategic process. After discussion, the Transaction Committee instructed representatives of J.P. Morgan to clearly articulate the expectation that the interested parties would expeditiously complete their remaining diligence and submit revised indications of interest no later than February 11, 2019. The Transaction Committee also instructed representatives of Cooley to prepare a proposed form acquisition agreement to be used for immediate negotiation in the event any party submitted a compelling final proposal. The Transaction Committee, with guidance from representatives of Cooley, also discussed the regulatory considerations attendant to any potential bid by each of Thoma Bravo, Party A, Party B and Party D (as lead co-investor for Party A), and requested that the form acquisition agreement include a hell or high water provision to mitigate any perceived regulatory risks associated with potential bidders.

On that same day, a representative from Party I had a call with Mr. Corr regarding a commercial arrangement between Ellie Mae and Party I unrelated to the strategic transaction process. During this conversation, the representative from Party I inquired about the DealReporter Article and the potential for Party I to explore a strategic transaction with Ellie Mae. Mr. Corr declined to comment on the strategic transaction process.

On February 8, 2019, at the direction of the Transaction Committee, representatives of J.P. Morgan provided a draft acquisition agreement to representatives of each of Thoma Bravo and Party B. The draft acquisition agreement contemplated (i) a customary 40-day go-shop period for Ellie Mae to solicit and consider superior proposals with a related 1.5% termination fee; (ii) a 3% termination fee for a superior proposal accepted after the go-shop period; (iii) a 7% termination fee payable by the acquiror if it fails to consummate the transaction under certain circumstances; (iv) a customary reasonable best efforts covenant from both parties to secure regulatory approval of the transaction with a hell or high water required divestiture provision; (v) payment of unvested equity incentives over the course of the existing vesting schedule as opposed to the acceleration contemplated by the Party A January 27 Proposal; and (vi) other customary terms for a strategic transaction of this nature.

Later on February 8, 2019, a representative of J.P. Morgan received an unsolicited inbound inquiry from a new financial sponsor (referred to as Party K ). J.P. Morgan indicated that it would discuss the inquiry with Ellie Mae. Representatives of J.P. Morgan then discussed with members of the Board of Directors such inbound inquiry, but contact with Party K was not initiated until after the announcement of the Merger Agreement due to the timing of this initial inquiry.

Throughout the day on February 8, 2019, representatives of each of Cooley and Kirkland & Ellis LLP ( Kirkland & Ellis ), outside counsel to Thoma Bravo, engaged in preliminary negotiations on the Ellie Mae draft acquisition agreement.

Throughout February 8 and 9, 2019, representatives of Party B had discussions with representatives of J.P. Morgan regarding key aspects of the Ellie Mae draft acquisition agreement, including the go-shop terms, termination fees and hell or high water required divestiture provision.

Throughout February 8 and 9, 2019, representatives of Thoma Bravo had discussions with representatives of J.P. Morgan regarding the go-shop terms, and Thoma Bravo indicated a strong preference for no go-shop given the prior DealReporter speculation.

Also on February 8, 2019, representatives of Cooley sent representatives of outside counsel to Party A revised drafts of the Party A form of merger agreement and other transaction documents, which conformed significant deal points

with those of the Ellie Mae draft acquisition agreement being used with Thoma Bravo and Party B.



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On February 9, 2019, representatives of outside counsel to Party A sent representatives of Cooley revised drafts of the Party A form of merger agreement and other transaction documents, which did not include a debt commitment letter. Representatives of Cooley requested that Party A promptly submit missing material.

Later that day, representatives of Kirkland & Ellis sent representatives of Cooley revised drafts of the Ellie Mae draft acquisition agreement and other transaction documents, including a debt commitment letter. The revised acquisition agreement had a few key differences from the Ellie Mae form draft acquisition agreement, including (i) a requirement that directors and officers of Ellie Mae sign a customary voting agreement to vote such individual's shares of Company Common Stock in favor of the merger concurrently with the execution of the acquisition agreement; and (ii) a shorter 30-day go-shop period.

On February 10, 2019, representatives of Cooley discussed and negotiated drafts of the Ellie Mae draft acquisition agreement, the Party A form of merger agreement, and other transaction documents with representatives of each of Kirkland & Ellis and outside counsel to Party A, respectively, including restrictions on the interim operations of Ellie Mae, the duration of the go-shop period, whether directors and officers would need to sign a voting agreement, and certain aspects of the scope of the go-shop and no shop terms, including whether existing bidders would be subject to those restrictions.

Later that day, representatives of Cooley sent revised drafts of the Party A form of merger agreement and other transaction documents to representatives of outside counsel to Party A, and also revised drafts of the Ellie Mae draft acquisition agreement and other transaction documents to representatives of Kirkland & Ellis. Representatives of Cooley requested again that Party A submit missing material.

On February 10, 2019, at the direction of the Transaction Committee, representatives of J.P. Morgan reminded representatives of each of Thoma Bravo, Party B and Party A of the Board of Directors request that it receive, no later than 5:00 p.m. Pacific Time on February 11, 2019, any final proposal accompanied by final drafts of the applicable transaction documents.

On February 11, 2019, a representative of Party I left a voicemail for Mr. Corr requesting further discussions regarding the strategic transaction process, which inquiry was briefly discussed at the meeting of the Board of Directors later that day. Due to the direction from the Board of Directors, a substantive response to this inquiry was not commenced until following the announcement of the Merger.

Over the course of that same day, Ellie Mae received three non-binding proposals from each of Thoma Bravo, Party B and Party A (with Party D serving as co-investor). Representatives of Thoma Bravo submitted a non-binding written proposal for an all-cash offer of \$99.00 per share, which proposal confirmed completion of due diligence and approval by its investment committee (the Thoma Bravo \$99 Proposal) and committed to prompt finalization and execution of a definitive acquisition agreement, subject to exclusivity through the proposed announcement of the transaction on February 12, 2019. The Thoma Bravo \$99 Proposal was accompanied by a revised merger agreement and other transaction documents, including an equity commitment letter and limited guarantee, each in substantially final form. Thoma Bravo also confirmed that the full purchase price would be backstopped by an equity commitment by the Thoma Bravo Fund. The revised merger agreement submitted by Thoma Bravo was on terms substantially similar to the prior Ellie Mae form of draft acquisition agreement, including (i) a customary 35-day go-shop period for Ellie Mae to solicit and consider superior proposals with a related 1.5% termination fee; (ii) a 3% termination fee for a superior proposal accepted after the go-shop period; (iii) a 7% termination fee payable by the acquiror if it fails to consummate the transaction under certain circumstances; and (iv) a customary reasonable best efforts covenant from both parties to secure regulatory approval of the transaction with a hell or high water divestiture provision. The revised merger agreement submitted by Thoma Bravo did not include a requirement that Ellie Mae's officers and directors deliver

voting agreements in support of the Merger. Representatives of Party B submitted a non-binding written proposal for an all-cash offer of \$93.00 per share (the Party B \$93 Proposal ) and verbally indicated that the full purchase price would be backstopped by an equity commitment by Party B and its co-investors. Party B also

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indicated, based on discussions with representatives of J.P. Morgan on the key terms of the transaction documents and drafts discussed to date, that Party B could finalize the necessary documentation by February 14. Representatives of Party A (including Party D as co-investor) orally confirmed its non-binding proposal for an all-cash offer of \$95.00 per share (the Party A \$95 Proposal) and indicated that the transaction documents previously submitted were in substantially final form.

Throughout the day on February 11, 2019, representatives of each of Cooley and Kirkland & Ellis continued to exchange drafts of Ellie Mae's draft acquisition agreement and other transaction documents.

Later on the same day, after market close, the Board of Directors held a meeting with representatives of Ellie Mae senior management, Cooley and J.P. Morgan. Representatives of J.P. Morgan reviewed for the Board of Directors the current status of discussions with applicable parties, including Thoma Bravo, Party A (with Party D serving as a co-investor), and Party B. Representatives of J.P. Morgan and Cooley reviewed with the Board of Directors the key legal and financial terms of each of the Thoma Bravo \$99 Proposal, the Party A \$95 Proposal and the Party B \$93 Proposal, and representatives of J.P. Morgan then provided J.P. Morgan's financial analyses of the Thoma Bravo \$99 Proposal, Party A \$95 Proposal and Party B \$93 Proposal, including that all agreements now included a hell or high water divestiture provision. J.P. Morgan then rendered its oral opinion (subsequently confirmed in a written opinion, dated as of February 11, 2019) to the Board of Directors to the effect that, as of February 11, 2019 and based upon and subject to the factors and assumptions set forth in such opinion, the Per Share Merger Consideration (as proposed in the Thoma Bravo \$99 Proposal) to be paid to the holders of Ellie Mae Common Stock in the proposed Merger was fair, from a financial point of view, to such holders. For more information about J.P. Morgan's opinion, see below under the caption The Merger Opinion of J.P. Morgan Securities LLC. Representatives of Cooley then provided a review for the Board of Directors of its fiduciary duties, and reviewed certain material terms of the proposed final Merger Agreement with Thoma Bravo, including (i) the 35-day go-shop provision that would allow Ellie Mae to, and following such go-shop period, the fiduciary duty exceptions that would permit Ellie Mae, in certain limited circumstances, to, negotiate and accept a Superior Proposal, (ii) the 1.5% termination fee to be paid by Ellie Mae in the event Ellie Mae were to terminate the Thoma Bravo transaction in order to accept a Superior Proposal with another party (who is not a Restricted Party) during the go-shop period, (iii) the 3.0% termination fee to be paid by Ellie Mae in the event Ellie Mae were to terminate the Thoma Bravo transaction in order to accept a Superior Proposal with another party after the go-shop period ended, or with respect to a Restricted Party, before or after the go-shop period ended, (iv) the 7.0% termination fee to be paid by Thoma Bravo in certain circumstances where Thoma Bravo fails to consummate the Merger and (v) the conditions to consummation of the Merger, including the absence of a Company Material Adverse Effect that is continuing. Representatives of Cooley answered questions from members of the Board of Directors regarding the terms of the proposed Merger Agreement and Ellie Mae's ability to conduct its business during the pendency of the Merger. After discussions, the Board of Directors noted that the Party B \$93 Proposal was not accompanied by proposed definitive transaction documents that it was prepared to execute and that the legal terms proposed by Thoma Bravo were, in the aggregate, substantially similar to, or more favorable than, those proposed by the latest drafts of the merger agreement and other transaction documents proposed by Party A. Moreover, the Thoma Bravo \$99 Proposal was financially superior to the proposals from each of Party B and Party A, and Thoma Bravo had indicated that the Thoma Bravo \$99 Proposal was its best and final offer. The Board of Directors also considered the potential risk of losing the favorable opportunity with Thoma Bravo in the event that Ellie Mae continued trying to obtain any additional offers at higher prices, especially in light of the go-shop provision that Thoma Bravo was willing to provide in the Merger Agreement. The Board of Directors continued to discuss the potential transaction with Thoma Bravo and the reasons that the Board of Directors believed that it was in the best interests of Ellie Mae and its stockholders to enter into the Merger Agreement with Thoma Bravo and consummate the Merger upon the terms and subject to the conditions set forth in the Merger Agreement (for more information concerning the recommendation of the Board of Directors, see the section titled The Merger Agreement Reasons for the Merger). Following such discussion, the Board of Directors unanimously (i) determined that it was in the best

interests of Ellie Mae and its stockholders, and declared it advisable, to enter into the Merger Agreement and consummate the Merger upon the terms and subject to the conditions set forth in the Merger Agreement;

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(ii) approved the execution and delivery of the Merger Agreement by Ellie Mae, the performance by Ellie Mae of its covenants and other obligations under the Merger Agreement, and the consummation of the Merger upon the terms and conditions set forth in the Merger Agreement; and (iii) resolved to recommend that Ellie Mae stockholders adopt the Merger Agreement and approve the Merger in accordance with the DGCL.

Later that evening, Ellie Mae and Thoma Bravo executed the Merger Agreement and related agreements in connection with the transactions contemplated by the Merger Agreement. At the time of the execution of the Merger Agreement, Thoma Bravo and Ellie Mae had not discussed the terms of any post-closing employment or equity participation for Ellie Mae management. Prior to (but after the execution of the Merger Agreement) and following the closing of the Merger, however, certain of our executive officers may have discussions, and following the closing of the Merger, may enter into agreements with, Parent or Merger Sub, their subsidiaries or their respective affiliates regarding employment with, or the right to purchase or participate in the equity of, the Surviving Corporation or one or more of its affiliates.

The following morning on February 12, 2019 before market open, the parties issued a joint press release announcing the execution of the Merger Agreement.

Since the execution of the Merger Agreement, in connection with the go-shop period provided for in the Merger Agreement, which expires at 12:00 p.m. Pacific Time on March 18, 2019, at the direction of the Board of Directors, representatives of J.P. Morgan re-engaged in discussions with all of the parties with whom Ellie Mae discussed a potential strategic transaction prior to the execution of the Merger Agreement, including Party I, Party J and Party K, other than Thoma Bravo. Party A, Party B, Party C, Party E, Party F and Party J declined to continue discussions with Ellie Mae during the go-shop period. In addition, at the direction of the Board of Directors, representatives of J.P. Morgan contacted 24 additional parties, comprised of 18 strategic parties (including Party I) and six (including Party K) financial sponsors to gauge such parties' interest in providing an alternative Acquisition Proposal. Of those 24 parties, Ellie Mae executed a confidentiality agreement with Party K, which confidentiality agreement was in customary form for a strategic transaction process and included a standstill obligation with a don't ask, don't waive provision but allowed the counterparty to privately and confidentially approach Ellie Mae senior management, the Board of Directors or J.P. Morgan at any time to make acquisition proposals. To date, Ellie Mae has not received any alternative Acquisition Proposal.

## **Recommendation of the Board of Directors and Reasons for the Merger**

### *Recommendation of the Board of Directors*

**The Board of Directors has unanimously: (i) determined that it is in the best interests of Ellie Mae and its stockholders, and declared it advisable, to enter into the Merger Agreement and consummate the Merger upon the terms and subject to the conditions set forth in the Merger Agreement; (ii) approved the execution and delivery of the Merger Agreement by Ellie Mae, the performance by Ellie Mae of its covenants and other obligations under the Merger Agreement, and the consummation of the Merger upon the terms and conditions set forth in the Merger Agreement; and (iii) resolved to recommend that Ellie Mae stockholders adopt the Merger Agreement and approve the Merger in accordance with the DGCL.**

**The Board of Directors unanimously recommends that you vote: (1) FOR the adoption of the Merger Agreement; (2) FOR , on an advisory (non-binding) basis, the Compensation Proposal; and (3) FOR the adjournment of the Special Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting.**

***Reasons for the Merger***

In the course of reaching its determination and recommendation, the Board of Directors consulted with Ellie Mae management, Cooley LLP, its outside legal advisor, and J.P. Morgan, its financial advisor. The Board of Directors considered a number of factors, including those below (which are not listed in any relative order of

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importance), all of which it viewed as generally supporting its (i) approval of the execution and delivery of the Merger Agreement by Ellie Mae, the performance by Ellie Mae of its covenants and other obligations under the Merger Agreement, and the consummation of the Merger upon the terms and conditions set forth in the Merger Agreement; and (ii) resolution to recommend that Ellie Mae stockholders adopt the Merger Agreement and approve the Merger in accordance with the DGCL:

the current and historical trading price of Ellie Mae common stock, including that the Per Share Merger Consideration constituted a premium of:

approximately 21% to \$81.92, the closing price of Ellie Mae common stock on February 11, 2019, the last full trading day prior to public announcement of Ellie Mae's entry into the Merger Agreement;

approximately 30% to \$76.43, the unaffected closing price of Ellie Mae common stock on February 1, 2019, the last full trading day prior to market speculation about a potential transaction involving Ellie Mae; and

approximately 42% to the one-month average closing price of \$69.64, and approximately 49% to the three-month average closing price of \$66.62, in each case, ending on February 1, 2019;

the fact that, during the course of negotiations with Thoma Bravo (as described under the section titled "The Merger Background of the Merger"), Thoma Bravo increased its initial offer on January 18, 2019 presented in the range of \$87.00 to \$92.00 per share, to \$94.75 per share on January 28, 2019 and then to \$99.00 per share on February 11, 2019;

the belief that the Per Share Merger Consideration represented the highest price that Thoma Bravo was willing to pay and the highest price per share value reasonably obtainable as of the date of the Merger Agreement;

the robustness of the strategic transaction process conducted to date, including the fact that Thoma Bravo and six other parties (exclusive of co-investor parties) were contacted or solicited during the process in an effort to obtain the best value reasonably available to stockholders and the additional 35-day "go-shop" period under the Merger Agreement;

the potential risk of losing the favorable opportunity with Thoma Bravo in the event Ellie Mae continued trying to obtain any additional offers at higher prices and the potential negative effect that a protracted sale process might have on Ellie Mae's business, especially in light of the "go-shop" provision Thoma Bravo was willing to provide that would allow for Ellie Mae to solicit Acquisition Proposals;

the belief that the all-cash Per Share Merger Consideration provides certainty of value and liquidity to stockholders, while eliminating the effect on stockholders of long-term business and execution risk, as well as risks related to the financial markets generally;

the belief that the Per Share Merger Consideration is more favorable to Ellie Mae stockholders than the potential value that would reasonably be expected to result from other strategic and financial alternatives reasonably available, which could include: (i) the continuation of Ellie Mae's business plan as an independent public company, based on its historical results of operations, financial prospects and condition; (ii) modifications to Ellie Mae's business and operations strategy; or (iii) potential expansion opportunities through acquisitions and combinations of Ellie Mae with other businesses;

the belief that the aforementioned other alternatives were not reasonably likely to create greater value for Ellie Mae's stockholders than the Merger, taking into account, among other variables, execution risks as well as business, competitive, industry and market risks, particularly those in the software and mortgage lending industries more generally, including (i) the risk that mortgage lending volumes may continue to decline more than expected as well as the risk that the long term growth in mortgage lending volumes may not grow at the same rate as reflected in Ellie Mae's operating plan, (ii) the risk



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that Ellie Mae may not be able to grow its loan origination system market share at the rates reflected in Ellie Mae's business plan, (iii) high attribution rate of current customers, (iv) risk that Ellie Mae may not be able to increase revenues for its core products as much as projected and (v) the risk that Ellie Mae may not be able to sell additional products and services as much as projected;

the oral opinion of J.P. Morgan, subsequently confirmed in writing, to the effect that, as of February 11, 2019 and based upon and subject to the various factors, qualifications, limitations and assumptions set forth therein, the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the Merger is fair, from a financial point of view, to such holders, as more fully described below under the section of this proxy statement captioned "The Merger" Opinion of J.P. Morgan Securities LLC, which full text of the written opinion is attached as Annex B to this proxy statement and is incorporated by reference in this proxy statement in its entirety;

the terms of the Merger Agreement and the related agreements, including:

the right, pursuant to a customary 35-day "go-shop" period beginning on February 11, 2019 and continuing until 12:00 p.m., Pacific time on March 18, 2019, to solicit alternative Acquisition Proposals from, and participate in discussions and negotiations with, third parties regarding any alternative Acquisition Proposals;

the ability, under certain circumstances after the No Shop Period Start Date, to furnish information to, and conduct negotiations with, third parties regarding Acquisition Proposals;

equity financing, as contemplated by the Equity Commitment Letter, sufficient to fund the aggregate purchase price required to be paid at the Closing of the Merger and to also fund, together with cash on hand at Ellie Mae, certain fees and expenses and the fact that Ellie Mae is a named third party beneficiary of the Equity Commitment Letter;

the ability of the parties to consummate the Merger, including the fact that Parent's obligation to complete the Merger is not conditioned upon, nor limited by, the receipt of third-party debt financing or the completion of any marketing period;

Ellie Mae's entitlement to specific performance to cause the equity financing contemplated by the Equity Commitment Letter to be funded, whether or not Thoma Bravo is able to procure any debt to finance the transaction;

Parent's obligation to pay Ellie Mae a termination fee of \$256 million, if the Merger Agreement is terminated by Ellie Mae due to any breach of representations or covenants made by Parent or Merger Sub that causes a closing condition not to be met (following notice and an opportunity to cure) or in certain circumstances in which all other closing conditions have been met, but Parent or Merger Sub

fails to close when required to do so under the Merger Agreement;

Ellie Mae's ability to terminate the Merger Agreement in order to accept a Superior Proposal, subject to certain conditions of the Merger Agreement and paying Parent a termination fee of either (i) \$55 million if the Merger Agreement had been terminated prior to the No Shop Period Start Date (other than with respect to a Restricted Party) or (ii) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date;

the fact that the Board of Directors believed that the termination fee of either \$55 million or \$110 million payable by Ellie Mae in the circumstances described above, which represents approximately 1.5% and 3%, respectively, of Ellie Mae's implied equity value in the Merger, is reasonable, is within the market averages for such fees, and is not preclusive of, or a substantial impediment to, other offers;

Ellie Mae's entitlement to specific performance to prevent breaches of the Merger Agreement; and

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the fact that Thoma Bravo Fund provided a limited guaranty in favor of Ellie Mae, which guarantees the obligation to pay any termination fee, reimburse and indemnify Ellie Mae with respect to certain expenses in connection with Parent's debt financing and pay certain other amounts required under the Merger Agreement (as described in the below section captioned "Financing of the Merger"); and

the likelihood of satisfying the conditions to complete the Merger and the likelihood that the Merger will be completed.

The Board of Directors also considered a number of uncertainties and risks concerning the Merger, including the following (which factors are not necessarily presented in order of relative importance):

the fact that Ellie Mae would no longer exist as an independent, publicly traded company, and stockholders would no longer participate in any future earnings or growth and would not benefit from any potential future appreciation in value of Ellie Mae;

the risks and costs to Ellie Mae if the Merger does not close, including the diversion of management and employee attention, and the potential effect on its business and relationships with customers, partners and employees;

the requirement that Ellie Mae pay Parent a termination fee, under certain circumstances following termination of the Merger Agreement, including if the Board of Directors terminates the Merger Agreement to accept a Superior Proposal, of either (i) \$55 million if the Merger Agreement is terminated prior to the No Shop Period Start Date (other than with respect to a Restricted Party) or (ii) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date;

if Parent fails to complete the Merger as a result of a breach of the Merger Agreement, depending upon the reason for not closing, remedies may be limited to the termination fee payable by Parent described above, which may be inadequate to compensate Ellie Mae for the damage caused (and such termination fee is itself limited in certain situations), and if available, other rights and remedies may be expensive and difficult to enforce, and the success of any such action may be uncertain;

the restrictions on the conduct of Ellie Mae's business prior to the consummation of the Merger, including the requirement that Ellie Mae use commercially reasonable efforts to conduct its business in the ordinary course, subject to specific limitations, which may delay or prevent Ellie Mae from undertaking business opportunities that may arise before the completion of the Merger and that, absent the Merger Agreement, Ellie Mae might have pursued;

the fact that an all cash transaction would be taxable to Ellie Mae's stockholders that are U.S. persons for U.S. federal income tax purposes;

the fact that under the terms of the Merger Agreement, Ellie Mae is unable to solicit other Acquisition Proposals after the No Shop Period Start Date;

the significant costs involved in connection with entering into the Merger Agreement and completing the Merger (many of which are payable whether or not the Merger is consummated) and the substantial time and effort of Ellie Mae management required to complete the Merger, which may disrupt its business operations and have a negative effect on its financial results;

the risk that the Merger might not be completed and the effect of the resulting public announcement of termination of the Merger Agreement on the trading price of Ellie Mae common stock;

the fact that the completion of the Merger will require antitrust clearance in the United States;

the fact that Ellie Mae's directors and officers may have interests in the Merger that may be different from, or in addition to, those of Ellie Mae's stockholders (see below under the caption "Interests of Ellie Mae's Directors and Executive Officers in the Merger"); and

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the possible loss of key management or other personnel of Ellie Mae during the pendency of the Merger. The foregoing discussion of reasons for the recommendation to adopt the Merger Agreement and approve the Merger and the transactions contemplated thereby is not meant to be exhaustive but addresses the material information and factors considered by the Board of Directors in consideration of its recommendation. In view of the wide variety of factors considered by the Board of Directors in connection with its evaluation of the Merger and the complexity of these matters, the 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. Rather, in considering the information and factors described above, individual members of the Board of Directors each applied his or her own personal business judgment to the process and may have given differing weights to differing factors. The Board of Directors based its unanimous recommendation on the totality of the information presented. 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 "Forward-Looking Statements."

### **Opinion of J.P. Morgan Securities LLC**

Pursuant to an engagement letter dated December 28, 2018, Ellie Mae retained J.P. Morgan as its financial advisor in connection with a possible acquisition of Ellie Mae and to deliver a fairness opinion in connection with the proposed Merger.

At the meeting of the Board of Directors on February 11, 2019, J.P. Morgan rendered its oral opinion to the Board of Directors that, as of such date and based upon and subject to the factors and assumptions set forth in its opinion, the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger was fair, from a financial point of view, to such holders. J.P. Morgan confirmed its February 11, 2019 oral opinion by delivering the Opinion, that, as of the date of the Opinion, the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger was fair, from a financial point of view, to such holders.

The full text of the Opinion, dated February 11, 2019, which sets forth the assumptions made, matters considered and limits on the review undertaken, is attached as Annex B to this proxy statement and is incorporated herein by reference. The summary of the Opinion set forth in this proxy statement is qualified in its entirety by reference to the full text of the Opinion. Ellie Mae stockholders are urged to read the Opinion in its entirety.

The Opinion was addressed to the Board of Directors (in its capacity as such) in connection with and for the purposes of its evaluation of the proposed Merger, was directed only to the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger and did not address any other aspect of the Merger. J.P. Morgan expressed no opinion as to the fairness of the Per Share Merger Consideration to the holders of any other class of securities, creditors or other constituencies of Ellie Mae or as to the underlying decision by Ellie Mae to engage in the proposed Merger. The issuance of the Opinion was approved by a fairness committee of J.P. Morgan. The summary of the Opinion of J.P. Morgan set forth in this proxy statement is qualified in its entirety by reference to the full text of the Opinion. The Opinion does not constitute a recommendation to any Ellie Mae stockholder as to how such stockholder should vote with respect to the proposed Merger or any other matter.

In arriving at the Opinion, J.P. Morgan, among other things:

reviewed the Merger Agreement, the Equity Commitment Letter and the Guarantee;

reviewed certain publicly available business and financial information concerning Ellie Mae and the industries in which it operates;

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compared the proposed financial terms of the Merger with the publicly available financial terms of certain transactions involving companies J.P. Morgan deemed relevant and the consideration paid for such companies;

compared the financial and operating performance of Ellie Mae with publicly available information concerning certain other companies J.P. Morgan deemed relevant and reviewed the current and historical market prices of Ellie Mae common stock and certain publicly traded securities of such other companies;

reviewed certain internal financial analyses and forecasts prepared by the management of Ellie Mae relating to its business; and

performed such other financial studies and analyses and considered such other information as J.P. Morgan deemed appropriate for the purposes of the Opinion.

In addition, J.P. Morgan held discussions with certain members of the management of Ellie Mae with respect to certain aspects of the Merger, the past and current business operations of Ellie Mae, the financial condition and future prospects and operations of Ellie Mae, and certain other matters J.P. Morgan believed necessary or appropriate to its inquiry.

In giving the Opinion, J.P. Morgan relied upon and assumed the accuracy and completeness of all information that was publicly available or was furnished to or discussed with J.P. Morgan by Ellie Mae or otherwise reviewed by or for J.P. Morgan. J.P. Morgan did not independently verify any such information or its accuracy or completeness and, pursuant to J.P. Morgan's engagement letter with Ellie Mae, J.P. Morgan did not assume any obligation to undertake any such independent verification. J.P. Morgan did not conduct and was not provided with any valuation or appraisal of any assets or liabilities, nor did J.P. Morgan evaluate the solvency of Ellie Mae, Parent, Merger Sub or the Thoma Bravo Fund under any state or federal laws relating to bankruptcy, insolvency or similar matters. In relying on financial analyses and forecasts provided to J.P. Morgan or derived therefrom, J.P. Morgan assumed that they were reasonably prepared based on assumptions reflecting the best currently available estimates and judgments by management as to the expected future results of operations and financial condition of Ellie Mae to which such analyses or forecasts relate. J.P. Morgan expressed no view as to such analyses or forecasts or the assumptions on which they were based. J.P. Morgan also assumed that the Merger and the other transactions contemplated by the Merger Agreement will be consummated as described in the Merger Agreement. J.P. Morgan also assumed that the representations and warranties made by Ellie Mae and Parent in the Merger Agreement, the Equity Commitment Letter, the Guarantee and the related agreements were and will be true and correct in all respects material to its analyses. J.P. Morgan is not a legal, regulatory or tax expert and relied on the assessments made by advisors to Ellie Mae with respect to such issues. J.P. Morgan further assumed that all material governmental, regulatory or other consents and approvals necessary for the consummation of the Merger will be obtained without any adverse effect on Ellie Mae or on the contemplated benefits of the Merger.

The Opinion was necessarily based on economic, market and other conditions as in effect on, and the information made available to J.P. Morgan, as of the date of the Opinion. The Opinion noted that subsequent developments may affect the Opinion and that J.P. Morgan does not have any obligation to update, revise or reaffirm the Opinion. The Opinion is limited to the fairness, from a financial point of view, of the Per Share Merger Consideration to be paid to the holders of Ellie Mae common stock in the proposed Merger, and J.P. Morgan has expressed no opinion as to the fairness of any consideration paid in connection with the Merger to the holders of any other class of securities, creditors or other constituencies of Ellie Mae or as to the underlying decision by Ellie Mae to engage in the Merger.

Furthermore, J.P. Morgan expressed no opinion with respect to the amount or nature of any compensation to any officers, directors or employees of any party to the Merger, or any class of such persons relative to the consideration to be paid to the holders of Ellie Mae common stock in the Merger with respect to the fairness of any such compensation.



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The terms of the Merger Agreement were determined through arm's length negotiations between Ellie Mae and Parent, and the decision to enter into the Merger Agreement was solely that of the Board of Directors. The Opinion and financial analyses were only one of the many factors considered by the Board of Directors in its evaluation of the proposed Merger and should not be viewed as determinative of the views of the Board of Directors or Ellie Mae management with respect to the proposed Merger or the Per Share Merger Consideration.

In accordance with customary investment banking practice, J.P. Morgan employed generally accepted valuation methodology in rendering the Opinion to the Board of Directors on February 11, 2019 and contained in the presentation delivered to the Board of Directors on such date in connection with the rendering of the Opinion and does not purport to be a complete description of the analyses or data presented by J.P. Morgan. Some of the summaries of the financial analyses include information presented in tabular format. The tables are not intended to stand alone, and in order to more fully understand the financial analyses used by J.P. Morgan, the tables must be read together with the full text of each summary. Considering the data set forth below without considering the full narrative description of the financial analyses, including the methodologies and assumptions underlying the analyses, could create a misleading or incomplete view of J.P. Morgan's analyses.

The projections furnished to J.P. Morgan for Ellie Mae were prepared by Ellie Mae's management. For more information regarding these projections, see below under Management Projections.

Public Trading Multiples Analysis. Using publicly available information, J.P. Morgan compared selected financial data of Ellie Mae with similar data for the following selected publicly traded companies engaged in businesses which J.P. Morgan judged to be sufficiently analogous to Ellie Mae:

Black Knight, Inc.

RealPage, Inc.

CoreLogic, Inc.

VMware, Inc.

ANSYS, Inc.

SolarWinds Corporation

Cornerstone OnDemand, Inc.

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These companies were selected, among other reasons, because they are publicly traded companies with operations and businesses that, for purposes of J.P. Morgan's analysis, may be considered similar to those of Ellie Mae based on business sector participation, operational characteristics and financial metrics. However, none of the selected companies reviewed is identical to Ellie Mae and certain of these companies may have financial and operating characteristics that are materially different from those of Ellie Mae. Using publicly available information, J.P. Morgan calculated, for each selected company, the multiple of firm value as of February 11, 2019 to published equity research consensus estimates that J.P. Morgan obtained from FactSet Research Systems for revenue for the calendar year 2019 (CY 2019E FV/Revenue) and for EBITDA (calculated as earnings before interest, tax, depreciation and amortization, and adjusted to exclude stock-based compensation and other non-recurring items) for the calendar year 2019 (CY 2019E FV/EBITDA). This analysis indicated the following CY 2019E FV/Revenue and CY 2019E FV/EBITDA multiples:

<b>Selected Company</b>	<b>CY 2019E FV/Revenue</b>	<b>CY 2019E FV/EBITDA</b>
Ellie Mae*	4.8x	17.2x
Black Knight, Inc.	7.6x	15.3x
RealPage, Inc.	5.9x	21.1x
CoreLogic, Inc.	2.8x	9.9x
VMware, Inc.	7.1x	18.7x
ANSYS, Inc.	10.3x	22.6x
SolarWinds Corporation	7.9x	16.2x
Cornerstone OnDemand, Inc.	6.8x	31.7x

\* Based on the closing price of Ellie Mae common stock as of February 1, 2019 (the last trading day prior to third party media reports speculating about a possible transaction involving Ellie Mae)

Based on the results of this analysis and other factors that J.P. Morgan considered appropriate, J.P. Morgan selected multiple reference ranges for CY 2019E FV/Revenue of 4.5x-6.5x and CY 2019E FV/EBITDA of 14.0x-20.0x. These multiple ranges were then applied to Ellie Mae's estimated revenue and Adjusted EBITDA for calendar year 2019 as provided in the Management Projections, which indicated implied equity value per share ranges for Ellie Mae common stock, rounded to the nearest \$1.00, of \$75.00 to \$103.00 and \$68.00 to \$93.00, respectively:

**Discounted Cash Flow Analysis.** J.P. Morgan conducted a discounted cash flow analysis for the purpose of determining the fully diluted equity value per share for Ellie Mae common stock.

A discounted cash flow analysis is a method of evaluating an asset by estimating the future unlevered cash flows generated by an asset and taking into consideration the time value of money with respect to those future cash flows by calculating their present value. The unlevered free cash flows refers to a calculation of the future cash flows generated by an asset without including in such calculation any debt servicing costs. Present value refers to the current value of the cash flows generated by the asset and is obtained by discounting those cash flows back to the present using a discount rate that takes into account macro-economic assumptions, estimates of risk, the opportunity cost of capital and other appropriate factors. Terminal value refers to the present value of all future cash flows generated by the asset for periods beyond the projections period.

J.P. Morgan calculated the unlevered free cash flows that Ellie Mae is expected to generate during fiscal year 2019 through fiscal year 2028 based upon the Management Projections. J.P. Morgan treated stock-based compensation as a

cash expense in the unlevered free cash flow calculation for purposes of its discounted cash flow analysis, as stock-based compensation is viewed as a true economic expense of the business. Based on Ellie Mae management's estimates of a 3.0% terminal value growth rate in the industry in which Ellie Mae operates, J.P. Morgan also calculated a range of terminal values for Ellie Mae at the end of fiscal year 2028 by applying terminal growth rates ranging from 2.5% to 3.5% to the unlevered free cash flows of Ellie Mae. The unlevered

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free cash flows and the range of terminal values were then discounted to present values using a range of discount rates from 9.0% to 10.0%, which was chosen by J.P. Morgan based upon an analysis of the weighted average cost of capital of Ellie Mae. The present value of the unlevered free cash flows and the range of terminal values were then adjusted by adding Ellie Mae's net cash balance of \$365 million as of December 31, 2018 (as per Ellie Mae's management) and divided by fully diluted shares outstanding (calculated using treasury stock method). The discounted cash flow analysis indicated an implied equity value per share range for Ellie Mae common stock, rounded to the nearest \$1.00, of \$78.00 to \$100.00.

**Transaction Multiples Analysis.** Using publicly available information, J.P. Morgan examined selected transactions involving software companies engaged in businesses which J.P. Morgan judged to be sufficiently analogous to the business of Ellie Mae or aspects thereof. For each of the selected transactions, J.P. Morgan calculated the firm value to be paid for the target company in such transaction as a multiple of published equity research estimates for revenue for the 12-month period following the announcement of the applicable transaction ( FV/NTM Revenue ). The transactions considered are as follows:

<b>Month/Year</b>	<b>Announced</b>	<b>Acquiror</b>	<b>Target</b>	<b>FV/NTM Revenue</b>
January 2018	SAP SE		Callidus Software, Inc.	7.8x
December 2017		Oracle Corporation	Aconex Limited	8.4x
August 2016		Verizon Communications, Inc.	Fleetmatics Group PLC	6.3x
April 2016		Oracle Corporation	Textura Corporation	5.7x
April 2016		Vista Equity Partners	Cvent, Inc.	6.0x
February 2016		Insight Venture Partners	Diligent Corporation	4.6x
September 2015		Vista Equity Partners	Solera Holdings, Inc.	5.1x
February 2015		SS&C Technologies Holdings, Inc.	Advent Software, Inc.	6.4x
September 2014		SAP SE	Concur Technologies, Inc.	10.1x
December 2013		Oracle Corporation	Responsys, Inc.	6.8x

Based on the results of this analysis and other factors that J.P. Morgan considered appropriate, J.P. Morgan selected a multiple reference range for FV/NTM Revenue of 4.5x – 7.0x. The FV/NTM Revenue multiples were then applied to Ellie Mae's estimated 2019 revenue, which indicated an implied equity value per share range for Ellie Mae common stock, rounded to the nearest \$1.00, of \$75.00 to \$110.00.

**Other Information**

**52-Week Historical Trading Range.** For reference only and not as a component of its fairness analyses, J.P. Morgan reviewed the trading range for Ellie Mae common stock for the 52-week period ended February 1, 2019. J.P. Morgan noted that the low and high closing share prices during this period were \$59.10 and \$115.84 per share of Ellie Mae common stock, respectively.

**Equity Research Analyst Price Targets.** For reference only and not as a component of its fairness analyses, J.P. Morgan reviewed certain publicly available equity research analyst price targets for Ellie Mae common stock available as of February 1, 2019. J.P. Morgan noted that the range of such price targets, rounded to the nearest \$1.00, was \$52.00 to \$100.00 per share of Ellie Mae common stock.

*Miscellaneous.* The foregoing summary of certain material financial analyses does not purport to be a complete description of the analyses or data presented by J.P. Morgan. The preparation of a fairness opinion is a complex process and is not necessarily susceptible to partial analysis or summary description. J.P. Morgan believes that the foregoing summary and its analyses must be considered as a whole and that selecting portions of the foregoing summary and these analyses, without considering all of its analyses as a whole, could create an incomplete view of the processes underlying the analyses and the Opinion. As a result, the ranges of valuations resulting from any particular analysis or combination of analyses described above were merely utilized to create

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points of reference for analytical purposes and should not be taken to be the view of J.P. Morgan with respect to the actual value of Ellie Mae. The order of analyses described does not represent the relative importance or weight given to those analyses by J.P. Morgan. In arriving at the Opinion, J.P. Morgan did not attribute any particular weight to any analyses or factors considered by it and did not form an opinion as to whether any individual analysis or factor (positive or negative), considered in isolation, supported or failed to support the Opinion. Rather, J.P. Morgan considered the totality of the factors and analyses performed in determining the Opinion.

Analyses based upon forecasts of future results are inherently uncertain, as they are subject to numerous factors or events beyond the control of the parties and their advisors. Accordingly, forecasts and analyses used or made by J.P. Morgan are not necessarily indicative of actual future results, which may be significantly more or less favorable than suggested by those analyses. Moreover, J.P. Morgan's analyses are not and do not purport to be appraisals or otherwise reflective of the prices at which businesses actually could be acquired or sold. None of the selected companies reviewed as described in the above summary is identical to Ellie Mae, and none of the selected transactions reviewed was identical to the Merger. However, the companies selected were chosen because they are publicly traded companies with operations and businesses that, for purposes of J.P. Morgan's analyses, may be considered similar to those of Ellie Mae. The transactions selected were similarly chosen because their participants, size and other factors, for purposes of J.P. Morgan's analyses, may be considered similar to the Merger. The analyses necessarily involve complex considerations and judgments concerning differences in financial and operational characteristics of the companies involved and other factors that could affect the companies compared to Ellie Mae and the transactions compared to the Merger.

As a part of its investment banking business, J.P. Morgan and its affiliates are continually engaged in the valuation of businesses and their securities in connection with mergers and acquisitions, investments for passive and control purposes, negotiated underwritings, secondary distributions of listed and unlisted securities, private placements, and valuations for corporate and other purposes. J.P. Morgan was selected to advise Ellie Mae with respect to the Merger and deliver a fairness opinion to the Board of Directors with respect to the Merger on the basis of, among other things, such experience and its qualifications and reputation in connection with such matters and its familiarity with Ellie Mae and the industries in which it operates.

For services rendered in connection with the Merger and the delivery of the Opinion, Ellie Mae has agreed to pay J.P. Morgan a fee of approximately \$37 million, of which \$2 million became payable upon delivery of the Opinion and the remainder will be payable only upon the completion of the Merger. In addition, Ellie Mae has agreed to reimburse J.P. Morgan for its reasonable expenses incurred in connection with its services, including reasonable fees and disbursements of counsel, and will indemnify J.P. Morgan against certain liabilities arising out of J.P. Morgan's engagement. During the two years preceding the date of the Opinion, J.P. Morgan and its affiliates have had commercial or investment banking relationships with Ellie Mae and with Thoma Bravo and its affiliates (unrelated to the Merger) for which J.P. Morgan and such affiliates have received customary compensation. Such services during such period for Ellie Mae have included asset management services for which J.P. Morgan and such affiliates received less than \$200,000 in compensation. Such services during such period for Thoma Bravo and its affiliates have included corporate finance and treasury services for which J.P. Morgan and such affiliates received less than \$25,000,000 in compensation. In addition, J.P. Morgan and its affiliates hold, on a proprietary basis, less than 1% of the outstanding common stock of Ellie Mae, and an employee of an affiliate of J.P. Morgan serves as a member of an advisory board of Ellie Mae. In the ordinary course of J.P. Morgan's businesses, J.P. Morgan and its affiliates may actively trade the debt and equity securities or financial instruments (including derivatives, bank loans or other obligations) of Ellie Mae or Thoma Bravo and its affiliates for J.P. Morgan's own account or for the accounts of customers, and accordingly, J.P. Morgan may at any time hold long or short positions in such securities or other financial instruments.

**Management Projections**

Ellie Mae does not, as a matter of course, publicly disclose long-term forecasts or projections as to future performance, earnings or other results due to the inherent unpredictability of the underlying long-term

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assumptions, estimates and projections. However, Ellie Mae is including a summary of certain previously nonpublic, unaudited prospective financial information prepared by its management for the calendar years 2019-2028 (the Management Projections) and together with the Five-Year Projections, the Projections) in order to provide Ellie Mae stockholders with access to information that was made available to, and approved by, the Board of Directors in connection with its evaluation of the Merger and the Per Share Merger Consideration. The Management Projections were based on the Five-Year Projections that Ellie Mae management presented to the Board of Directors in January 2019 in connection with the Board of Directors' review of the proposed Merger, and updated to include certain financial forecasts for calendar years 2024-2028 and Unlevered Free Cash Flow for calendar years 2019-2028. A subset of the Five-Year Projections was made available to Parent and Merger Sub at Parent's request in connection with their due diligence review, and the Management Projections were made available to J.P. Morgan in connection with the rendering of J.P. Morgan's opinion to the Board of Directors.

The following table presents the Management Projections.

<b>(in millions)</b>										
	<b>2019E</b>	<b>2020E</b>	<b>2021E</b>	<b>2022E</b>	<b>2023E</b>	<b>2024E</b>	<b>2025E</b>	<b>2026E</b>	<b>2027E</b>	<b>2028E</b>
Revenue	\$ 535	\$ 620	\$ 723	\$ 837	\$ 937	\$ 1,031	\$ 1,113	\$ 1,180	\$ 1,228	\$ 1,264
Adjusted EBITDA (1)	\$ 155	\$ 201	\$ 266	\$ 320	\$ 379	\$ 417	\$ 450	\$ 477	\$ 496	\$ 511
Unlevered Free Cash Flow (2)	\$ 4	\$ 58	\$ 111	\$ 163	\$ 202	\$ 220	\$ 241	\$ 257	\$ 269	\$ 277

- (1) Adjusted EBITDA is a non-GAAP financial measure and is earnings before interest, tax, depreciation and amortization and excludes stock-based compensation expense.
- (2) Unlevered Free Cash Flow is a non-GAAP financial measure and is calculated as Adjusted EBITDA (as shown in the table above) less (i) stock-based compensation, less (ii) estimated cash tax expense, less (iii) property and equipment capital expenditures, less (iv) internal-use software capital expenditures, plus or minus (v) change in net working capital.

The following table presents the Five-Year Projections, which is being made available in this proxy statement for informational purposes only.

<b>(in millions)</b>					
	<b>2019E</b>	<b>2020E</b>	<b>2021E</b>	<b>2022E</b>	<b>2023E</b>
Revenue	\$ 535	\$ 620	\$ 723	\$ 837	\$ 937
Adjusted EBITDA (1)	\$ 155	\$ 201	\$ 266	\$ 320	\$ 379
Free Cash Flow (2)	\$ 68	\$ 124	\$ 178	\$ 234	\$ 278

- (1) Adjusted EBITDA is a non-GAAP financial measure and is earnings before interest, tax, depreciation and amortization and excludes stock-based compensation expense.
- (2) Free Cash Flow is a non-GAAP financial measure and is calculated as Adjusted EBITDA (as shown in the table above) less (i) estimated cash tax expense, less (ii) property and equipment capital expenditures, less



(iii) internal-use software capital expenditures, plus or minus (iv) change in net working capital and interest income.

The Projections were developed by Ellie Mae management on a standalone basis without giving effect to the Merger and the other transactions contemplated by the Merger Agreement, or any changes to Ellie Mae'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 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 Ellie Mae management, the Management Projections have been reasonably prepared by Ellie Mae management on bases reflecting the best currently available estimates and judgments of Ellie Mae management of the future financial performance of Ellie Mae and other matters covered thereby.

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Although the Projections are presented with numerical specificity, they were based on numerous variables and assumptions made by Ellie Mae management with respect to industry performance, general business, economic, regulatory, market and financial conditions and other future events, as well as matters specific to Ellie Mae's business, all of which are difficult or impossible to predict accurately and many of which are beyond Ellie Mae's control. The Projections constitute forward-looking information and are subject to many risks and uncertainties that could cause actual results to differ materially from the results forecasted in the Projections, including, but not limited to, Ellie Mae's performance, industry performance, general business and economic conditions, customer requirements, staffing levels, competition, adverse changes in applicable laws, regulations or rules, and the various risks set forth in Ellie Mae's reports filed with the SEC. There can be no assurance that the Projections will be realized or that actual results will not be significantly higher or lower than forecasted. The Projections cover several years, and such information by its nature becomes less reliable with each successive year. In addition, the Projections will be affected by Ellie Mae's ability to achieve strategic goals, objectives and targets over the applicable periods. The Projections reflect assumptions as to certain business decisions that are subject to change and cannot, therefore, be considered a guarantee of future operating results, and this information should not be relied on as such. The inclusion of the Projections should not be regarded as an indication that Ellie Mae, J.P. Morgan, their respective officers, directors, affiliates, advisors, or other representatives or anyone who received this information then considered, or now considers, them a reliable prediction of future events, and this information should not be relied upon as such. The inclusion of the Projections in this proxy statement should not be regarded as an indication that the Projections will be necessarily predictive of actual future events. No representation is made by Ellie Mae or any other person regarding the Projections or Ellie Mae's ultimate performance compared to such information. The Projections should be evaluated, if at all, in conjunction with the historical financial statements and other information about Ellie Mae contained in Ellie Mae's public filings with the SEC. For more information, please see the section of this proxy statement captioned "Where You Can Find More Information." In light of the foregoing factors, and the uncertainties inherent in the Projections, stockholders are cautioned not to place undue, if any, reliance on the Projections.

The Projections were not prepared with a view toward public disclosure or with a view toward complying with the published guidelines of the SEC regarding projections or accounting principles generally accepted in the United States (GAAP), or the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. The non-GAAP financial measures used in the Management Projections were relied upon by J.P. Morgan for purposes of its opinion and by the Board of Directors in connection with its evaluation of the Merger. The SEC rules which would otherwise require a reconciliation of a non-GAAP financial measure to a GAAP financial measure do not apply to non-GAAP financial measures included in disclosures relating to a proposed business combination such as the Merger if the disclosure is included in a document such as this proxy statement. In addition, reconciliations of non-GAAP financial measures were not relied upon by J.P. Morgan for purposes of its opinion or by the Board of Directors in connection with its evaluation of the Merger. Accordingly, Ellie Mae has not provided a reconciliation of the financial measures included in the Projections to the relevant GAAP financial measures. Non-GAAP financial measures should not be considered in isolation from, or as a substitute for, financial information presented in compliance with GAAP, and non-GAAP financial measures as used by Ellie Mae may not be comparable to similarly titled amounts used by other companies. Neither Ellie Mae's independent auditor nor any other independent accountant has compiled, examined or performed any procedures with respect to the Projections, nor have they expressed any opinion or any other form of assurance on such information or its achievability.

Adjusted EBITDA and Unlevered Free Cash Flow contained in the Management Projections and Adjusted EBITDA and Free Cash Flow contained in the Five-Year Projections set forth above, are non-GAAP financial measures, which are financial performance measures that are not calculated in accordance with 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

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of such information above is included solely to give stockholders access to the information that was made available to the Board of Directors, J.P. Morgan, Parent and Merger Sub, 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 their shares of Ellie Mae common stock.

In addition, the 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, and except as required by applicable securities laws, Ellie Mae does not intend to update or otherwise revise the 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.

## **Interests of Ellie Mae's Directors and Executive Officers in the Merger**

When considering the recommendation of the Board of Directors that you vote to approve the proposal to adopt the Merger Agreement, you should be aware that our directors and executive officers may have interests in the Merger that are different from, or in addition to, the interests of stockholders generally, as more fully described below. The Board of Directors was aware of and considered these interests, among other matters, to the extent that they existed at the time, in approving the Merger Agreement and the Merger and recommending that the Merger Agreement be adopted by stockholders. These interests are described in more detail and, where applicable, are quantified in the narrative below.

### ***Arrangements with Parent***

As of the date of this proxy statement, none of our executive officers has entered into any agreement with Parent or any of its affiliates regarding employment with, or the right to purchase or participate in the equity of, the Surviving Corporation or one or more of its affiliates. Except as approved by the Board of Directors, from the date of the Merger Agreement, to the earlier of the termination of the Merger Agreement or the Effective Time, pursuant to the terms of the Merger Agreement, Parent and Merger Sub covenant not to, and covenant to not permit any of their subsidiaries or respective controlled affiliates to, authorize, make or enter into, any arrangements or understandings (formal or informal, binding or otherwise) with any executive officer of Ellie Mae (1) regarding any continuing employment or consulting relationship with the Surviving Corporation; (2) pursuant to which any such executive officer would be entitled to receive consideration of a different amount or nature than Ellie Mae stockholders; or (3) pursuant to which any such executive officer (directly or indirectly) would agree to provide equity investment to finance any portion of the Merger. Prior to and following the closing of the Merger, however, certain of our executive officers may have discussions, and following the closing of the Merger, may enter into agreements with, Parent or Merger Sub, their subsidiaries or their respective controlled affiliates regarding employment with, or the right to purchase or participate in the equity of, the Surviving Corporation or one or more of its affiliates.

### ***Insurance and Indemnification of Directors and Executive Officers***

For a period of six years after the Effective Time, the Surviving Corporation and Parent will indemnify, defend and hold harmless, and advance expenses to current or former directors, officers and employees of Ellie Mae with respect to all acts or omissions by them in their capacities as such at any time prior to the Effective Time (including any matters arising in connection with the Merger Agreement or the transactions contemplated thereby), to the fullest extent that Ellie Mae would be permitted by applicable law and to the fullest extent required by the organizational documents of Ellie Mae as in effect on the date of the Merger Agreement. For a period of six years after the Effective Time, Parent will cause the certificate of incorporation, bylaws or other organizational documents of the Surviving Corporation to contain provisions with respect to indemnification, advancement of expenses and limitation of director,

officer and employee liability that are no less favorable to the current or former directors, officers and employees of Ellie Mae than those set forth in Ellie Mae's organizational documents as of the date of the Merger Agreement. The Surviving Corporation will not, for a

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period of six years from the Effective Time, amend, repeal or otherwise modify these provisions in the organizational documents in any manner that would adversely affect the rights of the current or former directors, officers and employees of Ellie Mae.

The Merger Agreement also provides that, prior to the Effective Time, Ellie Mae may purchase a six-year prepaid tail policy on the same terms and conditions as Parent would be required to cause the Surviving Corporation to purchase as discussed below. Ellie Mae's ability to purchase a tail policy is subject to a cap on the premium equal to 300% of the aggregate annual premiums currently paid by Ellie Mae for its existing directors' and officers' liability insurance and fiduciary insurance for its last full fiscal year. If Ellie Mae does not purchase a tail policy prior to the Effective Time, for at least six years after the Effective Time, Parent will cause the Surviving Corporation to maintain in full force and effect, on terms and conditions no less advantageous to the current or former directors, officers and employees of Ellie Mae, the existing directors' and officers' liability insurance and fiduciary insurance maintained by the Ellie Mae as of the date of the Merger Agreement. The tail policy will cover claims arising from facts, events, acts or omissions that occurred at or prior to the Effective Time, including the transactions contemplated in the Merger Agreement. The obligation of Parent or the Surviving Corporation, as applicable, is subject to an annual premium cap of 300% of the aggregate annual premiums currently paid by Ellie Mae for such insurance, but if the costs exceed such cap, Parent or the Surviving Corporation will purchase as much of such insurance coverage as possible for such amount. For more information, please see the section of this proxy statement captioned Proposal 1: Adoption of the Merger Agreement Indemnification and Insurance.

***Treatment of Company Options, Company RSU Awards, Company Restricted Stock Awards and Company Performance Share Awards***

The Company from time to time has granted awards under Ellie Mae's 2009 Stock Option and Incentive Plan, as amended, and 2011 Equity Incentive Plan, including sub plans thereunder (collectively, the Company Equity Plans), of options to purchase shares of Ellie Mae common stock (each, a Company Option), restricted stock units covering shares of Ellie Mae common stock (each, a Company RSU Award), restricted stock awards denominated in Ellie Mae common stock (each, a Company Restricted Stock Award), and performance shares denominated in Ellie Mae common stock (each, a Company Performance Share Award).

As of February 13, 2019, there were 1,060,948 shares of Ellie Mae common stock subject to outstanding Company Options, 1,392,922 shares of Ellie Mae common stock subject to outstanding Company RSU Awards, 80,455 shares of Ellie Mae common stock subject to outstanding Company Restricted Stock Awards, and 87,680 shares of Ellie Mae common stock subject to outstanding Company Performance Share Awards.

At the Effective Time, each Company Option, Company RSU Award, and Company Restricted Stock Award that is unexpired, unexercised, outstanding and vested as of immediately before the Effective Time or that vests solely as a result of the consummation of the transactions contemplated by the Merger Agreement (each, a Vested Award) will be cancelled and automatically converted into the right to receive a cash amount equal to the product of: (1) the total number of shares of Ellie Mae common stock subject to the Vested Award, multiplied by (2) \$99.00 (or, for each Company Option, the excess, if any, of \$99.00 over the Company Option's per share exercise price), subject to any required tax withholdings (the Vested Award Cash-out Payment).

At the Effective Time, each Company Option, Company RSU Award, and Company Restricted Stock Award that is unexpired, unexercised, and outstanding as of immediately before the Effective Time that is not a Vested Award (each, an Unvested Award) will be cancelled and automatically converted into the right to receive the Cash Replacement Amount, subject to the vesting conditions described below. The Cash Replacement Amount will be equal to the product of: (1) the total number of shares of Ellie Mae common stock subject to the Unvested Award,

multiplied by (2) \$99.00 (or, for each Company Option, the excess, if any, of \$99.00 over the Company Option's per share exercise price), subject to any required tax withholdings. The Cash Replacement Amount will vest and be payable at the same time as the corresponding, cancelled Unvested Award would have vested and

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(subject to continued service) and will have the same terms as the corresponding, cancelled Unvested Award (including any accelerated vesting terms) that applied to the corresponding, cancelled Unvested Award in effect immediately before the Effective Time, except for terms rendered inoperative by reason of the Merger or for any appropriate administrative or ministerial changes.

Any Company Options (whether vested or unvested) with a per share exercise price equal to or greater than \$99.00 will be cancelled immediately upon the Effective Time without payment or consideration.

At the Effective Time, each Company Performance Share Award and Company RSU Award that is outstanding immediately before the Effective Time and subject to performance-based vesting will become vested and nonforfeitable with respect to a number of shares of Ellie Mae common stock subject to such Company Performance Share Award or Company RSU Award, as applicable, calculated in accordance with their respective terms, and will be cancelled and converted automatically into the right to receive a cash amount equal to the Per Share Merger Consideration in respect of each vested share of Ellie Mae common stock subject to such Company Performance Share Award or Company RSU Award, subject to applicable tax withholding.

The Company Performance Share Awards granted in 2018 will be settled at a 165% of target level. The Company Performance Share Awards and performance-based Company RSU Awards granted in the first quarter of 2019 will be settled based on the level of achievement of the applicable performance metrics as reasonably determined by the Company or a committee thereof in good faith in accordance with the Company Equity Plans (provided that such level of achievement shall not exceed the greater of (1) 100% of target and (2) the actual achievement of the performance goals attributable to such Company Performance Share Awards and performance-based Company RSU Awards).

The Company Equity Plans will terminate as of the Effective Time.

***Payments Upon Termination At or Following Change in Control***

***Employment Agreement with Sigmund Anderman***

In January 2015, we entered into an amended employment agreement with Mr. Anderman that sets forth the terms and conditions of his employment as executive chairman of our Board of Directors. Under his amended employment agreement, if Mr. Anderman's employment is terminated without cause or he experiences a constructive termination of employment (as such terms are defined in his employment agreement), then Mr. Anderman will receive (1) a severance payment equal to the aggregate amount of base salary and target bonuses for which Mr. Anderman would have been eligible during the period from the date of his termination of employment through December 31, 2019 had he continued employment through December 31, 2019, (2) payment of, or reimbursement for, premiums to continue healthcare coverage for himself and his eligible dependents under COBRA through December 31, 2019, and (3) 100% accelerated vesting and, if applicable, exercisability of all of his outstanding equity awards, and, if applicable, such equity awards will be exercisable for the duration of their original term.

If Mr. Anderman's employment terminates due to his death or him becoming permanently disabled, then Mr. Anderman will receive the equity award benefits described in clause 3 of the preceding paragraph.

Mr. Anderman's right to the severance payments and benefits described above is conditioned upon (1) him executing and not revoking a general release of claims in our favor within 60 days following his termination of employment and (2) his compliance with his confidentiality and non-solicitation obligations to Ellie Mae under his amended employment agreement.



The amended employment agreement will terminate on December 31, 2019 by its terms.

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*Employment Agreement with Jonathan Corr*

In January 2015, we entered into an employment agreement with Mr. Corr that sets forth the terms and conditions of his employment as our president and Chief Executive Officer. Under his employment agreement, if Mr. Corr's employment is terminated without cause or he experiences a constructive termination of employment (each, a Covered Termination) prior to a change in control (such terms as defined in his employment agreement), then he will receive (1) a severance payment equal to 24 months of his base salary at the rate in effect immediately prior to his termination of employment and (2) payment of, or reimbursement for, premiums to continue healthcare coverage for himself and his eligible dependents under COBRA for up to 24 months following his termination of employment.

If Mr. Corr has a Covered Termination on or following a change in control, then he will receive the severance benefits described in the paragraph above (except the severance payment in clause (1) above will be based on his base salary immediately prior to the change in control if higher than his base salary immediately prior to such termination of employment), and if such Covered Termination occurs on or prior to the second anniversary of the change in control, each of his outstanding equity awards will automatically become vested and, if applicable, exercisable with respect to 100% of the shares subject to such equity award, and, if applicable, such equity award will be exercisable for the duration of its original term.

If Mr. Corr's employment terminates due to his death or permanent disability, then he will receive (1) a pro-rata bonus for the year in which such termination of employment occurs, based on actual performance (with any individual performance goal determined at 100% of target) and (2) each of his outstanding equity awards will automatically become vested and, if applicable, exercisable with respect to 100% of the shares subject to such equity award.

Mr. Corr's right to the severance payments and benefits described above is conditioned upon (1) him executing and not revoking a general release of claims in our favor within 60 days following his termination of employment and (2) his compliance with his confidentiality and non-solicitation obligations to Ellie Mae under his employment agreement.

*Change in Control Severance Agreements with Dan Madden, Brian Brown, Carina Cortez, Joseph Tyrrell and Cathleen Schreiner Gates*

We have entered into change in control severance agreements with each of Messrs. Brown, Madden and Tyrrell, and Ms. Cortez and Schreiner Gates. Under the terms of each of the change in control severance agreements, if the executive's employment is terminated other than for cause or as the result of a constructive termination within 60 days prior to a change in control (such terms as defined in the applicable change in control severance agreement) or on or within 12 months following a change in control, then the executive will receive: (1) a lump sum cash payment equal to 12 months of the executive's base salary at the higher of the rate in effect immediately prior to the change in control or the executive's termination of employment, (2) payment of, or reimbursement for, premiums to continue healthcare coverage for the executive and his or her eligible dependents under COBRA for up to 12 months following the executive's termination of employment, and (3) 100% accelerated vesting and, if applicable, exercisability of all of the executive's outstanding equity awards, and, if applicable, such equity awards will be exercisable for the duration of their original term. The initial term of each change in control severance agreements is three years, and thereafter the agreements automatically renew for successive one year terms unless Ellie Mae provides written notice of non-renewal to the executive officer at least 180 days prior to the expiration of the then-current term.

Each executive's right to the severance payments and benefits described above is conditioned upon (1) him or her executing and not revoking a general release of claims in our favor within 60 days following his or her termination of employment and (2) his or her compliance with the confidentiality and non-solicitation provisions in his or her change in control severance agreement.



**Table of Contents***Change in Control Severance Agreement with Popi Heron*

Ms. Heron is not currently one of our executive officers. Ms. Heron, however, served as our interim Chief Financial Officer during 2018 and is thus one of our named executive officers for our fiscal year ended December 31, 2018. Under Item 402(t) of Regulation S-K, we are required to disclose certain information regarding her compensation that is based on or otherwise relates to the merger. Accordingly, we have summarized below the terms of the change in control agreement in connection with this disclosure requirement.

In February 2019, we entered into a change in control severance agreement with Ms. Heron. Under the terms of her change in control severance agreement, if Ms. Heron's employment is terminated other than for cause or as the result of a constructive termination upon or within 12 months following a change in control (such terms as defined in her change in control severance agreement), then she will receive 100% accelerated vesting and, if applicable, exercisability of all her then outstanding and unvested equity awards. In addition, Ms. Heron will be entitled to receive a bonus equal to \$80,069 on the 60th day following the earlier of (1) a change in control or (2) a termination of her employment other than for cause prior to the 60th day following a change in control.

In the event a change in control of Ellie Mae does not occur on or prior to February 8, 2020, the change in control severance agreement will terminate on February 8, 2020.

Ms. Heron's right to the severance payments and benefits described above is conditioned upon (1) her executing and not revoking a general release of claims in our favor within 60 days following her termination of employment and (2) her compliance with her confidentiality and non-solicitation obligations to Ellie Mae under her change in control severance agreement.

***Quantification of Potential Payments to Ellie Mae Named Executive Officers in Connection with the Merger***

This section sets forth the information required by Item 402(t) of Regulation S-K regarding the compensation for each of Ellie Mae's named executive officers that is based on or otherwise relates to the Merger. This compensation is referred to as golden parachute compensation by the applicable SEC disclosure rules. The amounts set forth in the table below are estimates based on multiple assumptions that may or may not actually occur, including assumptions described in this proxy statement and in the footnotes to the table. As a result, the actual amounts, if any, that a named executive officer receives may materially differ from the amounts set forth in the table.

The table below assumes that: (i) the Effective Time of the Merger will occur on February 13, 2019; (ii) the employment of the named executive officer will be terminated immediately following the Effective Time of the Merger in a manner entitling the named executive officer to receive the severance benefits described in the section of this proxy statement captioned Payments Upon Termination At or Following Change in Control; and (iii) no named executive officer becomes entitled to additional compensation or benefits or equity awards prior to the Effective Time of the Merger. Pursuant to applicable proxy disclosure rules, the value of the equity award vesting acceleration below is equal to the number of shares covered by the applicable Company Option, Company RSU Award, Company Restricted Stock Award or Company Performance Share Award that are accelerating multiplied by the Per Share Merger Consideration (\$99.00 per share). The amounts shown in the table below do not include the value of payments or benefits that would have been earned, or any amounts associated with equity awards that would vest pursuant to their terms, on or prior to the Effective Time of the Merger, or the value of payments or benefits that are not based on or otherwise related to the Merger.

In the footnotes to the amounts shown in the table below, we refer to payments that are conditioned on the occurrence of both the Merger as well as the named executive officer's qualifying termination of employment as being payable on

a double-trigger basis, and we refer to payments that are conditioned only upon the occurrence of the Merger as being payable on a single-trigger basis. The individuals named below represent the named executive officers for Ellie Mae's fiscal year ending December 31, 2018.

**Table of Contents****Golden Parachute Compensation (1)**

Name (2)	Cash \$(3)	Equity \$(4)	Perquisites/ Benefits \$(5)	Total \$(6)
Jonathan Corr	950,000	22,617,936	36,120	23,604,056
Dan Madden	400,000	4,062,564	18,060	4,480,624
Cathleen Schreiner Gates	385,000	5,854,524	18,060	6,257,584
Joseph Tyrrell	385,000	6,118,755	18,060	6,521,815
Popi Heron	80,069	559,845		639,914
Carina Cortez	325,000	2,649,636	18,060	2,992,696

- (1) The conditions under which each of these payments and benefits are to be provided are described in more detail above in the section of this proxy statement captioned Payments Upon Termination At or Following Change in Control. Under each of the Change in Control Severance Agreements (or in the case of Mr. Corr, his employment agreement) with our named executive officers, if payments and benefits payable to an executive would be subject to the excise tax imposed by Sections 280G and 4999 of the Code, such amounts will be cut back to the extent necessary to avoid such excise tax, unless the executive would be better off, on an after-tax basis, receiving full payment of such amounts. The effect of this provision and any related cut-backs are not reflected in the values disclosed in this table.
- (2) Matthew LaVay, our former Chief Financial Officer, and Pete Hirsch, our former Executive Vice President, Technology and Operations, are also named executive officers of Ellie Mae for our fiscal year ended December 31, 2018. Mr. LaVay and Mr. Hirsch are no longer employed by Ellie Mae and have not received and are not eligible to receive any payments or benefits that are based on or otherwise related to the Merger. We note that Ellie Mae will continue to pay premiums for Mr. Hirsch to continue healthcare coverage under COBRA up to June 30, 2019 pursuant to a separation and release agreement that Ellie Mae entered into with Mr. Hirsch in December 2018, and that these benefits are not based on or otherwise related to the Merger.
- (3) The amounts listed in this column represent the double trigger cash severance payments each named executive officer may become entitled to receive, as described in more detail in the section of this proxy statement captioned Payments Upon Termination At or Following Change in Control.
- (4) The amounts listed in this column represent the double trigger accelerated vesting that each named executive officer may become entitled to receive with respect to his or her equity awards, as described in more detail in the section of this proxy statement captioned Payments Upon Termination At or Following Change in Control.
- (5) The amounts listed in this column represent the value of the double trigger COBRA benefits that each named executive officer may become entitled to receive, as described in more detail in the section of this proxy statement captioned Payments Upon Termination At or Following Change in Control.
- (6) None of the named executive officers is eligible to receive single trigger benefits (due upon the closing of the Merger). The double trigger benefits are the severance payments referenced in footnote (3), the double trigger equity award vesting referenced in footnote (4), and the welfare plan premiums referenced in footnote (5). When calculations are performed for purposes of calculating the amount of excise tax (and any related cutback), the value of a portion of the equity vesting will be discounted under applicable tax regulations.

Name	Single Trigger (\$)	Double Trigger (\$)
Jonathan Corr		23,604,056

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Dan Madden	4,480,624
Cathleen Schreiner Gates	6,257,584
Joseph Tyrrell	6,521,815
Popi Heron	639,914
Carina Cortez	2,992,696

**Table of Contents****Equity Awards Held by Ellie Mae's Executive Officers and Non-employee Directors**

At the Effective Time of the Merger, each Company Option, Company RSU Award, Company Restricted Stock Award, and Company Performance Share Award held by our executives and non-employee directors will receive the treatment described in the section of this proxy statement captioned Treatment of Company Options, Company RSU Awards, Company Restricted Stock Awards, and Company Performance Share Awards.

Each of our executive officers is eligible to receive the applicable vesting acceleration benefits with respect to his or her equity awards described above under the heading Payments Upon Termination At or Following Change in Control.

At the Effective Time each unvested equity award held by Ellie Mae's non-employee directors will become fully vested and, as applicable, exercisable pursuant to the terms of Ellie Mae's Non-Employee Director Equity Compensation Policy.

**Equity Interests of Ellie Mae's Executive Officers and Non-employee Directors**

The following table sets forth the number of shares of common stock and the number of shares of common stock underlying equity awards held by each of Ellie Mae's executive officers and non-employee directors that are outstanding as of February 13, 2019. The table also sets forth the values of these shares and equity awards, determined as the number of shares multiplied by the Per Share Merger Consideration (minus the applicable per share exercise price for any Company Options). No additional shares of common stock or equity awards were granted to any executive officer or non-employee director in contemplation of the Merger.

**Equity Interests of Ellie Mae's Executive Officers and Non-employee Directors**

Name	Shares		Company Restricted Stock Awards		Company Restricted Stock Options		Company RSUs		Company Performance Shares		Total (\$)
	(#) (1)	Shares (\$)	(#) (2)	Awards (\$)	(#) (3)	Options (\$)	(#) (4)(5)	Company RSUs (\$)	(#) (6)(7)	Shares (\$)	
Erman	78,906	\$ 7,811,694			300,042	\$ 19,089,955	6,945	\$ 687,555	3,813	\$ 377,487	\$ 27,966,000
Mathan	69,349	\$ 6,865,551	47,463	\$ 4,698,837	2,731	\$ 152,036	99,133	\$ 9,814,167	81,868	\$ 8,104,932	\$ 29,635,000
Walden							27,357	\$ 2,708,343	13,679	\$ 1,354,221	\$ 4,062,000
Wynn			6,527	\$ 646,173	2,124	\$ 81,877	17,669	\$ 1,749,231	15,121	\$ 1,496,979	\$ 3,974,000
Wynn	108	\$ 10,692					14,142	\$ 1,400,058	12,622	\$ 1,249,578	\$ 2,660,000
Wynn	984	\$ 97,416	12,836	\$ 1,270,764	8,710	\$ 495,347	26,875	\$ 2,660,625	21,907	\$ 2,168,793	\$ 6,692,000
Wynn			12,836	\$ 1,270,764	639	\$ 27,954	25,364	\$ 2,511,036	20,749	\$ 2,054,151	\$ 5,863,000



en ing	2,023	\$ 200,277	1,727	\$ 55,903	2,105	\$ 208,395	\$ 464,
cellato	21,953	\$ 2,173,347	71,121	\$ 5,780,267	2,105	\$ 208,395	\$ 8,162,
g is	80,586	\$ 7,978,014	61,121	\$ 4,858,270	2,105	\$ 208,395	\$ 13,004,
arr n	4,107	\$ 406,593	39,455	\$ 2,905,080	2,105	\$ 208,395	\$ 3,520,
ert J. n	9,878	\$ 977,922	76,121	\$ 6,352,511	2,105	\$ 208,395	\$ 7,538,
ina nson	2,411	\$ 238,689	3,455	\$ 111,838	2,105	\$ 208,395	\$ 558,
S. ncer	6,901	\$ 683,199	36,972	\$ 2,767,794	2,105	\$ 208,395	\$ 3,659,
t eja	8,363	\$ 827,937	3,455	\$ 111,838	2,105	\$ 208,395	\$ 1,148,

- (1) This number includes shares of common stock beneficially owned, excluding shares subject to unvested Company Restricted Stock Awards and shares of common stock issuable upon exercise of Company Options, or settlement of Company RSU Awards, or payout of Company Performance Share Awards.
- (2) This number reflects the number of shares of common stock subject to Company Restricted Stock Awards that were not vested as of February 13, 2019.

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- (3) The number of shares of common stock subject to Company Options includes both vested and unvested Company Options. The number of shares subject to the vested and unvested portions of the Company Options and the value (determined as the aggregate number of underlying shares multiplied by the Per Share Merger Consideration minus the aggregate exercise price with respect to such shares) of those portions of the Company Options are as follows:

Name	Vested Company Options (#)	Vested Company Options (\$)	Unvested Company Options (#)	Unvested Company Options (\$)
Sigmund Anderman	283,253	\$ 18,770,018	16,789	\$ 319,937
Jonathan Corr	2,731	\$ 152,036		
Dan Madden				
Brian Brown	1,995	\$ 77,034	129	\$ 4,843
Joseph Tyrrell	8,285	\$ 476,775	425	\$ 18,573
Cathleen Schreiner Gates	214	\$ 9,382	425	\$ 18,573
Karen Blasing	1,727	\$ 55,903		
Carl Buccellato	71,121	\$ 5,780,267		
Craig Davis	61,121	\$ 4,858,270		
A. Barr Dolan	39,455	\$ 2,905,080		
Robert J. Levin	76,121	\$ 6,352,511		
Marina Levinson	3,455	\$ 111,838		
Jeb S. Spencer	36,972	\$ 2,767,794		
Rajat Taneja	3,455	\$ 111,838		

- (4) This number reflects the number of shares of common stock subject to Company RSU Awards that were not vested as of February 13, 2019.
- (5) In connection with the Merger, the performance-based vesting Company RSU Award that was granted to Sigmund Anderman in the first quarter of 2019 will be settled based on the level of achievement of the applicable performance goals as reasonably determined by the Board of Directors or a committee thereof in good faith in accordance with the applicable Company Equity Plan (provided that such level of achievement will not exceed the greater of (1) 100% of target and (2) the actual achievement of the performance goals attributable to such Company RSU Award) and will receive the same treatment as all other Company RSU Awards will receive in the Merger. The amount in this column for Mr. Anderman assumes this Company RSU Award being settled at 100% of target pursuant to its terms. In addition, this column assumes that performance-based vesting Company RSU Awards granted to Mr. Anderman in 2018 will be settled at 75% of target.
- (6) This number reflects the number of shares of common stock subject to Company Performance Shares that were not vested as of February 13, 2019.
- (7) In connection with the Merger, the Company Performance Share Awards granted to our executives in 2018 will be settled at a 165% of target level in Company Restricted Stock Awards prior to the Closing, which Company Restricted Stock Awards will receive the same treatment in the Merger that all other Company Restricted Stock Awards will receive. The amounts in this column reflects the Company Performance Share Awards granted in 2018 to our executives being settled at 165% of target. In addition, in connection with the Merger, the Company Performance Share Awards granted to our executives in the first quarter of 2019 will be settled in Company RSU Awards based on the level of achievement of the applicable performance goals as reasonably determined by the Board of Directors or a committee thereof in good faith in accordance with the applicable Company Equity Plan

(provided that such level of achievement will not exceed the greater of (1) 100% of target and (2) the actual achievement of the performance goals attributable to such Company Performance Share Award) and will receive the same treatment as all other Company Performance Share Awards will receive in the Merger. The amount in this column assumes the Company Performance Share Awards granted to our executives in the first quarter of 2019 being settled at 100% of target pursuant to its terms.

**Financing of the Merger**

The obligation of Parent and Merger Sub to consummate the Merger is not subject to any financial condition.

We anticipate that the total amount of funds necessary to complete the Merger and the related transactions, and to pay the fees and expenses required to be paid at the closing of the Merger by Parent and Merger Sub under the Merger Agreement, will be approximately \$3.6 billion. This amount includes the funds needed to: (1) pay stockholders the amounts due under the Merger Agreement and (2) make payments in respect of our outstanding equity-based awards pursuant to the Merger Agreement.

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### ***Equity Financing***

Pursuant to the Equity Commitment Letter, the Thoma Bravo Fund has agreed to provide Parent with an equity commitment sufficient to fund the aggregate purchase price required to be paid at the closing of the Merger and to also fund, together with cash on hand at Ellie Mae, certain fees and expenses to be paid at the closing of the Merger, contemplated by, and subject to the terms and conditions of, the Merger Agreement.

The Equity Commitment Letter provides, among other things, that: (1) Ellie Mae is an express third party beneficiary thereof with respect to enforcing Parent's right to cause the equity commitment under the Equity Commitment Letter by the Thoma Bravo Fund to be funded to Parent in order to consummate the Merger, if, and only if, (a) all conditions in Article VII of the Merger Agreement have been satisfied or waived (other than any conditions that by their nature are to be satisfied at the Closing, but subject to the prior or substantially concurrent satisfaction of such conditions), (b) Parent and Merger Sub fail to consummate the Closing by the date on which the Closing would otherwise be required to have occurred pursuant to Section 2.3 of the Merger Agreement and (c) Parent is required pursuant to a final and non-appealable order of a court of competent jurisdiction to specifically perform such obligations; and (2) the Thoma Bravo Fund will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that (x) there is adequate remedy at law or (y) an award of specific performance is not an appropriate remedy for any reason at law or in equity. The Equity Commitment Letter may not be amended or otherwise modified without the prior written consent of Parent, the Thoma Bravo Fund and Ellie Mae.

### ***Guaranty***

Pursuant to the Guaranty, the Thoma Bravo Fund has agreed to guarantee the due, punctual and complete payment and performance of all of the liabilities and obligations of Parent under the Merger Agreement, including, but not limited to: (1) the aggregate amount of the Parent Termination Fee (as defined under the caption "The Merger Termination Fee") solely if and when any of the Parent Termination Fee is payable pursuant to the Merger Agreement; (2) any amounts due by Parent pursuant to legal proceedings as a result of default under the Merger Agreement; and (3) the reimbursement obligations of Parent pursuant to the indemnification obligations to Ellie Mae and its representatives in connection with any debt financing. We refer to the obligations set forth in the preceding sentence as the Guaranteed Obligations. The obligations of the Thoma Bravo Fund under the Guaranty are subject to a cap equal to \$258 million.

Subject to specified exceptions, the Guaranty will terminate upon the earliest of:

funding of the commitment under the Equity Commitment Letter;

the closing of the Merger;

(1) the payment and full discharge of any reimbursement obligations which Ellie Mae has requested reimbursement for within 90 days following the valid termination of the Merger Agreement and (2) the valid termination of the Merger Agreement in accordance with its terms, other than a termination pursuant to which Ellie Mae would be entitled to a Parent Termination Fee under the Merger Agreement, in which case the Guaranty shall terminate 90 days after such termination unless Ellie Mae shall have delivered a written notice with respect to the Guaranteed Obligations prior to such 90<sup>th</sup> day; provided that if the Merger

Agreement has been so terminated and such notice has been provided, the Thoma Bravo Fund, as the guarantor entity under the Guaranty, shall have no further liability or obligation under the Guaranty from and after the earliest of (x) the Closing of the Merger, including payment of the aggregate merger consideration payable at the Closing in accordance with the Merger Agreement, (y) a final, non-appealable order of a court of competent jurisdiction determining that the Thoma Bravo Fund, as the guarantor entity under the Guaranty, does not owe any amount under the Guaranty and (z) a written agreement among the Thoma Bravo Fund, as the guarantor entity under the Guaranty, and Ellie Mae terminating the obligations and liabilities of the Thoma Bravo Fund, as the guarantor entity under the Guaranty, pursuant to the Guaranty; and

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payment of the Guaranteed Obligations by the Thoma Bravo Fund, as the guarantor entity under the Guaranty, Parent and/or Merger Sub to Ellie Mae.

### **Closing and Effective Time**

The closing of the Merger will take place no later than the second business day following the satisfaction or waiver in accordance with the Merger Agreement of all of the conditions to closing of the Merger (as described under the caption, Proposal 1: Adoption of the Merger Agreement Conditions to the Closing of the Merger ), other than conditions that by their terms are to be satisfied at the closing but subject to the satisfaction or waiver of such conditions.

### **Appraisal Rights**

If the Merger is consummated, stockholders who continuously hold shares of Ellie Mae common stock through the Effective Time, who do not vote in favor of the adoption of the Merger Agreement and who properly demand appraisal of their shares and who do not withdraw their demands or otherwise lose their rights of appraisal will be entitled to seek appraisal of their shares in connection with the Merger under Section 262 the DGCL ( Section 262 ). The following discussion is not a complete statement of the law pertaining to appraisal rights under the DGCL and is qualified in its entirety by the full text of Section 262, which is attached to this proxy statement as Annex C and incorporated herein by reference. The following summary does not constitute any legal or other advice and does not constitute a recommendation that stockholders exercise their appraisal rights under Section 262. All references in Section 262 and in this summary to a stockholder are to the record holder of shares of Ellie Mae common stock unless otherwise expressly noted herein. Only a holder of record of shares of Ellie Mae common stock is entitled to demand appraisal of the shares registered in that holder s name. A person having a beneficial interest in shares of Ellie Mae common stock held of record in the name of another person, such as a bank, broker, trust or other nominee, must act promptly to cause the record holder to follow the steps summarized below properly and in a timely manner to perfect appraisal rights. **If you hold your shares of Ellie Mae common stock through a bank, broker or other nominee and you wish to exercise appraisal rights, you should consult with your bank, broker or the other nominee.**

Under Section 262, if the Merger is completed, holders of shares of Ellie Mae common stock who: (1) submit a written demand for appraisal of their shares, (2) do not vote in favor of the adoption of the Merger Agreement; (3) continuously are the record holders of such shares through the Effective Time; and (4) otherwise exactly follow the procedures set forth in Section 262 may be entitled to have their shares appraised by the Delaware Court of Chancery and to receive payment in cash of the fair value of the shares of Ellie Mae common stock, exclusive of any element of value arising from the accomplishment or expectation of the Merger, together with interest to be paid on the amount determined to be fair value, if any, as determined by the court. However, after an appraisal petition has been filed, the Delaware Court of Chancery will dismiss appraisal proceedings as to all stockholders who have asserted appraisal rights unless (a) the total number of shares for which appraisal rights have been pursued and perfected exceeds 1% of the outstanding shares of Ellie Mae common stock as measured in accordance with subsection (g) of Section 262; or (b) the value of the aggregate Per Share Merger Consideration in respect of the shares of Ellie Mae common stock for which appraisal rights have been pursued and perfected exceeds \$1 million (conditions (a) and (b) referred to as the ownership thresholds ). Unless the Delaware Court of Chancery, in its discretion, determines otherwise for good cause shown, interest on an appraisal award will accrue and compound quarterly from the Effective Time through the date the judgment is paid at 5% over the Federal Reserve discount rate (including any surcharge) as established from time to time during such period. However, at any time before the Delaware Court of Chancery enters judgment in the appraisal proceedings, the Surviving Corporation may voluntarily pay to each stockholder entitled to appraisal an amount in cash pursuant to subsection (h) of Section 262, in which case such interest will accrue after the time of such payment only on an amount that equals the difference, if any, between the amount so paid and the fair value of the shares as determined by the Delaware Court of Chancery, in addition to any interest accrued prior to the time of such

voluntary cash payment, unless paid at such time. The Surviving Corporation is under no obligation to make such voluntary cash payment prior to such entry of judgment.

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Under Section 262, where a Merger Agreement is to be submitted for adoption at a meeting of stockholders, the corporation, not less than 20 days prior to the meeting, must notify each of its stockholders who was such on the record date for notice of such meeting with respect to shares for which appraisal rights are available that appraisal rights are available and include in the notice a copy of Section 262. This proxy statement constitutes Ellie Mae's notice to stockholders that appraisal rights are available in connection with the Merger, and the full text of Section 262 is attached to this proxy statement as Annex C. In connection with the Merger, any holder of shares of Ellie Mae common stock who wishes to exercise appraisal rights, or who wishes to preserve such holder's right to do so, should review Annex C carefully. Failure to strictly comply with the requirements of Section 262 in a timely and proper manner may result in the loss of appraisal rights under the DGCL. A stockholder who loses his, her or its appraisal rights will be entitled to receive the Per Share Merger Consideration described in the Merger Agreement. Moreover, because of the complexity of the procedures for exercising the right to seek appraisal of shares of Ellie Mae common stock, Ellie Mae believes that if a stockholder considers exercising such rights, that stockholder should seek the advice of legal counsel.

Stockholders wishing to exercise the right to seek an appraisal of their shares of Ellie Mae common stock must do **ALL** of the following:

the stockholder must not vote in favor of the proposal to adopt the Merger Agreement;

the stockholder must deliver to Ellie Mae a written demand for appraisal before the vote on the Merger Agreement at the Special Meeting;

the stockholder must continuously hold the shares from the date of making the demand through the Effective Time (a stockholder will lose appraisal rights if the stockholder transfers the shares before the Effective Time); and

the stockholder (or any person who is the beneficial owner of shares of Ellie Mae common stock held either in a voting trust or by a nominee on behalf of such person) or the Surviving Corporation must file a petition in the Delaware Court of Chancery requesting a determination of the fair value of the shares within 120 days after the Effective Time. The Surviving Corporation is under no obligation to file any petition and has no intention of doing so.

In addition, one of the ownership thresholds must be met.

Because a proxy that does not contain voting instructions will, unless revoked, be voted in favor of the adoption of the Merger Agreement, a stockholder who votes by proxy and who wishes to exercise appraisal rights must vote against the adoption of the Merger Agreement, abstain or not vote its shares.

### ***Filing Written Demand***

Any holder of shares of Ellie Mae common stock wishing to exercise appraisal rights must deliver to Ellie Mae, before the vote on the adoption of the Merger Agreement at the Special Meeting at which the proposal to adopt the Merger Agreement will be submitted to stockholders, a written demand for the appraisal of the stockholder's shares, and that stockholder must not vote or submit a proxy in favor of the adoption of the Merger Agreement. A holder of



shares of Ellie Mae common stock exercising appraisal rights must hold of record the shares on the date the written demand for appraisal is made and must continue to hold the shares of record through the Effective Time. A proxy that is submitted and does not contain voting instructions will, unless revoked, be voted in favor of the adoption of the Merger Agreement, and it will constitute a waiver of the stockholder's right of appraisal and will nullify any previously delivered written demand for appraisal. Therefore, a stockholder who submits a proxy and who wishes to exercise appraisal rights must submit a proxy containing instructions to vote against the adoption of the Merger Agreement or abstain from voting, or otherwise fail to vote, on the adoption of the Merger Agreement. Neither voting against the adoption of the Merger Agreement nor abstaining from voting or failing to vote on the proposal to adopt the Merger Agreement will, in and of itself, constitute a written demand for appraisal satisfying the requirements of Section 262. The written demand for appraisal must be in addition to

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and separate from any proxy or vote on the adoption of the Merger Agreement. A proxy or vote against the adoption of the Merger Agreement will not constitute a demand. A stockholder's failure to make the written demand prior to the taking of the vote on the adoption of the Merger Agreement at the Special Meeting of Ellie Mae stockholders will constitute a waiver of appraisal rights.

Only a holder of record of shares of Ellie Mae common stock is entitled to demand appraisal rights for the shares registered in that holder's name. A demand for appraisal in respect of shares of Ellie Mae common stock must be executed by or on behalf of the holder of record, and must reasonably inform Ellie Mae of the identity of the holder and state that the person intends thereby to demand appraisal of the holder's shares in connection with the Merger. If the shares are owned of record in a fiduciary or representative capacity, such as by a trustee, guardian or custodian, such demand must be executed by or on behalf of the record owner, and if the shares are owned of record by more than one person, as in a joint tenancy and tenancy in common, the demand must be executed by or on behalf of all joint owners. An authorized agent, including an authorized agent for two or more joint owners, may execute a demand for appraisal on behalf of a holder of record; however, the agent must identify the record owner or owners and expressly disclose that, in executing the demand, the agent is acting as agent for the record owner or owners.

STOCKHOLDERS WHO HOLD THEIR SHARES IN BROKERAGE OR BANK ACCOUNTS OR OTHER NOMINEE FORMS AND WHO WISH TO EXERCISE APPRAISAL RIGHTS SHOULD CONSULT WITH THEIR BANK, BROKER OR OTHER NOMINEES, AS APPLICABLE, TO DETERMINE THE APPROPRIATE PROCEDURES FOR THE BANK, BROKER OR OTHER NOMINEE TO MAKE A DEMAND FOR APPRAISAL OF THOSE SHARES. A PERSON HAVING A BENEFICIAL INTEREST IN SHARES HELD OF RECORD IN THE NAME OF ANOTHER PERSON, SUCH AS A BANK, BROKER OR OTHER NOMINEE, MUST ACT PROMPTLY TO CAUSE THE RECORD HOLDER TO FOLLOW PROPERLY AND IN A TIMELY MANNER THE STEPS NECESSARY TO PERFECT APPRAISAL RIGHTS.

All written demands for appraisal pursuant to Section 262 should be mailed or delivered to:

Ellie Mae, Inc.

Attention: Investor Relations

4420 Rosewood Drive, Suite 500

Pleasanton, CA 94588

Any holder of shares of Ellie Mae common stock who has delivered a written demand to Ellie Mae and who has not commenced an appraisal proceeding or joined that proceeding as a named party may withdraw his, her or its demand for appraisal and accept the consideration offered pursuant to the Merger Agreement by delivering to Ellie Mae a written withdrawal of the demand for appraisal. However, any such attempt to withdraw the demand made more than 60 days after the Effective Time will require written approval of the Surviving Corporation. No appraisal proceeding in the Delaware Court of Chancery will be dismissed as to any stockholder without the approval of the Delaware Court of Chancery, and such approval may be conditioned upon such terms as the Delaware Court of Chancery deems just; provided, however, that this 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 Per Share Merger Consideration within 60 days after the Effective Time. If an appraisal proceeding is commenced and Ellie Mae, as the Surviving Corporation, does not approve a request to withdraw a demand for appraisal when that approval is required, or, except with respect to any stockholder who withdraws such stockholder's demand in accordance with the proviso in the immediately preceding sentence, if the Delaware Court of Chancery

does not approve the dismissal of an appraisal proceeding with respect to a stockholder, the stockholder will be entitled to receive only the appraised value determined in any such appraisal proceeding, which value could be less than, equal to or more than the per share merger consideration being offered pursuant to the Merger Agreement.

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***Notice by the Surviving Corporation***

If the Merger is completed, within 10 days after the Effective Time, the Surviving Corporation will notify each holder of shares of Ellie Mae common stock who has properly made a written demand for appraisal pursuant to Section 262, and who has not voted in favor of the adoption of the Merger Agreement, that the Merger has become effective and the effective date thereof.

***Filing a Petition for Appraisal***

Within 120 days after the Effective Time, but not thereafter, the Surviving Corporation or any holder of shares of Ellie Mae common stock who has complied with Section 262 and is entitled to seek appraisal under Section 262 (including for this purpose any beneficial owner of the relevant shares) may commence an appraisal proceeding by filing a petition in the Delaware Court of Chancery, with a copy served on the Surviving Corporation in the case of a petition filed by a stockholder (or beneficial owner), demanding a determination of the fair value of the shares held by all dissenting stockholders entitled to appraisal. The Surviving Corporation is under no obligation, and has no present intention, to file a petition, and stockholders should not assume that the Surviving Corporation will file a petition or initiate any negotiations with respect to the fair value of the shares of Ellie Mae common stock. Accordingly, any holders of shares of Ellie Mae common stock who desire to have their shares appraised should initiate all necessary action to perfect their appraisal rights in respect of their shares of Ellie Mae common stock within the time and in the manner prescribed in Section 262. The failure of a holder of Ellie Mae common stock to file such a petition within the period specified in Section 262 could nullify the stockholder's previous written demand for appraisal.

Within 120 days after the Effective Time, any holder of shares of Ellie Mae common stock who has complied with the requirements of Section 262 and who is entitled to appraisal rights thereunder will be entitled, upon written request, to receive from the Surviving Corporation a statement setting forth the aggregate number of shares not voted in favor of the adoption of the Merger Agreement and with respect to which Ellie Mae has received demands for appraisal, and the aggregate number of holders of such shares. The Surviving Corporation must mail this statement to the requesting stockholder within 10 days after receipt by the Surviving Corporation of the written request for such a statement or within 10 days after the expiration of the period for delivery of demands for appraisal, whichever is later. A beneficial owner of shares of Ellie Mae common 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 seeking appraisal or request from the Surviving Corporation the foregoing statements. As noted above, however, the demand for appraisal can only be made by a stockholder of record.

If a petition for an appraisal is duly filed by a holder of shares of Ellie Mae common stock and a copy thereof is served upon the Surviving Corporation, the Surviving Corporation will then be obligated within 20 days after such service to file with the Delaware Register in Chancery 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. Upon the filing of any such petition, the Delaware Court of Chancery may order that notice of the time and place fixed for the hearing on the petition be mailed to the Surviving Corporation and all of the stockholders shown on the written statement described above at the addresses stated therein. Such notice will also be published at least one week before the day of the hearing in a newspaper of general circulation published in the City of Wilmington, Delaware, or in another publication determined by the court. The costs of these notices are borne by the Surviving Corporation. After notice to stockholders as required by the court, the Delaware Court of Chancery is empowered to conduct a hearing on the petition to determine those stockholders who have complied with Section 262 and who have become entitled to appraisal rights thereunder. The Delaware Court of Chancery may require the stockholders who demanded payment for their shares to submit their stock certificates (if any) to the Register in Chancery for notation thereon of the pendency of the appraisal proceedings and, if any stockholder fails to comply

with the direction, the Delaware Court of Chancery may dismiss that stockholder from the proceedings. The Delaware Court of Chancery will dismiss appraisal proceedings as to all stockholders who have asserted appraisal rights if neither of the ownership thresholds is met.

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**Table of Contents*****Determination of Fair Value***

After determining the holders of Ellie Mae common stock entitled to appraisal and that at least one of the ownership thresholds described above has been satisfied as to stockholders seeking appraisal rights, the appraisal proceeding will be conducted in accordance with the rules of the Delaware Court of Chancery, including any rules specifically governing appraisal proceedings. Through such proceeding, the Delaware Court of Chancery will determine the fair value of the shares of Ellie Mae common stock, exclusive of any element of value arising from the accomplishment or expectation of the Merger, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining fair value, the Delaware Court of Chancery will take into account all relevant factors. Unless the court in its discretion determines otherwise for good cause shown, interest from the Effective Time 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 Time and the date of payment of the judgment. However, at any time before the Delaware Court of Chancery enters judgment in the appraisal proceedings, the Surviving Corporation may pay to each stockholder entitled to appraisal an amount in cash, in which case such interest will accrue after the time of such payment only on an amount that equals the difference, if any, between the amount so paid and the fair value of the shares as determined by the Delaware Court of Chancery, in addition to any interest accrued prior to the time of such voluntary payment, unless paid at such time.

In *Weinberger v. UOP, Inc.*, the Supreme Court of Delaware 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 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 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 value, but which rather applies only to the speculative elements of value arising from such accomplishment or expectation. In *Weinberger*, the Supreme Court of Delaware 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. In addition, the Delaware courts have decided that the statutory appraisal remedy, depending on factual circumstances, may or may not be a dissenting stockholder's exclusive remedy.

Stockholders considering seeking appraisal should be aware that the fair value of their shares as so determined by the Delaware Court of Chancery could be more than, the same as or less than the consideration they would receive pursuant to the Merger if they did not seek appraisal of their shares 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 Merger is not an opinion as to, and does not in any manner address, fair value under Section 262. **No representation is made as to the outcome of the appraisal of fair value as determined by the Delaware Court of Chancery, and stockholders should recognize that such an appraisal could result in a determination of a value higher or lower than, or the same as, the Per Share Merger Consideration.** Neither Ellie Mae nor Parent anticipates offering more than the Per Share Merger Consideration to any stockholder exercising appraisal rights, and each of Ellie Mae and Parent reserves the rights to make a voluntary cash payment pursuant to subsection (h) of Section 262 and to assert, in any appraisal proceeding, that for purposes of Section 262, the fair value of a share of Ellie Mae common stock is less than the Per Share Merger Consideration. If a petition for appraisal is not timely filed, or if neither of the ownership thresholds described above has been satisfied as to stockholders seeking appraisal rights, then the right to an appraisal will cease. The costs of the appraisal proceedings (which do not include attorneys' fees or the fees and expenses of experts) may be determined by

the Delaware Court of Chancery and charged upon the parties as the Delaware Court of Chancery deems equitable under the circumstances. Upon application of a stockholder, the Delaware Court of Chancery may also order that all or a portion of the expenses incurred by a stockholder in connection with an appraisal proceeding, including, without

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limitation, reasonable attorneys' fees and the fees and expenses of experts, be charged pro rata against the value of all the shares entitled to be appraised. In the absence of such determination or assessment, each party bears its own expenses.

If any stockholder who demands appraisal of his, her or its shares of Ellie Mae common stock under Section 262 fails to perfect, or effectively loses or withdraws, such holder's right to appraisal, the stockholder's shares of Ellie Mae common stock will be deemed to have been converted at the Effective Time into the right to receive the Per Share Merger Consideration. A stockholder will fail to perfect, or effectively lose or withdraw, the holder's right to appraisal if no petition for appraisal is filed within 120 days after the Effective Time, if neither of the ownership thresholds described above has been satisfied as to stockholders seeking appraisal rights or if the stockholder delivers to the Surviving Corporation a written withdrawal of the holder's demand for appraisal and an acceptance of the Per Share Merger Consideration in accordance with Section 262.

From and after the Effective Time, no stockholder who has demanded appraisal rights will be entitled to vote such shares of Ellie Mae common stock for any purpose or to receive payment of dividends or other distributions on the stock, except dividends or other distributions on the holder's shares of Ellie Mae common stock, if any, payable to stockholders as of a time prior to the Effective Time. If no petition for an appraisal is filed, if neither of the ownership thresholds described above has been satisfied as to the stockholders seeking appraisal rights, or if the stockholder delivers to the Surviving Corporation a written withdrawal of the demand for an appraisal and an acceptance of the Merger, either within 60 days after the Effective Time or thereafter with the written approval of the Surviving Corporation, then the right of such stockholder to an appraisal will cease. Once a petition for appraisal is filed with the Delaware Court of Chancery, however, the appraisal proceeding may not 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 the foregoing 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 within 60 days after the Effective Time.

Failure to comply strictly with all of the procedures set forth in Section 262 may result in the loss of a stockholder's statutory appraisal rights. Consequently, any stockholder wishing to exercise appraisal rights is encouraged to consult legal counsel before attempting to exercise those rights.

## **Accounting Treatment**

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

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

The following discussion is a summary of material U.S. federal income tax consequences of the Merger that may be relevant to U.S. Holders and Non-U.S. Holders (each as defined below) of shares of Ellie Mae common stock whose shares are converted into the right to receive cash pursuant to the Merger. This summary is general in nature and does not discuss all aspects of U.S. federal income taxation that may be relevant to an Ellie Mae stockholder in light of its particular circumstances. In addition, this summary does not describe any tax consequences arising under the laws of any state, local or non-U.S. jurisdiction and does not consider any aspects of U.S. federal tax law other than income taxation. This discussion is based upon the Internal Revenue Code of 1986, as amended (the Code), Treasury Regulations promulgated under the Code, court decisions, published positions of the Internal Revenue Service (the IRS), and other applicable authorities, all as in effect on the date of this proxy statement and all of which are subject to change or differing interpretations at any time, possibly with retroactive effect. This discussion is limited to Ellie Mae stockholders who hold their shares of Ellie Mae common stock as capital assets within the meaning of Section 1221 of



the Code (generally, property held for investment purposes).

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This discussion is for general information only and does not address all of the tax consequences that may be relevant to Ellie Mae stockholders in light of their particular circumstances. For example, this discussion does not address:

tax consequences that may be relevant to Ellie Mae stockholders who may be subject to special treatment under U.S. federal income tax laws, such as banks or other financial institutions; tax-exempt organizations; retirement or other tax deferred accounts; S corporations, partnerships or any other entities or arrangements treated as partnerships or pass-through entities for U.S. federal income tax purposes (or an investor in a partnership, S corporation or other pass-through entity); insurance companies; mutual funds; dealers in stocks and securities; traders in securities that elect to use the mark-to-market method of accounting for their securities; regulated investment companies; real estate investment trusts; entities subject to the U.S. anti-inversion rules; certain former citizens or long-term residents of the United States; or, except as noted below, holders that own or have owned (directly, indirectly or constructively) five percent or more of Ellie Mae common stock (by vote or value);

tax consequences to Ellie Mae stockholders holding their shares of Ellie Mae common stock as part of a hedging, constructive sale or conversion, straddle or other risk reduction transaction;

tax consequences to Ellie Mae stockholders whose shares of Ellie Mae common stock constitute qualified small business stock within the meaning of Section 1202 of the Code;

tax consequences to Ellie Mae stockholders that received their shares of Ellie Mae common stock in a compensatory transaction, through a tax qualified retirement plan or pursuant to the exercise of options or warrants;

tax consequences to Ellie Mae stockholders who own an equity interest in Parent following the Merger;

tax consequences to U.S. Holders whose functional currency is not the U.S. dollar;

tax consequences to Ellie Mae stockholders who hold their Ellie Mae common stock through a bank, financial institution or other entity, or a branch thereof, located, organized or resident outside the United States;

tax consequences arising from the Medicare tax on net investment income;

tax consequences to Ellie Mae stockholders subject to special tax accounting rules as a result of any item of gross income with respect to the shares of Ellie Mae common stock being taken into account in an applicable financial statement (as defined in Section 451(b) of the Code);

the U.S. federal estate, gift or alternative minimum tax consequences, if any, as a result of the Merger;

any state, local or non-U.S. tax consequences as a result of the Merger; or

tax consequences to Ellie Mae stockholders that do not vote in favor of the Merger and that properly demand appraisal of their shares under Section 262 of the DGCL or that entered into a non-tender and support agreement as part of the transaction described in this proxy statement.

If a partnership (including an entity or arrangement, domestic or non-U.S., treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of shares of Ellie Mae common stock, then the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partner and the partnership. Partnerships holding shares of Ellie Mae common stock and partners therein should consult their tax advisors regarding the consequences of the Merger.

We have not sought, and do not intend to seek, any ruling from the IRS with respect to the statements made and the conclusions reached in the following summary, and no assurance can be given that the IRS will agree with the views expressed herein, or that a court will not sustain any challenge by the IRS in the event of litigation.

**THE FOLLOWING SUMMARY IS FOR GENERAL INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE. WE URGE YOU TO**

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**CONSULT YOUR OWN TAX ADVISOR WITH RESPECT TO THE SPECIFIC TAX CONSEQUENCES TO YOU IN CONNECTION WITH THE MERGER IN LIGHT OF YOUR OWN PARTICULAR CIRCUMSTANCES, INCLUDING FEDERAL ESTATE, GIFT AND OTHER NON-INCOME TAX CONSEQUENCES, AND TAX CONSEQUENCES UNDER STATE, LOCAL OR NON-U.S. TAX LAWS.**

***U.S. Holders***

For purposes of this discussion, a U.S. Holder is a beneficial owner of shares of Ellie Mae common stock that is for U.S. federal income tax purposes:

an individual who is a citizen or resident of the United States;

a corporation, or other entity taxable as a corporation, created or organized in or under the laws of the United States or any state thereof or the District of Columbia;

an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust (1) that is subject to the primary supervision of a court within the United States and the control of one or more United States persons as defined in Section 7701(a)(30) of the Code; or (2) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

The receipt of cash by a U.S. Holder in exchange for shares of Ellie Mae common stock pursuant to the Merger will be a taxable transaction for U.S. federal income tax purposes. In general, such U.S. Holder's gain or loss will be equal to the difference, if any, between the amount of cash received and the U.S. Holder's adjusted tax basis in the shares of Ellie Mae common stock surrendered pursuant to the Merger. Gain or loss must be determined separately for each block of shares (that is, shares of Ellie Mae common stock acquired at the same cost in a single transaction). A U.S. Holder's adjusted tax basis generally will equal the amount that such U.S. Holder paid for the shares of Ellie Mae common stock. A U.S. Holder's gain or loss on the disposition of shares of Ellie Mae common stock will generally be characterized as capital gain or loss. Any such gain or loss will be long-term capital gain or loss if such U.S. Holder's holding period in such shares is more than one year at the time of the completion of the Merger. A reduced tax rate on capital gain generally will apply to long-term capital gain of a non-corporate U.S. Holder (including individuals). The deductibility of capital losses is subject to limitations.

***Non-U.S. Holders***

The following is a summary of the material U.S. federal income tax consequences that will apply to you if you are a Non-U.S. Holder. The term Non-U.S. Holder means a beneficial owner of Ellie Mae common stock that is, for U.S. federal income tax purposes, not a U.S. Holder.

Special rules, not discussed herein, may apply to certain Non-U.S. Holders, such as:

certain former citizens or long-term residents of the United States;

controlled foreign corporations;

passive foreign investment companies;

corporations that accumulate earnings to avoid U.S. federal income tax; and

pass-through entities, or investors in such entities.

Any gain realized by a Non-U.S. Holder pursuant to the Merger generally will not be subject to U.S. federal income tax unless:

the gain is effectively connected with a trade or business of such Non-U.S. Holder in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment or

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fixed base maintained by such Non-U.S. Holder in the United States), in which case such gain generally will be subject to U.S. federal income tax at rates generally applicable to U.S. persons, and, if the Non-U.S. Holder is a corporation, such gain may also be subject to the branch profits tax at a rate of 30% (or a lower rate under an applicable income tax treaty);

such Non-U.S. Holder is an individual who is present in the United States for 183 days or more in the taxable year of disposition of shares of Ellie Mae common stock pursuant to the Merger, and certain other specified conditions are met, in which case such gain will be subject to U.S. federal income tax at a rate of 30% (or a lower rate under an applicable income tax treaty), which gain may be offset by certain U.S. source capital losses of such Non-U.S. Holder; or

Ellie Mae is or has been a United States real property holding corporation as such term is defined in Section 897(c) of the Code ( USRPHC ), at any time within the shorter of the five-year period preceding the Merger or such Non-U.S. Holder's holding period with respect to the applicable shares of Ellie Mae common stock (the Relevant Period ) and, if shares of Ellie Mae common stock are regularly traded on an established securities market (within the meaning of Section 897(c)(3) of the Code), such Non-U.S. Holder owns directly or is deemed to own pursuant to attribution rules more than 5% of Ellie Mae common stock at any time during the Relevant Period, in which case such gain will be subject to U.S. federal income tax at rates generally applicable to U.S. persons (as described in the first bullet point above), except that the branch profits tax will not apply. Although there can be no assurances in this regard, we believe that we are not, and have not been, a USRPHC at any time during the five-year period preceding the Merger.

***Information Reporting and Backup Withholding***

Information reporting and backup withholding (currently, at a rate of 24%) may apply to the proceeds received by an Ellie Mae stockholder pursuant to the Merger. Backup withholding generally will not apply to (1) a U.S. Holder that furnishes a correct taxpayer identification number and certifies that such holder is not subject to backup withholding on IRS Form W-9 (or a substitute or successor form) or (2) a Non-U.S. Holder that (i) provides a certification of such holder's foreign status on the appropriate series of IRS Form W-8 (or a substitute or successor form) or (ii) otherwise establishes an exemption from backup withholding. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against the holder's U.S. federal income tax liability, provided that the required information is timely furnished to the IRS.

The foregoing summary does not discuss all aspects of U.S. federal income taxation that may be relevant to particular holders of Ellie Mae common stock. Ellie Mae stockholders should consult their own tax advisors as to the particular tax consequences to them of exchanging their Ellie Mae common stock for cash pursuant to the Merger under any federal, state, local or non-U.S. tax laws.

***Withholding on Foreign Entities***

Sections 1471 through 1474 of the Code ( FATCA ), impose a U.S. federal withholding tax of 30% on certain payments made to a foreign financial institution (as specially defined under these rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding certain U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners) or an exemption applies. FATCA also generally will impose a U.S. federal withholding tax of 30% on certain payments made to a non-financial foreign entity unless such entity provides the withholding agent a certification

identifying certain direct and indirect U.S. owners of the entity or an exemption applies. An intergovernmental agreement between the United States and an applicable foreign country may modify these requirements. Under certain circumstances, a Non-U.S. Holder might be eligible for refunds or credits of such taxes. Subject to the recently released proposed Treasury Regulations described below, FATCA

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will apply to gross proceeds from sales or other dispositions of Ellie Mae common stock after December 31, 2018. The United States Treasury Department recently released proposed regulations which, if finalized in their present form, would eliminate the federal withholding tax of 30% applicable to the gross proceeds of a sale or other disposition Ellie Mae common stock. In its preamble to such proposed regulations, the U.S. Treasury Department stated that taxpayers may generally rely on the proposed regulations until final regulations are issued.

Prospective investors are encouraged to consult with their own tax advisors regarding the possible implications of FATCA on the disposition of Ellie Mae common stock pursuant to the Merger.

## **Regulatory Approvals Required for the Merger**

### ***General***

Ellie Mae and Parent have agreed to take all action necessary to comply with all regulatory notification requirements, and, subject to certain limitations, to obtain all regulatory approvals required to consummate the Merger and the other transactions contemplated by the Merger Agreement. These approvals include approval under the HSR Act and any other applicable antitrust laws (whether domestic or foreign).

### ***HSR Act and U.S. Antitrust Matters***

Under the HSR Act and the rules promulgated thereunder, certain acquisitions may not be completed until information has been furnished to the Antitrust Division of the U.S. Department of Justice ( DOJ ) and the Federal Trade Commission ( FTC ), and the applicable HSR Act waiting period has expired or been terminated. The waiting period under the HSR Act is 30 calendar days, unless the waiting period is terminated earlier or extended by a request for additional information and documentary material. The Merger is subject to the provisions of the HSR Act and therefore cannot be completed until Ellie Mae and Parent file a notification and report form with the FTC and the DOJ under the HSR Act and the applicable waiting period has expired or been terminated. Ellie Mae and Thoma Bravo Fund XIII-A, L.P. made the necessary filings with the FTC and the Antitrust Division of the DOJ on February 21, 2019. Ellie Mae and Thoma Bravo Fund XIII-A, L.P. may also file pre-merger or post-merger notification filings, forms and submissions with other Governmental Authorities pursuant to other applicable antitrust laws in connection with the Merger to the extent required in the reasonable judgement of counsel to Parent and Ellie Mae. The Merger Agreement provides that Ellie Mae, Parent and Merger Sub will use reasonable best efforts to obtain regulatory clearance, including, to the extent necessary to obtain clearance of the Merger pursuant to the HSR Act and any other antitrust laws applicable to the Merger, including that Parent and Merger Sub will offer, commit to and effect, by consent decree, hold separate order or otherwise, (A) the sale, divestiture, license or other disposition of any and all of the capital stock or other equity or voting interest, assets (whether tangible or intangible), rights, products or businesses of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and Ellie Mae, on the other hand; and (B) any other restrictions on the activities of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and Ellie Mae, on the other hand; and (ii) contest, defend and appeal any Legal Proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Merger.

At any time before or after consummation of the Merger, notwithstanding the termination or expiration of the waiting period under the HSR Act, the FTC or the DOJ could take such action under the antitrust laws as it deems necessary or desirable in the public interest, including seeking to enjoin the completion of the Merger, seeking divestiture of substantial assets of the parties, or requiring the parties to license or hold separate assets or terminate existing relationships and contractual rights. At any time before or after the completion of the Merger, any state or foreign jurisdiction could take such action under the antitrust laws as it deems necessary or desirable in the public interest.



Such action could include seeking to enjoin the completion of the Merger or seeking divestiture of substantial assets of the parties. Private parties may also seek to take legal action under the antitrust laws under certain circumstances. We cannot be certain that a challenge to the Merger will not be made or that, if a challenge is made, we will prevail.

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*Other Regulatory Approvals*

One or more governmental agencies may impose a condition, restriction, qualification, requirement or limitation when it grants the necessary approvals and consents. Third parties may also seek to intervene in the regulatory process or litigate to enjoin or overturn regulatory approvals, any of which actions could significantly impede or even preclude obtaining required regulatory approvals. There is currently no way to predict how long it will take to obtain all of the required regulatory approvals or whether such approvals will ultimately be obtained and there may be a substantial period of time between the approval by stockholders and the completion of the Merger.

Although we expect that all required regulatory clearances and approvals will be obtained, we cannot assure you that these regulatory clearances and approvals will be timely obtained, obtained at all or that the granting of these regulatory clearances and approvals will not involve the imposition of additional conditions on the completion of the Merger, including the requirement to divest assets, or require changes to the terms of the Merger Agreement. These conditions or changes could result in the conditions to the Merger not being satisfied.

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**Table of Contents****PROPOSAL 1: ADOPTION OF THE MERGER AGREEMENT**

*The following summary describes the material provisions of the Merger Agreement. The descriptions of the Merger Agreement in this summary and elsewhere in this proxy statement are not complete and are qualified in their entirety by reference to the Merger Agreement, a copy of which is attached to this proxy statement as Annex A and incorporated into this proxy statement by reference. You should carefully read and consider the entire Merger Agreement, which is the legal document that governs the Merger, because this summary may not contain all the information about the Merger Agreement that is important to you. **The rights and obligations of the parties are governed by the express terms of the Merger Agreement and not by this summary or any other information contained in this proxy statement.***

*The representations, warranties, covenants and agreements described below and included in the Merger Agreement (1) were made only for purposes of the Merger Agreement and as of specific dates; (2) were made solely for the benefit of the parties to the Merger Agreement; and (3) may be subject to important qualifications, limitations and supplemental information agreed to by Ellie Mae, Parent and Merger Sub in connection with negotiating the terms of the Merger Agreement. In addition, the representations and warranties have been included in the Merger Agreement for the purpose of allocating contractual risk between Ellie Mae, Parent and Merger Sub rather than to establish matters as facts, and may be subject to standards of materiality applicable to such parties that differ from those applicable to investors. Stockholders are not third party beneficiaries under the Merger Agreement and should not rely on the representations, warranties, covenants and agreements or any descriptions thereof as characterizations of the actual state of facts or condition of Ellie Mae, Parent or Merger Sub or any of their respective affiliates or businesses. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Merger Agreement. In addition, you should not rely on the covenants in the Merger Agreement as actual limitations on the respective businesses of Ellie Mae, Parent and Merger Sub, because the parties may take certain actions that are either expressly permitted in the confidential disclosure letter to the Merger Agreement or as otherwise consented to by the appropriate party, which consent may be given without prior notice to the public. The Merger Agreement is described below, and included as Annex A, only to provide you with information regarding its terms and conditions, and not to provide any other factual information regarding Ellie Mae, Parent, Merger Sub or their respective businesses. Accordingly, the representations, warranties, covenants and other agreements in the Merger Agreement should not be read alone, and you should read the information provided elsewhere in this document and in our filings with the SEC regarding Ellie Mae and our business.*

**Effects of the Merger; Directors and Officers; Certificate of Incorporation; Bylaws**

The Merger Agreement provides that, subject to the terms and conditions of the Merger Agreement, and in accordance with the DGCL, at the Effective Time: (1) Merger Sub will be merged with and into Ellie Mae, with Ellie Mae becoming a wholly owned subsidiary of Parent; and (2) the separate corporate existence of Merger Sub will thereupon cease. From and after the Effective Time, the Surviving Corporation will possess all properties, rights, privileges, powers and franchises of Ellie Mae and Merger Sub, and all of the debts, liabilities and duties of Ellie Mae and Merger Sub will become the debts, liabilities and duties of the Surviving Corporation.

At the Effective Time, the board of directors of the Surviving Corporation will consist of the directors of Merger Sub as of immediately prior to the Effective Time, to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their successors are duly elected or appointed and qualified. At the Effective Time, the officers of Ellie Mae as of immediately prior to the Effective Time will be the officers of the Surviving Corporation, until their successors are duly appointed. At the Effective Time, the certificate of incorporation of Ellie Mae as the Surviving Corporation will be amended to read substantially identically to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, and the bylaws of

Merger Sub, as in effect immediately prior to the Effective Time, will become the bylaws of the Surviving Corporation, until thereafter amended.

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### **Closing and Effective Time**

The closing of the Merger will take place no later than the second business day following the satisfaction or waiver of all conditions to closing of the Merger (described below under the caption, **Conditions to the Closing of the Merger**) (other than those conditions to be satisfied at the closing of the Merger) or such other time agreed to in writing by Parent, Ellie Mae and Merger Sub. On the Closing Date, the parties will file a certificate of merger with the Secretary of State for the State of Delaware as provided under the DGCL. The time at which the Merger will become effective will occur upon the filing of a certificate of merger with the Secretary of State of the State of Delaware in accordance with the applicable provision of the DGCL (the time of such filing and the acceptance for record by the Secretary of State of the State of Delaware, or such later time as may be agreed in writing by Parent, Merger Sub and Ellie Mae and specified in the certificate of merger, being referred to herein as the **Effective Time**).

### **Merger Consideration**

#### ***Ellie Mae common stock***

At the Effective Time, and without any action required by any stockholder, each share of Ellie Mae common stock (other than Excluded Shares, which include, for example, shares of Ellie Mae common stock owned by stockholders who have properly and validly exercised their statutory rights of appraisal under Section 262 of the DGCL) outstanding as of immediately prior to the Effective Time will be cancelled and extinguished, and automatically converted into the right to receive the Per Share Merger Consideration, less any applicable withholding taxes.

#### ***Outstanding Company Options, Company RSU Awards, Company Restricted Stock Awards, and Company Performance Share Award***

At the Effective Time, each Vested Award (other than vested Company Options with a per share exercise price equal to or greater than \$99.00) will be cancelled and automatically converted into the right to receive the Vested Award Cash-out Payment (as described above).

At the Effective Time, each Unvested Award will be cancelled and automatically converted into the right to receive the applicable Cash Replacement Amount (as described above), subject to the vesting conditions described below. The Cash Replacement Amount will vest and be payable (subject to continued service) at the same time as the corresponding, cancelled Unvested Award would have vested and will have the same terms (including any vesting acceleration terms) that applied to the cancelled Unvested Award, except for terms rendered inoperative by reason of the Merger or for any applicable administrative or ministerial changes.

Any Company Option (whether vested or unvested) with a per share exercise price equal to or greater than \$99.00 will be cancelled immediately upon the Effective Time without payment or consideration.

At the Effective Time, each Company Performance Share Award and Company RSU Award that is outstanding immediately before the Effective Time and subject to performance-based vesting will become vested and nonforfeitable with respect to a number of shares of Ellie Mae common stock subject to such Company Performance Share Award or Company RSU Award, as applicable, calculated in accordance with their respective terms, and will be cancelled and converted automatically into the right to receive a cash amount equal to the Per Share Merger Consideration in respect of each vested share of Ellie Mae common stock subject to such Company Performance Share Award or Company RSU Award, subject to applicable tax withholding.

The Company Performance Share Awards granted in 2018 will be settled at a 165% of target level. The Company Performance Share Awards and performance-based Company RSU Awards granted in the first quarter of 2019 will be settled based on the level of achievement of the applicable performance metrics as reasonably determined by the Company or a committee thereof in good faith in accordance with the Company Equity Plans

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(provided that such level of achievement shall not exceed the greater of (1) 100% of target and (2) the actual achievement of the performance goals attributable to such Company Performance Share Awards and performance-based Company RSU Awards).

The Company Equity Plans will terminate as of the Effective Time.

### ***Treatment of Purchase Rights under the Employee Stock Purchase Plan***

The Merger Agreement generally provides that no new offering periods or purchase periods will begin under the ESPP after February 11, 2019, and no individual will be allowed to begin participating in the ESPP after February 11, 2019. After February 11, 2019, each ESPP participant will not be allowed to increase his or her payroll contribution rate from the rate in effect as of February 11, 2019, or make separate non-payroll contributions to the ESPP, except as required by applicable law. Any offering period that would otherwise be outstanding at the Effective Time will end no later than five days before the Effective Time. All outstanding purchase rights under the ESPP will be exercised no later than one business day before the Effective Time (with such purchase rights subject to any pro rata adjustments that may be necessary if the current offering period in progress is shortened), and the ESPP will terminate as of the Effective Time. Each share of Ellie Mae common stock purchased under the ESPP that remains outstanding as of immediately before the Effective Time will be cancelled at the Effective Time and converted into the right to receive \$99.00.

### **Exchange and Payment Procedures**

Prior to the closing of the Merger, Parent will designate a bank or trust company reasonably acceptable to Ellie Mae (the Payment Agent) to make payments of the Merger consideration to stockholders. At or prior to the Effective Time, Parent will deposit (or cause to be deposited) with the Payment Agent cash sufficient to pay the aggregate Per Share Merger Consideration to stockholders.

Promptly following the Effective Time (and in any event within three business days), the Payment Agent will mail to each holder of record (as of immediately prior to the Effective Time) a letter of transmittal in customary form and instructions for use in effecting the surrender of such holder's shares of Ellie Mae common stock represented by such holder's certificate(s) or book-entry shares in exchange for the Per Share Merger Consideration payable in respect of such shares. The amount of any Per Share Merger Consideration paid to stockholders may be reduced by any applicable withholding taxes.

If any cash deposited with the Payment Agent is not claimed within one year following the Effective Time, such cash will be returned to Parent, upon demand, and any holders of Ellie Mae common stock who have not complied with the exchange procedures in the Merger Agreement will thereafter look only to Parent as general creditor for payment of the Per Share Merger Consideration. Any cash deposited with the Payment Agent that remains unclaimed two years following the Effective Time will, to the extent permitted by applicable law, become the property of the Surviving Corporation free and clear of any claims or interest of any person previously entitled thereto.

### **Representations and Warranties**

The Merger Agreement contains representations and warranties of Ellie Mae, Parent and Merger Sub.

Some of the representations and warranties in the Merger Agreement made by Ellie Mae are qualified as to materiality or Company Material Adverse Effect. For purposes of the Merger Agreement, Company Material Adverse Effect means, with respect to Ellie Mae, any change, event, violation, inaccuracy, effect or circumstance that, individually or

in the aggregate have occurred prior to the date of determination of the occurrence of the Company Material Adverse Effect (1) is or would reasonably be expected to be materially adverse to the business, financial condition or results of operations of Ellie Mae or (2) would reasonably be



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expected to prevent or materially impair the consummation by Ellie Mae of the Merger prior to Termination Date, except that, with respect to clause (1) only, none of the following (by itself or when aggregated) will be deemed to be or constitute a Company Material Adverse Effect or will be taken into account when determining whether a Company Material Adverse Effect has occurred or may, would or could occur:

changes in general economic conditions in the United States or any other country or region in the world, or changes in conditions in the global economy generally;

changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world, including (1) changes in interest rates or credit ratings in the United States or any other country; (2) changes in exchange rates for the currencies of any country; or (3) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world;

changes in conditions in the industries in which Ellie Mae or its customers generally conducts business, including changes in conditions in the software and mortgage industries;

changes in regulatory, legislative or political conditions in the United States or any other country or region in the world;

any geopolitical conditions, outbreak of hostilities, acts of war, sabotage, terrorism or military actions (including any escalation or general worsening of any such hostilities, acts of war, sabotage, terrorism or military actions) in the United States or any other country or region in the world;

earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions and other force majeure events in the United States or any other country or region in the world;

any change, event, violation, inaccuracy, effect or circumstance resulting from the announcement of the Merger Agreement or the pendency of the Merger, including the impact thereof on the relationships, contractual or otherwise, of Ellie Mae with employees, suppliers, customers, partners, vendors or any other third person;

the compliance by Parent, Merger Sub or Ellie Mae with the terms of the Merger Agreement, including any action taken or refrained from being taken pursuant to or in accordance with the Merger Agreement;

any action taken or refrained from being taken, in each case to which Parent has expressly approved, consented to or requested in writing following the date of the Merger Agreement;

changes or proposed changes in GAAP or other accounting standards or in any applicable laws or regulations (or the enforcement or interpretation of any of the foregoing);

changes in the price or trading volume of Ellie Mae common stock, in and of itself (it being understood that any cause of such change may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred);

any failure, in and of itself, by Ellie Mae to meet (1) any public estimates or expectations of Ellie Mae's revenue, earnings or other financial performance or results of operations for any period; or (2) any internal budgets, plans, projections or forecasts of its revenues, earnings or other financial performance or results of operations (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred);

the availability or cost of equity, debt or other financing to Parent or Merger Sub;

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any transaction litigation or other legal proceeding threatened, made or brought by any of the current or former stockholders of Ellie Mae (on their own behalf or on behalf of Ellie Mae) against Ellie Mae, any of its executive officers or other employees or any member of the Board of Directors arising out of the Merger or any other transaction contemplated by the Merger Agreement; and

any matters expressly disclosed in the confidential disclosure letter to the Merger Agreement.

In the Merger Agreement, Ellie Mae has made customary representations and warranties to Parent and Merger Sub that are subject, in some cases, to specified exceptions and qualifications contained in the Merger Agreement. These representations and warranties relate to, among other things:

due organization, valid existence, good standing and authority and qualification to conduct business with respect to Ellie Mae;

Ellie Mae's corporate power and authority to enter into and perform the Merger Agreement, the enforceability of the Merger Agreement and the absence of conflicts with laws, Ellie Mae's organizational documents and Ellie Mae's contracts;

the organizational documents of Ellie Mae;

the necessary approval of the Board of Directors;

the rendering of J.P. Morgan's opinion to the Board of Directors;

the inapplicability of anti-takeover statutes to the Merger;

the necessary vote of stockholders in connection with the Merger Agreement;

the absence of any conflict, violation or material alteration of any organizational documents, existing contracts, applicable laws to Ellie Mae or the resulting creation of any lien upon Ellie Mae's assets due to the performance of the Merger Agreement;

required consents, approvals and regulatory filings in connection with the Merger Agreement and performance thereof;

the capital structure of Ellie Mae;

the absence of any undisclosed exchangeable security, option, warrant or other right convertible into Ellie Mae common stock;

the absence of any contract relating to the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or other similar rights with respect to any of Ellie Mae's securities;

the absence of subsidiaries of Ellie Mae;

the accuracy and required filings of Ellie Mae's SEC filings and financial statements;

Ellie Mae's disclosure controls and procedures;

Ellie Mae's internal accounting controls and procedures;

certain indebtedness of Ellie Mae;

the absence of specified undisclosed liabilities;

the conduct of the business of Ellie Mae in the ordinary course consistent with past practice and the absence of any change, event, development or state of circumstances that has had or would be reasonably expected to have, individually or in the aggregate, a Company Material Adverse Effect, in each case since October 1, 2018;

the existence and enforceability of specified categories of Ellie Mae's material contracts, and any notices with respect to termination or intent not to renew those material contracts therefrom;

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certain real property leased or subleased by Ellie Mae;

environmental matters;

trademarks, patents, copyrights and other intellectual property matters including data security requirements and privacy;

tax matters;

employee benefit plans;

labor matters;

Ellie Mae's compliance with laws, standards and requirements and possession of necessary permits;

litigation matters;

insurance matters;

absence of any transactions, relations or understandings between Ellie Mae or any affiliate or related person;

payment of fees to brokers in connection with the Merger Agreement; and

export controls matters and compliance with the Foreign Corrupt Practices Act of 1977.

In the Merger Agreement, Parent and Merger Sub have made customary representations and warranties to Ellie Mae that are subject, in some cases, to specified exceptions and qualifications contained in the Merger Agreement. These representations and warranties relate to, among other things:

due organization, good standing and authority and qualification to conduct business with respect to Parent and Merger Sub and availability of these documents;

Parent's and Merger Sub's corporate authority to enter into and perform the Merger Agreement, the enforceability of the Merger Agreement and the absence of conflicts with laws, Parent's or Merger Sub's organizational documents and Parent's or Merger Sub's contracts;

the absence of any conflict, violation or material alteration of any organizational documents, existing contracts, applicable laws or the resulting creation of any lien upon Parent or Merger Sub's assets due to the performance of the Merger Agreement;

required consents and regulatory filings in connection with the Merger Agreement;

the absence of litigation, orders and investigations;

ownership of capital stock of Ellie Mae;

payment of fees to brokers in connection with the Merger Agreement;

operations of Parent and Merger Sub;

the absence of any required consent of holders of voting interests in Parent or Merger Sub;

delivery and enforceability of each of the Equity Commitment Letter and the Guaranty;

matters with respect to Parent's financing and sufficiency of funds;

the absence of agreements between Parent and members of the Board of Directors or Ellie Mae management;

the absence of any stockholder or management arrangements related to the Merger;

the solvency of Parent and the Surviving Corporation following the consummation of the Merger and the transactions contemplated by the Merger Agreement; and

the exclusivity and terms of the representations and warranties made by Ellie Mae.

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The representations and warranties contained in the Merger Agreement will not survive the consummation of the Merger.

**Conduct of Business Pending the Merger**

The Merger Agreement provides that, except as: (1) expressly contemplated by the Merger Agreement; (2) required by applicable law; (3) approved by Parent (which approval will not be unreasonably withheld, conditioned or delayed); or (4) as disclosed in the confidential disclosure letter to the Merger Agreement, during the period of time between the date of the signing of the Merger Agreement and the Effective Time, Ellie Mae will:

use its commercially reasonable efforts to maintain its existence in good standing pursuant to applicable law;

subject to the restrictions and exceptions in the Merger Agreement, use commercially reasonable efforts to conduct its business and operations in the ordinary course of business; and

use its commercially reasonable efforts to preserve intact its current business organization, to keep available the services of its current officers and employees, and to preserve its present relationships with customers, vendors, distributors and other persons with which it has material business relationships.

In addition, Ellie Mae has also agreed that, except as (1) expressly contemplated by the Merger Agreement; (2) approved by Parent (which approval will not be unreasonably withheld, conditioned or delayed); (3) as disclosed in the confidential disclosure letter to the Merger Agreement; (4) to the extent necessary to comply with the express obligations set forth in any Material Contract in effect on the date of the Merger Agreement; or (5) as required by applicable law, during the period of time between the date of the signing of the Merger Agreement and the Effective Time, Ellie Mae will not, among other things:

amend the organizational documents of Ellie Mae;

liquidate, dissolve or reorganize;

issue, sell, deliver or grant any shares of capital stock or any options, warrants, commitments, subscriptions or rights to purchase any similar capital stock or securities of Ellie Mae other than as provided below;

adjust, split, combine, pledge, encumber or modify the terms of capital stock of Ellie Mae;

declare, set aside or pay any dividend or other distribution;

incur, assume or suffer any indebtedness or issue any debt securities;

(A) enter into, adopt, amend (including accelerating the vesting of), modify or terminate any compensation or benefit plan or arrangement of any director, officer, individual consultant or employee, (B) increase the compensation payable or to become payable or benefits or other similar arrangements provided or pay any special bonus or special remuneration or pay any benefit not required by (or accelerate the time of payment or vesting of any payment becoming due under) any employee plan as in effect as of the date of the Merger Agreement to directors, officers, employees or independent contractors or other individual service providers of Ellie Mae (other than, in each case of (A) and (B): (1) as may be required by applicable law or the terms of the applicable employee plan in effect; (2) in connection with any new employee hires in the ordinary course of business and consistent with past practice at the vice president level or below; or (3) for increases in compensation for employees at the vice president level or below in the ordinary course of business and consistent with past practice); or (C) enter into any change in control, severance or similar arrangement or any retention or similar agreement with any officer, employee, director or independent contractor or other individual service provider; provided that in each case of (A) through (C), Ellie Mae may (1) change



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the title of its employees, provided that such changes do not involve increases in compensation, acceleration of vesting or acceleration of payment and (2) make bonus or commission payments in the ordinary course of business consistent with past practice and set targets in accordance with existing employee plans;

effect certain layoffs without complying with applicable laws;

settle litigation involving Ellie Mae;

change accounting practices;

change tax elections or settle any tax claims;

make capital expenditures in excess of \$5 million in the aggregate, other than to the extent that such capital expenditures are otherwise reflected in Ellie Mae's capital expenditure budget, as previously disclosed to Parent;

enter into Material Contracts (as defined in the Merger Agreement) except in the ordinary course of business;

make any acquisitions by merger, consolidation or acquisition of stock or assets or enter into any joint ventures or similar arrangements other than investment in equity securities held in the ordinary course of business for cash management purposes, but not including strategic relationships, alliances, reseller agreements and similar commercial relationships;

enter into any collective bargaining agreement;

adopt or implement any stockholder rights plan or similar arrangement; or

enter into agreements to do any of the foregoing.

**The Go Shop Period Solicitation of Other Offers**

Under the Merger Agreement, from the date of the Merger Agreement until 12:00 p.m., Pacific time on March 18, 2019 (the No Shop Period Start Date), Ellie Mae and its Representatives have the right to, among other things: (1) solicit, initiate, propose or induce or knowingly encourage, facilitate or assist any inquiries regarding any Acquisition Proposal (as defined below), (2) engage in discussions or negotiations regarding, or provide any non-public information to, any person relating to, or that would reasonably be expected to lead to, an Acquisition Proposal, or (3) subject to entering into an Acceptable Confidentiality Agreement (as defined below), furnish to any person (other than to Parent, Merger Sub or any designees of Parent or Merger Sub) any nonpublic information

relating to Ellie Mae or afford to any person access to the business, properties, assets, books, records or other non-public information, or to any personnel, of Ellie Mae (other than Parent, Merger Sub or any designees of Parent or Merger Sub), in any such case with the intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal or any inquiries or the making of any proposal that would reasonably be expected to lead to an Acquisition Proposal, provided that Ellie Mae must, within 24 hours, provide to Parent, or provide Parent access to, any such non-public information that has not been previously provided to Parent or its representatives.

Ellie Mae is not entitled to terminate the Merger Agreement for the purpose of entering into an agreement in respect of a Superior Proposal (as defined below), unless it complies with certain procedures in the Merger Agreement, including, but not limited to, negotiating with Parent in good faith over a two business day period in an effort to amend the terms and conditions of the Merger Agreement, so that such Superior Proposal no longer constitutes

Superior Proposal relative to the transactions contemplated by the Merger Agreement, as amended pursuant to such negotiations.

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If Ellie Mae terminates the Merger Agreement for the purpose of entering into an agreement with any Person who is not a Restricted Party in respect of a Superior Proposal prior to the No Shop Period Start Date, Ellie Mae would be required to pay a termination fee of \$55 million to Parent. For more information, please see the section of this proxy statement captioned "The Board of Directors' Recommendation; Company Board Recommendation Change."

For purposes of this proxy statement and the Merger Agreement:

**Acceptable Confidentiality Agreement** means an agreement with Ellie Mae that contains customary provisions requiring the counterparty thereto (and any of its affiliates and representatives named therein) that receive material non-public information of or with respect to Ellie Mae to keep such information confidential, provided that with respect to agreements executed and delivered after the Merger Agreement, the provisions contained therein are no less restrictive in any material respect to such counterparty (and any of its affiliates and representatives named therein) than the terms of the confidentiality agreement entered into between Ellie Mae and Thoma Bravo (except that such agreement need not contain any "standstill" or similar provision or otherwise prohibit the making of any Acquisition Proposal).

**Acquisition Proposal** means any offer, proposal or indication of interest (other than an offer, proposal or indication of interest by Parent or Merger Sub) to engage in an Acquisition Transaction.

**Acquisition Transaction** means any transaction or series of related transactions (other than the Merger) involving:

(1) any direct or indirect purchase or other acquisition by any person or "group" (as defined pursuant to Section 13(d) of the Exchange Act) of persons, whether from Ellie Mae or any other person(s), of securities representing more than 20% of the total outstanding voting power of Ellie Mae after giving effect to the consummation of such purchase or other acquisition, including pursuant to a tender offer or exchange offer by any person or "group" of persons that, if consummated in accordance with its terms, would result in such person or "group" of persons beneficially owning more than 20% of the total outstanding voting power of Ellie Mae after giving effect to the consummation of such tender or exchange offer;

(2) any direct or indirect purchase, license or other acquisition by any person or "group" (as defined pursuant to Section 13(d) of the Exchange Act) of persons of assets constituting or accounting for more than 20% of the consolidated assets, revenue or net income of Ellie Mae taken as a whole (measured by the fair market value thereof as of the date of such purchase or acquisition); or

(3) any merger, consolidation, business combination, recapitalization, reorganization, liquidation, dissolution or other transaction involving Ellie Mae pursuant to which any person or "group" (as defined pursuant to Section 13(d) of the Exchange Act) of persons would hold securities representing more than 20% of the total outstanding voting power of Ellie Mae outstanding after giving effect to the consummation of such transaction.

**Restricted Party** means any Person who at any time prior to the date of the Merger Agreement has submitted a bona fide written Acquisition Proposal, including any direct or indirect Affiliates, Subsidiaries or portfolio companies of the foregoing.

**Superior Proposal** means any bona fide written Acquisition Proposal for an Acquisition Transaction that (1) is not solicited in violation of the obligations pursuant to the Merger Agreement in any material respect and (2) is on terms that the Board of Directors (or a committee thereof) has determined in good faith (after consultation with its financial advisor and outside legal counsel) is reasonably likely to be consummated in accordance with its terms, taking into account all legal, regulatory and financing aspects of the proposal (including certainty of closing) and the identity of

the person making the proposal and other aspects of the Acquisition Proposal that the Board of Directors (or a committee thereof) deems relevant, and if consummated, would be more favorable, from a financial point of view, to Ellie Mae stockholders (in their capacity as such) than the Merger (taking into

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account any revisions to the Merger Agreement made or proposed in writing by Parent prior to the time of such determination). For purposes of the reference to an Acquisition Proposal in this definition, all references to 20% in the definition of Acquisition Transaction will be deemed to be references to 80%.

**The No Shop Period No Solicitation of Other Offers**

From the date of the No Shop Period Start Date until the earlier to occur of the termination of the Merger Agreement and the Effective Time, Ellie Mae has agreed not to, and to cause its respective representatives not to:

solicit, initiate, propose or induce or knowingly encourage, facilitate or assist any inquiries regarding any proposal or offer that constitutes or would reasonably be expected to lead to an Acquisition Proposal;

participate or engage in discussions or negotiations regarding, or provide any non-public information to, any person relating to, or that would reasonably be expected to lead to, an Acquisition Proposal;

other than with respect to any Excluded Party (and in the case of an Excluded Party, only for so long as the applicable Person remains an Excluded Party), furnish to any person (other than to Parent, Merger Sub or any designees of Parent or Merger Sub) any non-public information relating to Ellie Mae or afford to any person access to the business, properties, assets, books, records or other non-public information, or to any personnel, of Ellie Mae (other than Parent, Merger Sub or any designees of Parent or Merger Sub), in any such case with the intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal or any inquiries or the making of any proposal that would reasonably be expected to lead to an Acquisition Proposal;

approve, endorse or recommend any proposal that constitutes, or is reasonably expected to lead to, an Acquisition Proposal; or

enter into any letter of intent, memorandum of understanding, Merger Agreement, acquisition agreement or other contract relating to an Acquisition Transaction (as defined below), other than certain permitted confidentiality agreements.

In addition, Ellie Mae has agreed to request the prompt return or destruction of all non-public information concerning Ellie Mae furnished to any person with whom a confidentiality agreement was entered into at any time within the six month period immediately preceding the No Shop Period Start Date was executed and will cease providing any further information with respect to Ellie Mae or any Acquisition Proposal to any such persons or their respective Representatives and will terminate all access granted to any such persons or their respective Representatives to any physical or electronic data room.

Notwithstanding these restrictions, under certain circumstances, prior to the adoption of the Merger Agreement by Ellie Mae stockholders, Ellie Mae may, among other things, provide information to, and engage or participate in negotiations or substantive discussions with, a person in respect of an Acquisition Proposal, and otherwise facilitate such Acquisition Proposal or assist such person (and its Representatives and financing sources) with such Acquisition

Proposal (in each case, if requested by such person and such Acquisition Proposal did not result from any material breach of Ellie Mae's obligations, as described in the immediately preceding paragraph) if (and only if), subject to complying with certain procedures described in the subsequent paragraph, the Board of Directors (or a committee thereof) determines in good faith (after consultation with its financial advisor and its outside legal counsel) that such Acquisition Proposal either constitutes a Superior Proposal or is reasonably likely to lead to a Superior Proposal, and, in each case, the failure to act in respect of such Acquisition Proposal would be inconsistent with the Board of Directors' fiduciary duties to stockholders under applicable law.

Ellie Mae is not entitled to terminate the Merger Agreement after the No Shop Period Start Date for the purpose of entering into an agreement in respect of a Superior Proposal, unless it complies with certain procedures in the

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Merger Agreement, including, but not limited to, negotiating with Parent in good faith over a two business day period in an effort to amend the terms and conditions of the Merger Agreement, so that such Superior Proposal no longer constitutes a Superior Proposal relative to the transactions contemplated by the Merger Agreement, as amended pursuant to such negotiations.

If Ellie Mae terminates the Merger Agreement after the No Shop Period Start Date but prior to the adoption of the Merger Agreement by Ellie Mae stockholders or with respect to a Restricted Party, before or after the No Shop Period Start Date but prior to the adoption of the Merger Agreement by Ellie Mae stockholders, in each case for the purpose of entering into an agreement in respect of a Superior Proposal, Ellie Mae must pay a \$110 million termination fee to Parent.

For purposes of this proxy statement and the Merger Agreement:

**Excluded Party** means any third party Person from whom Ellie Mae 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 bona fide Acquisition Proposal received after the execution of the Merger Agreement the Board of Directors has reasonably 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 the Merger Agreement applicable to Excluded Parties shall cease to apply with respect to such Person) if (1) such Acquisition Proposal made by such Person following the execution of the Merger Agreement but prior to the start of the No-Shop Period Start Date is withdrawn by written notice to Ellie Mae at any time or (B) such Acquisition Proposal made following the Merger Agreement, in the good faith reasonable determination of the 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 in light of the facts and circumstances available to, or known by, the Board of Directors.

**The Board of Directors Recommendation; Company Board Recommendation Change**

As described above, and subject to the provisions described below, the Board of Directors has made the recommendation that the holders of shares of Ellie Mae common stock vote **FOR** the proposal to adopt the Merger Agreement. The Merger Agreement provides that the Board of Directors will not effect a Company Board Recommendation Change except as described below.

Prior to the adoption of the Merger Agreement by stockholders, the Board of Directors may not take any action described in the following (any such action, a Company Board Recommendation Change ):

withhold, withdraw, amend, qualify or modify, or publicly propose to withhold, withdraw, amend, qualify or modify, the Ellie Mae recommendation in a manner adverse to Parent in any material respect;

adopt, approve, endorse, recommend or otherwise declare advisable an Acquisition Proposal;

fail to publicly reaffirm the Ellie Mae recommendation within ten business days after Parent so requests in writing (it being understood that Ellie Mae will have no obligation to make such reaffirmation on more than

three separate occasions);

take or fail to take any formal action or make or fail to make any recommendation or public statement in connection with a tender or exchange offer, other than a recommendation against such offer or a "stop, look and listen" communication by the Board of Directors (or a committee thereof) to Ellie Mae stockholders pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any substantially similar communication) (it being understood that the Board of Directors (or a committee thereof) may refrain from taking a position with respect to an Acquisition Proposal until the close of business on the tenth business day after the commencement of a tender or exchange offer in connection with such Acquisition Proposal without such action being considered a violation of the Merger Agreement); or



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fail to include the Ellie Mae recommendation in this proxy statement.

Notwithstanding the restrictions described above, prior to the adoption of the Merger Agreement by stockholders, the Board of Directors may effect a Company Board Recommendation Change if (1) there has been an Intervening Event (as defined below); or (2) Ellie Mae has received a bona fide Acquisition Proposal, whether before or after the No Shop Period Start Date, that the Board of Directors has concluded in good faith (after consultation with its financial advisor and outside legal counsel) is a Superior Proposal, in each case, to the extent a failure to effect a Company Board Recommendation Change would be inconsistent with the Board of Directors' fiduciary obligations under applicable law.

The Board of Directors may only effect a Board of Directors Recommendation Change for an Intervening Event if:

Ellie Mae has provided prior written notice to Parent at least two business days in advance to the effect that the Board of Directors (or a committee thereof) has (1) so determined; and (2) resolved to effect a Company Board Recommendation Change pursuant to Merger Agreement, which notice must specify the applicable Intervening Event in reasonable detail; and

prior to effecting such Company Board Recommendation Change, Ellie Mae and its Representatives, during such two business day period, must have (1) negotiated with Parent and its Representatives in good faith (to the extent that Parent desires to so negotiate) to make such adjustments to the terms and conditions of the Merger Agreement so that the Board of Directors (or a committee thereof) no longer determines that the failure to make a Company Board Recommendation Change in response to such Intervening Event would be inconsistent with its fiduciary obligations pursuant to applicable law; and (2) permitted Parent and its representatives to make a presentation to the Board of Directors regarding the Merger Agreement and any adjustments with respect thereto (to the extent that Parent requests to make such a presentation).

In addition, the Board of Directors may only effect a Company Board Recommendation Change or authorize Ellie Mae to terminate the Merger Agreement to enter into an agreement with respect to an Acquisition Proposal in response to a bona fide Acquisition Proposal that the Board of Directors has concluded in good faith (after consultation with its financial advisor and outside legal counsel) is a Superior Proposal, in each case if and only if:

the Board of Directors (or a committee thereof) has determined in good faith (after consultation with its financial advisor and outside legal counsel) that the failure to do so would be inconsistent with its fiduciary obligations pursuant to applicable law;

Ellie Mae has provided prior written notice to Parent at least two business days in advance to the effect that the Board of Directors (or a committee thereof) has (1) received a bona fide Acquisition Proposal that has not been withdrawn; (2) concluded in good faith that such Acquisition Proposal constitutes a Superior Proposal; and (3) resolved to effect a Company Board Recommendation Change or to terminate the Merger Agreement absent any revision to the terms and conditions of the Merger Agreement, which notice will specify the basis for such Company Board Recommendation Change or termination, including the identity of the person or group of persons making such Acquisition Proposal (unless such disclosure is prohibited pursuant to the terms of any confidentiality agreement with such person or group of persons that was in effect on the date of the Merger Agreement), the material terms thereof and copies of all relevant documents

relating to such Acquisition Proposal;

prior to effecting such Company Board Recommendation Change or termination, Ellie Mae and its Representatives, during the two business day notice period describe above, has: (1) negotiated with Parent and its Representatives in good faith (to the extent that Parent desires to so negotiate) to make such adjustments to the terms and conditions of the Merger Agreement so that such Acquisition Proposal would cease to constitute a Superior Proposal; and (2) permitted Parent and its

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Representatives to make a presentation to the Board of Directors regarding the Merger Agreement and any adjustments with respect thereto (to the extent that Parent requests to make such a presentation) provided, however, that in the event of any material revisions to such Acquisition Proposal, Ellie Mae will be required to deliver a new written notice to Parent and to comply with the requirements of the foregoing clause (1) (it being understood that the notice period in respect of such new written notice will be one business day);

in the event of any termination of the Merger Agreement in order to cause or permit Ellie Mae to enter into an acquisition agreement with respect to such Acquisition Proposal, Ellie Mae will have validly terminated the Merger Agreement in accordance with the terms of the Merger Agreement, including paying to Parent a termination fee of either (1) \$55 million if the Merger Agreement had been terminated prior to the No Shop Period Start Date for the purposes of entering into a definitive agreement with any Person who is not a Restricted Party in respect of a Superior Proposal or (2) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date; and

Ellie Mae has otherwise complied in all material respects with its obligations pursuant to the Merger Agreement with respect to such Acquisition Proposal.

For purposes of this proxy statement and the Merger Agreement, an Intervening Event means any positive material event or development or material change in circumstances with respect to Ellie Mae (other than in connection with a bona fide Acquisition Proposal that constitutes a Superior Proposal) that was (1) not actually known to, or reasonably expected by, the Board of Directors as of the date on which the Merger Agreement was executed; or (2) does not relate to (a) any Acquisition Proposal; or (b) the mere fact, in and of itself, that Ellie Mae meets or exceeds any internal or published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics for any period ending on or after the date of the Merger Agreement, or changes after the date of the Merger Agreement in the market price or trading volume of Ellie Mae common stock or credit rating of Ellie Mae, it being understood that the underlying cause of any of the foregoing in clause (b) may be considered and taken into account).

**Employee Benefits**

The Merger Agreement provides that Parent will cause the Surviving Corporation to honor all of the terms of Ellie Mae's benefit plans and compensation and severance arrangements following the Merger in accordance with their terms as in effect on February 11, 2019 and as set forth in the disclosure letter to the Merger Agreement, unless otherwise required pursuant to applicable law. In addition, from and after the Effective Time until December 31, 2019, each employee who continues employment following the Merger (a Continuing Employee) will be provided with employee benefit plans or other compensation and severance arrangements (other than equity-based benefits and individual employment agreements, except as provided in the first sentence of this paragraph) at benefit levels that are substantially comparable in the aggregate to those provided to the Continuing Employee immediately before the Effective Time, in each case, either through (1) Ellie Mae's benefit plans and arrangements in existence immediately before the Effective Time, (2) comparable plans, or some combination of (1) and (2). In each case, base compensation and target incentive compensation opportunity will not be decreased from and after the Effective Time until December 31, 2019 for any Continuing Employee employed during that period. From and after the Effective Time until December 31, 2019, eligible employees will receive severance benefits according to Ellie Mae's severance plans, guidelines and practices as in effect on February 11, 2019 that are described in the disclosure letter to the Merger Agreement.

The Surviving Corporation will grant any Continuing Employee credit for all service with Ellie Mae before the Effective Time for purposes of eligibility to participate, vesting and entitlement to benefits where length of service is relevant (including for purposes of vacation accrual and severance pay entitlement), except where the service credit would result in duplication of coverage or benefits. Each Continuing Employee will be immediately eligible to participate, without any waiting period, in any and all employee benefit plans sponsored

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by the Surviving Corporation (other than Ellie Mae's benefit plans and arrangements in existence immediately before the Effective Time) to the extent that coverage under any of the employee benefit plans sponsored by the Surviving Corporation replaces coverage under a comparable Ellie Mae benefit plan or arrangement in which the Continuing Employee participates immediately before the Effective Time. For purposes of each employee benefit plan sponsored by the Surviving Corporation that provides medical, dental, pharmaceutical, vision or disability benefits to any Continuing Employee, all waiting periods, pre-existing condition exclusions, evidence of insurability requirements and actively-at-work or similar requirements of the plan will be waived for the Continuing Employee and his or her covered dependents, and full credit will be given for any eligible expenses incurred by the Continuing Employee and his or her covered dependents during the portion of the plan year of the comparable Ellie Mae benefit plan or arrangement in which the Continuing Employee participates immediately before the Effective Time that ends on the date that the Continuing Employee's participation in the corresponding employee benefit plan sponsored by the Surviving Corporation begins for purposes of satisfying all deductible, coinsurance, co-pay, offsets and maximum out-of-pocket requirements applicable to the Continuing Employee and his or her covered dependents for the applicable plan year as if the amounts had been paid according to the employee benefit plan of the Surviving Corporation (provided that the Surviving Corporation shall only be required to use commercially reasonable efforts to take such actions). The account of each Continuing Employee under any flexible spending plan sponsored will be credited by the Surviving Corporation with any unused balance in the account of the Continuing Employee. Any vacation or paid time off accrued but unused by a Continuing Employee as of immediately before the Effective Time will be credited to the Continuing Employee following the Effective Time, and will not be subject to accrual limits or other forfeiture and will not limit future accruals (except to the extent that the limits or forfeitures applied under Ellie Mae's benefit plans and arrangements in effect as of February 11, 2019).

## **Efforts to Close the Merger**

Under the Merger Agreement, Parent, Merger Sub and Ellie Mae agreed to use reasonable best efforts to take all actions and assist and cooperate with the other parties, in each case as necessary, proper and advisable pursuant to applicable law or otherwise to consummate the Merger.

## **Cooperation with Debt Financing**

Although the obligation of Parent and Merger Sub to consummate the Merger is not subject to any financing condition (including, without limitation, consummation of any debt financing), Ellie Mae has agreed that it will use its reasonable best efforts to, and will use its reasonable best efforts to cause its representatives to, among other things:

provide Parent and Merger Sub with such reasonable cooperation as may be reasonably requested by Parent or Merger Sub to assist them in arranging the debt financing (if any) to be obtained by Parent, Merger Sub or their respective affiliates in connection with the Merger (the Debt Financing);

participate (and cause senior management of Ellie Mae and its representatives with appropriate seniority and expertise to participate) in a reasonable number of meetings and presentations with actual or prospective lenders, road shows and due diligence sessions, drafting sessions and sessions with rating agencies, and otherwise cooperate with the marketing and due diligence efforts for any of the Debt Financing;

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assist Parent and Parent's financing sources with the timely preparation of customary (A) rating agency presentations, bank information memoranda, confidential information memoranda, lender presentations and similar documents required in connection with the Debt Financing; and (B) pro forma financial statements and forecasts of financial statements of the Surviving Corporation for one or more periods following the Effective Time;

assist Parent in connection with the preparation, registration, execution and delivery of definitive financing documents and related documentation as may be reasonably requested by Parent or its

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financing sources and otherwise facilitate the pledging of collateral and the granting of security interests in respect of the Debt Financing;

cooperate with Parent to obtain customary and reasonable corporate and facilities ratings, consents, landlord waivers and estoppels, non-disturbance agreements, non-invasive environmental assessments, non-imputation affidavits, legal opinions, surveys and title insurance as reasonably requested by Parent;

facilitate the granting of security interests (and perfection thereof) in collateral or the reaffirmation of the pledge of collateral on or after the Effective Time; facilitate the payoff, discharge and termination in full at the closing of all indebtedness required to be repaid, and the release of all liens and encumbrances required to be released, at the closing;

deliver notices of prepayment within the time periods required by the relevant agreements governing indebtedness and obtain customary payoff letters, lien terminations and instruments of discharge to be delivered at the Effective Time, give any other necessary notices to allow for the payoff, discharge and termination in full of all indebtedness required to be repaid at the Effective Time and release all liens and encumbrances in connection therewith, and cooperate in the replacement, backstop, or cash collateralization of any outstanding letters of credit;

provide customary authorization letters, confirmations and undertakings to Parent's financing sources in connection with the distribution of information to prospective lenders;

facilitate and assist in the preparation, execution, and delivery of credit agreements, guarantees, certificates, and other definitive financing documents;

ensure that the Debt Financing benefits from Ellie Mae's existing lending relationships;

take all corporate and other organizational actions, subject to the occurrence of the closing, reasonably requested by Parent or Merger Sub to (A) permit the consummation of the Debt Financing; and (B) cause the direct borrowing or incurrence of all of the proceeds of the Debt Financing by the Surviving Corporation concurrently with or immediately following the Effective Time, in each of case (A) and (B), including, facilitating the execution and delivery of documents reasonably related to the debt financing on the terms contemplated by any debt commitment letters, in connection with the authorization of the debt financing and debt documents and execution and delivery of the debt documents in anticipation of the closing;

promptly furnish Parent, Merger Sub and Parent's financing sources with all documentation and other information about Ellie Mae as is reasonably requested by Parent, Merger Sub or Parent's financing sources relating to applicable know your customer and anti-money laundering rules and regulations; and

cooperate in satisfying the conditions precedent set forth in the definitive agreements relating to the Debt Financing to the extent satisfaction thereof requires the cooperation, or is within the control, of Ellie Mae, or its representatives;

Additionally, Ellie Mae has agreed that it will use its best efforts to, and will use its best efforts to cause its representatives to furnish Parent, Merger Sub and their financing sources, as promptly as practicable, with (1) financial and other pertinent and customary regarding Ellie Mae as may be reasonably requested by Parent or Parent's financing sources to the extent that such information is of the type and form customarily included in a bank confidential information memorandum in connection with the arrangement of financing similar to the Debt Financing or in rating agency presentations, lender presentations or other customary marketing materials, and (2) financial statements regarding Ellie Mae necessary to satisfy the conditions of the debt commitment letter related to the debt financing as in effect on February 11, 2019, and such other information customarily delivered and reasonably necessary for the preparation of a bank information memorandum, including the required financials in the debt comment letter related to the debt financing.



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Notwithstanding the foregoing, Ellie Mae is not required to (1) waive or amend any terms of the Merger Agreement or agree to pay any fees or reimburse any expenses prior to the Effective Time for which they have not received prior reimbursement or are not otherwise indemnified by or on behalf of Parent; (2) enter into any definitive agreement or distribute any cash (except to the extent subject to concurrent reimbursement by Parent) that will be effective prior to the Effective Time; (3) give any indemnities in connection with the cooperation requirements described herein that are, in each case, effective prior to the Effective Time; (4) take any action that, in their good faith determination would unreasonably interfere with the conduct of their business or create an unreasonable risk of damage or destruction to any of their property or assets; or (5) take any action that will conflict with or violate their respective organizational documents or any applicable laws or would result in a material violation or breach of, or default under, any material agreement to which Ellie Mae is a party. In addition, (1) no action, liability or obligation of Ellie Mae or any of its respective representatives pursuant to any certificate, agreement, arrangement, document or instrument relating to the Debt Financing or any of the actions required to be taken by Ellie Mae pursuant to the cooperation requirements described herein (other than customary representation letters, authorization letters and undertakings) will be effective until the Effective Time, and Ellie Mae will not be required to take any action pursuant to any certificate, agreement, arrangement, document or instrument (other than customary representation letters, authorization letters and undertakings) that is not contingent on the occurrence of the closing or that must be effective prior to the Effective Time; and (2) any bank information memoranda required in relation to the Debt Financing will contain disclosure reflecting the Surviving Corporation as the obligor. No officer or representative of Ellie Mae shall be required to deliver any certificate or opinion or take any other action pursuant to the cooperation requirements described herein that could reasonably be expected to result in personal liability to such officer or representative and the Board of Directors shall not be required to approve any financing or agreements related thereto, that are, in each case, effective prior to the Effective Time.

In addition, Parent shall (1) reimburse Ellie Mae for any documented and reasonable out-of-pocket costs and expenses (including attorneys' fees) incurred by Ellie Mae in connection with the cooperation requirements described herein and (2) indemnify Ellie Mae and its representatives from and against any and all liabilities, losses, damages, claims, costs, expenses (including attorneys' fees), interest, awards, judgments, penalties and amounts paid in settlement suffered or incurred by them in connection with any cooperation described herein, except to the extent resulting from Ellie Mae's or any of its representatives gross negligence or willful and material misconduct.

**Indemnification and Insurance**

The Merger Agreement provides that all existing rights to exculpation, indemnification and the advancement of expenses for acts or omissions occurring at or prior to the Effective Time existing as of the signing of the Merger Agreement in favor of the current or former directors, officers or employees of Ellie Mae (in each case, as provided in the respective organizational documents of Ellie Mae) or in any indemnification agreement between Ellie Mae and the current or former directors, officers or employees of Ellie Mae on the date on which the Merger Agreement was signed, will survive the Merger and will continue in full force and effect for a period of six years from the Effective Time, in each case, except as otherwise required by applicable law.

In addition, the Merger Agreement provides that, during the six-year period commencing at the Effective Time, the Surviving Corporation will (and Parent must cause the Surviving Corporation to) indemnify and hold harmless each current or former director, officer or employee of Ellie Mae, to the fullest extent permitted by law, from and against all costs, fees and expenses (including attorneys' fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement or compromise in connection with any legal proceeding arising, directly or indirectly, out of or pertaining, directly or indirectly, to (1) any action or omission, or alleged action or omission, in such indemnified person's capacity as a director, officer, employee or agent of Ellie Mae or other affiliates to the extent that such action or omission, or alleged action or omission, occurred prior to or at the Effective Time; and

(2) the Merger, as well as any actions taken by Ellie Mae, Parent or Merger Sub with respect thereto. The Merger Agreement also provides that the Surviving Corporation will

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(and Parent must cause the Surviving Corporation to) advance all fees and expenses (including fees and expenses of any counsel) as incurred by any such indemnified person in the defense of such legal proceeding.

In addition, without limiting the foregoing, unless Ellie Mae has purchased a tail policy prior to the Effective Time (which Ellie Mae may purchase, provided that the premium for such insurance does not exceed 300% of the aggregate annual premiums currently paid), the Merger Agreement requires Parent to cause the Surviving Corporation to maintain, on terms no less advantageous to the indemnified parties, Ellie Mae's directors' and officers' insurance policies for a period of at least six years commencing at the Effective Time. Neither Parent nor the Surviving Corporation will be required to pay premiums for such policy to the extent such premiums exceed, on an annual basis, 300% of the aggregate annual premiums currently paid by Ellie Mae, and if the premium for such insurance coverage would exceed such amount, Parent shall be obligated to cause the Surviving Corporation to obtain the greatest coverage available for a cost equal to such amount.

For more information, please refer to the section of this proxy statement captioned "The Merger: Interests of Ellie Mae's Directors and Executive Officers in the Merger."

## **Other Covenants**

### ***Stockholders Meeting***

Ellie Mae has agreed to take all necessary action (in accordance with applicable law and Ellie Mae's organizational documents) to establish a record date for, duly call, give notice of, convene and hold a special meeting of the stockholders as promptly as reasonably practicable following the mailing of this proxy statement for the purpose of voting upon the adoption of the Merger Agreement, and approval of the Merger.

### ***Stockholder Litigation***

Ellie Mae will: (1) provide Parent with prompt notice of all stockholder litigation relating to the Merger Agreement; (2) keep Parent reasonably informed with respect to status thereof; (3) give Parent the opportunity to participate in the defense, settlement or prosecution of any such litigation; and (4) will consult with Parent with respect to the defense, settlement or prosecution of such litigation. Ellie Mae may not settle any such litigation without Parent's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

## **Conditions to the Closing of the Merger**

The obligations of Parent and Merger Sub, on the one hand, and Ellie Mae, on the other hand, to consummate the Merger is subject to the satisfaction or waiver (where permitted by applicable law) of each of the following conditions:

the adoption of the Merger Agreement by the requisite affirmative vote of stockholders;

the expiration or termination of the applicable waiting period under the HSR Act; and

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the consummation of the Merger not being restrained, enjoined, rendered illegal or otherwise prohibited by any law or order of any governmental authority.

In addition, the obligations of Parent and Merger Sub to consummate the Merger are subject to the satisfaction or waiver (where permitted by applicable law) of each of the following additional conditions:

the representations and warranties of Ellie Mae relating to organization, good standing, corporate power, enforceability, anti-takeover laws, no other securities, no voting agreement and brokers being generally true and correct in all material respects as of the date on which the closing occurs as if made at and as of such time;

the representations and warranties of Ellie Mae relating to the absence of any Company Material Adverse Effect being true and correct in all respects from October 1, 2018 through February 11, 2019;

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the representations and warranties of Ellie Mae relating to certain aspects of Ellie Mae's capitalization being generally true and correct in all respects as of the date on which the closing occurs, except where the failure to be so true and correct in all respects would not reasonably be expected to result in additional cost, expense or liability to Ellie Mae, Parent and their affiliates, individually or in the aggregate, that is more than \$10 million;

the other representations and warranties of Ellie Mae set forth elsewhere in the Merger Agreement being true and correct as of the date on which the closing occurs as if made at and as of such time, except for such failures to be true and correct that would not have a Company Material Adverse Effect;

Ellie Mae having performed and complied in all material respects with all covenants, obligations and conditions of the Merger Agreement and complied with by Ellie Mae;

the receipt by Parent and Merger Sub of a certificate of Ellie Mae, validly executed for and on behalf of Ellie Mae and in its name by a duly authorized executive officer thereof, certifying that the conditions described in the preceding five bullets have been satisfied; and

the absence of any Company Material Adverse Effect having occurred after the date of Merger Agreement that is continuing as of the Effective Time.

In addition, the obligation of Ellie Mae to consummate the Merger is subject to the satisfaction or waiver (where permitted by applicable law) of each of the following additional conditions:

the representations and warranties of Parent and Merger Sub set forth in the Merger Agreement being true and correct on and as of the date on which the closing occurs with the same force and effect as if made on and as of such date, except for any failure to be so true and correct that would not, individually or in the aggregate, prevent or materially impair the consummation of the Merger or the ability of Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to the Merger Agreement;

Parent and Merger Sub having performed and complied in all material respects with all covenants, obligations and conditions of the Merger Agreement required to be performed and complied with by Parent or Merger Sub at or prior to the Effective Time; and

the receipt by Ellie Mae of a certificate of Parent and Merger Sub, validly executed for and on behalf of Parent and Merger Sub and in their respective names by a duly authorized executive officer thereof, certifying that the conditions described in the preceding two bullets have been satisfied.

**Termination of the Merger Agreement**

The Merger Agreement may be terminated at any time prior to the Effective Time, whether before or after the adoption of the Merger Agreement by stockholders, in the following ways:

by mutual written agreement of Ellie Mae and Parent;

by either Ellie Mae or Parent if:

prior to the Effective Time, (1) any permanent injunction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger is in effect, that, prohibits, makes illegal or enjoins the consummation of the Merger and has become final and non-appealable; or (2) any statute, rule, regulation or order is enacted, entered, enforced or deemed applicable to the Merger that prohibits, makes illegal or enjoins the consummation of the Merger;

the Merger has not been consummated by 11:59 p.m., Pacific time, on August 11, 2019 (the Termination Date ); or

stockholders fail to adopt the Merger Agreement at the Special Meeting or any adjournment or postponement thereof;

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by Ellie Mae if:

Parent or Merger Sub has breached or failed to perform any of its respective representations, warranties, covenants or other agreements set forth in the Merger Agreement such that certain conditions set forth in the Merger Agreement are not satisfied, and such breach is not capable of being cured, or is not cured, before the earlier of the Termination Date or the date that is 45 calendar days following Ellie Mae's delivery of written notice of such breach (or such shorter period of time as remains prior to the Termination Date); or

prior to the adoption of the Merger Agreement by stockholders and so long as Ellie Mae is not then in material breach of its obligations related to Acquisition Proposals and Superior Proposals, in order to enter into a definitive agreement with respect to a Superior Proposal in accordance with the terms of the Merger Agreement, subject to Ellie Mae paying to Parent a termination fee of either (1) \$55 million if the Merger Agreement had been terminated prior to the No Shop Period Start Date with any Person who is not a Restricted Party in respect of a Superior Proposal or (2) \$110 million if the Merger Agreement is terminated after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date; or

prior to the Effective Time the closing obligations of Ellie Mae have been satisfied, Parent has failed to consummate the Merger under the timing restrictions, Ellie Mae has notified the Parent in writing that it is ready and able to consummate the Merger by satisfying its obligations under the Merger Agreement and those pursuant to the Equity Commitment Letter and has provided at least three business days written notice that it intends to terminate the Merger Agreement, and the Merger is not consummated by the end of such three business day period.

by Parent if:

Ellie Mae has breached or failed to perform any of its representations, warranties, covenants or other agreements set forth in the Merger Agreement such that certain conditions set forth in the Merger Agreement are not satisfied and such breach is not capable of being cured, or is not cured, before the earlier of the Termination Date or the date that is 45 calendar days following Parent's delivery of written notice of such breach (or such shorter period of time as remains prior to the Termination Date); or

prior to the adoption of the Merger Agreement by stockholders, the Board of Directors effects a Company Board Recommendation Change (except that such right to terminate will expire at 5:00 p.m., Pacific time, on the 10th business day following that Company Board Recommendation Change).

In the event that the Merger Agreement is terminated pursuant to the termination rights above, the Merger Agreement will be of no further force or effect without liability of any party to the other parties, as applicable, except certain sections of the Merger Agreement will survive the termination of the Merger Agreement in accordance with their respective terms, including terms relating to reimbursement of expenses and indemnification. Notwithstanding the foregoing, nothing in the Merger Agreement will relieve any party from any liability for any willful and material

breach of the Merger Agreement. In addition, no termination of the Merger Agreement will affect the rights or obligations of any party pursuant to the confidentiality agreement between Thoma Bravo and Ellie Mae or the Guaranty, which rights, obligations and agreements will survive the termination of the Merger Agreement in accordance with their respective terms.

### **Termination Fee**

If Ellie Mae terminates the Merger Agreement prior to the No Shop Period Start Date for the purposes of entering into a definitive agreement with any Person who is not a Restricted Party in respect of a Superior Proposal, Ellie Mae would be required to pay a \$55 million termination fee to Parent. If the Merger Agreement is terminated (1) after the No Shop Period Start Date but prior to the adoption of the Merger Agreement by Ellie Mae stockholders for the purposes of entering a definitive agreement in respect of a Superior Proposal or (2) under specified circumstances including the instances described below, Ellie Mae must pay a \$110 million termination fee to Parent.



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Parent will be entitled to receive a \$110 million termination fee from Ellie Mae if the Merger Agreement is terminated:

(1) (a) by either Parent or Ellie Mae because (i) the closing of the Merger has not occurred by the Termination Date; or (ii) the stockholders fail to adopt the Merger Agreement; or (b) by Parent because Ellie Mae has materially breached its representations, warranties, covenants or agreements in the Merger Agreement; (2) a person has made (since the date of the Merger Agreement and prior to its termination) an Acquisition Proposal that is not withdrawn or otherwise abandoned; and (3) Ellie Mae enters into an agreement relating to, or consummates, an Acquisition Transaction within 12 months of such termination (provided that, for purposes of the termination fee, all references to 20% in the definition of Acquisition Transaction are deemed to be references to 50% );

by Parent, because the Board of Directors has effected a Company Board Recommendation Change (which termination must occur by 5:00 p.m., Pacific time, on the 10th business day following the date on which such right to terminate first arose); or

by Ellie Mae, to enter into a definitive agreement in respect of a Superior Proposal after the No Shop Period Start Date or, with respect to a Restricted Party, before or after the No Shop Period Start Date.

Ellie Mae will be entitled to receive a \$256 million termination fee from Parent (the Parent Termination Fee ) if the Merger Agreement is terminated:

by Ellie Mae if prior to the Effective Time, (1) the closing obligations of Ellie Mae have been satisfied, (2) Parent has failed to consummate the Merger under the timing restrictions, (3) Ellie Mae has notified the Parent in writing that it is ready and able to consummate the Merger by satisfying its obligations under the Merger Agreement and those pursuant to the equity commitment later and has provided at least three (3) business days written notice that it intends to terminate the Merger Agreement, and (4) the Merger is not consummated by the end of such three (3) business day period; or

by Ellie Mae if Parent or Merger Sub has breached or failed to perform any of its respective representations, warranties, covenants or other agreements set forth in the Merger Agreement such that certain conditions set forth in the Merger Agreement are not satisfied, and such breach is not capable of being cured, or is not cured, before the earlier of the Termination Date or the date that is 45 calendar days following Ellie Mae's delivery of written notice of such breach (or such shorter period of time as remains prior to the Termination Date).

**Specific Performance**

Parent, Merger Sub and Ellie Mae 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 do not perform the provisions of the Merger Agreement (including any party failing to take such actions as are required of it in order to consummate the Merger Agreement). Parent, Merger Sub and Ellie Mae acknowledge and agree that: (1) the parties will 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 the Merger Agreement and to enforce specifically the terms and provisions thereof; (2) the fees and expenses provisions of the Merger Agreement are not intended to and would not adequately compensate Ellie Mae, on the one hand, or Parent and Merger Sub, on the other hand, for the harm that would result from a breach of the Merger Agreement, and will not be construed to diminish or otherwise impair in any respect any party's right to an injunction, specific performance and other equitable relief; and (3) the right of specific enforcement is an integral part of the Merger and without that right, neither Ellie Mae nor Parent would have entered into the Merger Agreement. It is explicitly agreed that Ellie Mae will have the right to an injunction, specific performance or other equitable remedies in connection with enforcing Parent's and Merger Sub's obligations to consummate the Merger and cause the equity financing to be funded to fund the Merger (including to cause Parent to enforce the obligations of the Thoma Bravo Fund under the Equity Commitment Letter in order to cause the equity financing to be

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timely completed in accordance with and subject to the terms and conditions set forth in the Equity Commitment Letter). Notwithstanding the foregoing and subject to the rights of the parties to the definitive agreements for any debt financing under the terms thereof, none of Ellie Mae and its Affiliates and their direct and indirect equityholders will have any rights or claims (whether in contract or in tort or otherwise) against any financing source, solely in their respective capacities as lenders or arrangers in connection with the debt financing, and in no event shall Ellie Mae, any of its Affiliates or its or their direct or indirect equityholders be entitled to directly seek the remedy of specific performance of the Merger Agreement against any financing source.

Parent, Merger Sub and Ellie Mae agree not to raise any objections to (1) the granting of an injunction, specific performance or other equitable relief to prevent or restrain breaches or threatened breaches of the Merger Agreement by Ellie Mae, on the one hand, or Parent and Merger Sub, on the other hand; and (2) the specific performance of the terms and provisions of the merger Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants, obligations and agreements of Parent and Merger Sub pursuant to the Merger Agreement. Any party seeking an injunction or injunctions to prevent breaches of the Merger Agreement and to enforce specifically the terms and provisions of the Merger Agreement will not be required to provide any bond or other security in connection with such injunction or enforcement, and each party irrevocably waives any right that it will have to require the obtaining, furnishing or posting of any such bond or other security.

## **Limitations of Liability**

The maximum aggregate monetary damages of Parent and Merger Sub for breaches under the Merger Agreement, the Guaranty or the Equity Commitment Letter will not exceed, in the aggregate for all such breaches, an amount equal to \$256 million. The maximum aggregate monetary damages of Ellie Mae for breaches under the Merger Agreement (taking into account the payment of the termination fee, if applicable) will not exceed an amount equal to \$110 million in the aggregate for all such breaches and any indemnification. The maximum aggregate monetary damages of Ellie Mae for termination of the Merger Agreement for the purposes of entering into a definitive agreement with any Person who is not a Restricted Party in respect of a Superior Proposal during the go-shop period will not exceed \$55 million. Notwithstanding such limitations on liability for monetary damages, Parent, Merger Sub and Ellie Mae may be entitled to an injunction, specific performance or other equitable relief as provided in the Merger Agreement.

## **Fees and Expenses**

Except in specified circumstances, whether or not the Merger is completed, Ellie Mae, on the one hand, and Parent and Merger Sub, on the other hand, are each responsible for all of their respective costs and expenses incurred in connection with the Merger and the other transactions contemplated by the Merger Agreement.

## **Amendment**

The Merger Agreement may be amended by the parties in an executed written instrument at any time before or after adoption of the Merger Agreement by stockholders. However, after adoption of the Merger Agreement by stockholders, no amendment that requires further approval by such stockholders pursuant to the DGCL may be made without such approval.

## **Governing Law**

The Merger Agreement is governed by Delaware law.

**The Board of Directors unanimously recommends that you vote FOR this proposal.**



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**PROPOSAL 2: THE ELLIE MAE COMPENSATION PROPOSAL**

Under Section 14A of the Exchange Act and the applicable SEC rules issued thereunder, Ellie Mae is required to submit a proposal to our stockholders to approve, on an advisory (non-binding) basis, the compensation that may be paid or become payable to Ellie Mae's named executive officers that is based on or otherwise relates to the Merger Agreement and the transactions contemplated by the Merger Agreement. This compensation is summarized in the section captioned "The Merger Interests of Ellie Mae's Directors and Executive Officers in the Merger". The Board of Directors encourages you to review carefully the named executive officer merger-related compensation information disclosed in this proxy statement. Accordingly, Ellie Mae is asking you to approve the following resolution:

RESOLVED, that the stockholders of Ellie Mae approve, on a non-binding, advisory basis the compensation that will or may become payable to Ellie Mae's named executive officers that is based on or otherwise relates to the merger as disclosed pursuant to Item 402(t) of Regulation S-K in the section entitled "The Merger Interest of Ellie Mae's Directors and Executive Officers in the Merger."

The vote on this Compensation 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 this Compensation Proposal and vice versa. Because the vote on the Compensation Proposal is advisory only, it will not be binding on Ellie Mae. Accordingly, if the Merger Agreement is adopted and the Merger is completed, the compensation will be payable, subject only to the conditions applicable thereto, regardless of the outcome of the vote on this Compensation Proposal.

**Vote Required and Board of Directors Recommendation**

Approval, on an advisory (non-binding) basis, of the Compensation Proposal requires the affirmative vote of the outstanding shares of Ellie Mae common stock representing a majority of the outstanding shares present at the Special Meeting in person or by proxy, provided a quorum is present. Assuming a quorum is present, (1) a failure to vote in person or by proxy at the Special Meeting will have no effect on the outcome of the Compensation Proposal, (2) abstentions will be treated as votes cast and, therefore, will have the same effect as a vote against the Compensation Proposal and (3) broker non-votes (if any) will have no effect on the outcome of the Compensation Proposal. Shares of Ellie Mae common stock represented by properly executed, timely received and unrevoked proxies will be voted in accordance with the instructions indicated thereon. If a Ellie Mae stockholder returns a signed proxy card without indicating voting preferences on such proxy card, the shares of Ellie Mae common stock represented by that proxy will be counted as present for purposes of determining the presence of a quorum for the Special Meeting and all of such shares will be voted as recommended by the Board of Directors.

**The Board of Directors unanimously recommends that you vote FOR this proposal.**

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**PROPOSAL 3: ADJOURNMENT OF THE SPECIAL MEETING**

We are asking you to approve a proposal to adjourn the Special Meeting to a later date or dates if necessary or appropriate to solicit additional proxies if there are insufficient votes to adopt the Merger Agreement at the time of the Special Meeting. If stockholders approve the adjournment proposal, we could adjourn the Special Meeting and any adjourned session of the Special Meeting and use the additional time to solicit additional proxies, including soliciting proxies from stockholders that have previously returned properly executed proxies voting against adoption of the Merger Agreement. Among other things, approval of the adjournment proposal could mean that, even if we had received proxies representing a sufficient number of votes against adoption of the Merger Agreement such that the proposal to adopt the Merger Agreement would be defeated, we could adjourn the Special Meeting without a vote on the adoption of the Merger Agreement and seek to convince the holders of those shares to change their votes to votes in favor of adoption of the Merger Agreement. Additionally, we may seek to adjourn the Special Meeting if a quorum is not present or otherwise at the discretion of the chairman of the Special Meeting.

**The Board of Directors unanimously recommends that you vote FOR this proposal.**

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**MARKET PRICES AND DIVIDEND DATA**

Ellie Mae common stock is listed on NYSE under the symbol ELLI. As of February 13, 2019, there were 34,887,444 shares of Ellie Mae common stock outstanding held by approximately 40 stockholders of record. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares are held in street name by brokers and other nominees. We have never declared or paid any cash dividends on Ellie Mae common stock.

On [ ], 2019, the latest practicable trading day before the mailing of this proxy statement, the closing price for Ellie Mae common stock on NYSE was \$[ ] per share. You are encouraged to obtain current market quotations for Ellie Mae common stock.

Following the Merger, there will be no further market for Ellie Mae common stock and it will be delisted from NYSE and deregistered under the Exchange Act. As a result, following the Merger we will no longer file periodic reports with the SEC.

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The following table sets forth the beneficial ownership of our capital stock as of February 13, 2019 by:

each person or group of affiliated persons, who we know to beneficially own more than 5% of Ellie Mae common stock;

each of our named executive officers;

each of our directors; and

all of our current named executive officers and directors as a group.

The percentage ownership information shown in the table is based on 34,887,444 shares of Ellie Mae common stock outstanding as of February 13, 2019.

We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include (i) shares of Ellie Mae common stock issuable pursuant to the exercise of stock options that are currently exercisable or are exercisable within 60 days of February 13, 2019, and (ii) shares of Ellie Mae common stock issuable upon vesting of RSUs within 60 days of February 13, 2019. These shares are deemed to be outstanding and beneficially owned by the person holding those options for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Unless otherwise noted below, the address of each of the individuals and entities named in the table below is c/o Ellie Mae, Inc., 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588. The information provided in the table is based on our records, information filed with the SEC and information provided to us, except where otherwise noted.

Name of Beneficial Owner	Shares of Common Stock Beneficially Owned	
	Number	Percent
<b><i>Greater than 5% Stockholders:</i></b>		
T. Rowe Price Associates, Inc. (1)	5,182,338	14.85%
Brown Capital Management LLC (2)	4,499,826	12.90%
The Vanguard Group, Inc. (3)	3,485,455	9.99%
PRIMECAP Management Co. (4)	2,800,445	8.03%
Kayne Anderson Rudnick Investment (5)	2,564,534	7.35%
BlackRock Fund Advisors (6)	2,467,891	7.07%



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Eminence Capital LP (7)	2,309,552	6.62%
HMI Capital, LLC (8)	1,974,986	5.66%

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<b>Name of Beneficial Owner</b>	<b>Shares of Common Stock Beneficially Owned</b>	
	<b>Number</b>	<b>Percent</b>
<b><i>Named Executive Officers and Directors:</i></b>		
Sigmund Anderman (9)	367,935	1.05%
Jonathan Corr (10)	153,430	*
Dan Madden		*
Popi Heron		*
Carina Cortez (11)	9,425	*
Joseph Tyrrell (12)	32,160	*
Cathleen Schreiner Gates (13)	23,464	*
Karen Blasing (14)	3,750	*
Carl Buccellato (15)	93,074	*
Craig Davis (16)	141,707	*
A. Barr Dolan (17)	43,562	*
Robert J. Levin (18)	85,999	*
Marina Levinson (19)	5,866	*
Jeb S. Spencer (20)	43,873	*
Rajat Taneja (21)	11,818	*
<b>All directors and executive officers as a group (15 people) (22)</b>	<b>1,029,743</b>	<b>2.90%</b>

\*\* Represents voting power of less than 1%

- (1) Based solely on the information set forth in Amendment No. 3 to Schedule 13G filed with the SEC on February 14, 2019. The address of T. Rowe Price Associates, Inc. is 100 E. Pratt Street, Baltimore, MD 21202.
- (2) Based solely on the information set forth in Amendment No. 4 to Schedule 13G filed with the SEC on February 14, 2019. The address of Brown Capital Management, LLC is 1201 N. Calvert Street, Baltimore, MD 21202.
- (3) Based solely on the information set forth in Amendment No. 5 to Schedule 13G filed with the SEC on January 10, 2019. The Vanguard Group, Inc. ( The Vanguard Group ) has sole dispositive power over 3,410,436 shares of Ellie Mae common stock and sole voting power over 72,203 of the shares of Ellie Mae common stock reported as beneficially owned. As a result of serving as investment managers, (i) Vanguard Fiduciary Trust Company, a wholly-owned subsidiary of The Vanguard Group is the beneficial owner of 68,467 shares of Ellie Mae common stock and (ii) Vanguard Investments Australia, Ltd. a wholly-owned subsidiary of The Vanguard Group, is the beneficial owner of 10,288 shares of Ellie Mae common stock. The address of The Vanguard Group is 100 Vanguard Blvd., Malvern, PA 19355.
- (4) Based solely on the information set forth in Amendment No. 7 to Schedule 13G filed with the SEC on February 8, 2019. The address of PRIMECAP Management Company is 177 E. Colorado Blvd., 11th Floor, Pasadena, CA 91105.
- (5) Based solely on the information set forth in Schedule 13G filed with the SEC on February 15, 2019. The address of Kayne Anderson Rudnick Investment Management LLC is 1800 Avenue of the Stars, 2nd Floor, Los Angeles, CA 90067.
- (6) Based solely on the information set forth in Amendment No. 5 to Schedule 13G filed with the SEC on January 2, 2019. BlackRock Inc., BlackRock Advisors, LLC, BlackRock Asset Management Canada Limited, BlackRock Asset Management Ireland Limited, Blackrock Asset Management Schweiz AG, BlackRock Financial Management, Inc., BlackRock Fund Advisors, BlackRock Institutional Trust Company, N.A., BlackRock

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International Limited, BlackRock Investment Management (Australia) Limited, BlackRock Investment Management (UK) Ltd, BlackRock Investment Management, LLC, BlackRock Japan Co., Ltd. and BlackRock (Netherlands) B.V. have shared voting or dispositive power over these shares. The address of Blackrock, Inc. is 55 East 52nd Street, New York, NY 10055.

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- (7) Based solely on the information set forth in Amendment No. 2 to Schedule 13G filed with the SEC on February 14, 2019. Eminence Capital, LP has shared voting and shared dispositive power with respect to 2,309,552 shares of Ellie Mae common stock. Eminence GP, LLC has shared voting and shared dispositive power with respect to 1,510,368 shares of Ellie Mae common stock. Ricky C. Sandler has shared voting and shared dispositive power with respect to 2,309,552 shares of Ellie Mae common stock. Mr. Sandler is the Chief Executive Officer of Eminence Capital, LP and the Managing Member of Eminence GP, LLC. The address of Eminence Capital, LP is 399 Park Avenue, 25th Floor, New York, NY 10022. The business address of Mr. Sandler is 399 Park Avenue, 25th Floor, New York, NY 10022.
- (8) Based solely on the information set forth in Amendment No. 1 to Schedule 13G filed with the SEC on February 12, 2019. HMI Capital, LLC has shared voting and shared dispositive power with respect to 1,974,986 shares of Ellie Mae common stock. HMI Capital Partners, L.P. has shared voting and shared dispositive power with respect to 1,761,605 shares of Ellie Mae common stock. The address of HMI Capital, LLC and HMI Capital Partners, L.P. is 555 California Street, Suite 4900, San Francisco, CA 94104.
- (9) Consists of (i) 78,906 shares of Ellie Mae common stock held of record by February 13, 2019, (ii) 285,388 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019, and (iii) 3,641 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company RSU Awards within 60 days of February 13, 2019.
- (10) Consists of (i) 69,349 shares of Ellie Mae common stock held of record by February 13, 2019, (ii) 2,731 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019, (iii) 22,824 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company RSU Awards within 60 days of February 13, 2019, (iv) 35,992 shares of Ellie Mae common stock issuable upon the vesting of Company Restricted Stock Awards within 60 days of February 13, 2019, and (v) 22,534 shares of Ellie Mae common stock issuable upon vesting of Company Performance Share Awards held in escrow.
- (11) Consists of (i) 108 shares of Ellie Mae common stock held of record by February 13, 2019, (ii) 2,167 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company RSU Awards within 60 days of February 13, 2019, and (iii) 7,150 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company Restricted Stock Awards within 60 days of February 13, 2019.
- (12) Consists of (i) 984 shares of Ellie Mae common stock held of record by February 13, 2019, (ii) 8,710 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019, (iii) 5,942 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company RSU Awards within 60 days of February 13, 2019, (iv) 9,720 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company Restricted Stock Awards vesting within 60 days of February 13, 2019, and (v) 6,804 shares of Ellie Mae common stock issued in escrow for Company Performance Share Awards.
- (13) Consists of (i) 639 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019, (ii) 6,077 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company RSU Awards within 60 days of February 13, 2019, (iii) 9,944 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company Restricted Stock Awards within 60 days of February 13, 2019, and (iv) 6,804 shares of Ellie Mae common stock issued in escrow for Company Performance Share Awards.
- (14) Consists of 2,023 shares of Ellie Mae common stock held of record by February 13, 2019, and 1,727 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (15) Consists of 21,953 shares of Ellie Mae common stock held of record by February 13, 2019, and 71,121 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (16) Consists of 80,586 shares of Ellie Mae common stock held of record by February 13, 2019, and 61,121 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (17) Consists of 4,107 shares of Ellie Mae common stock held of record by February 13, 2019, and 39,455 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (18)

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Consists of 9,878 shares of Ellie Mae common stock held of record by February 13, 2019, and 76,121 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.

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- (19) Consists of 2,411 shares of Ellie Mae common stock held of record by February 13, 2019, and 3,455 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (20) Consists of 6,901 shares of Ellie Mae common stock held of record by February 13, 2019, and 36,972 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (21) Consists of 8,363 shares of Ellie Mae common stock held of record by February 13, 2019, and 3,455 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019.
- (22) Consists of (i) 285,569 shares of Ellie Mae common stock beneficially owned by our executive officers and directors, (ii) 592,976 shares of Ellie Mae common stock subject to Company Options exercisable within 60 days of February 13, 2019, (iii) 43,418 shares of Ellie Mae common stock issuable upon the vesting and settlement of Company RSU Awards within 60 days of February 13, 2019, (iv) 68,018 shares of Ellie Mae common stock issuable upon the vesting of Company Restricted Stock Awards within 60 days of February 13, 2019, and (v) 39,762 shares of Ellie Mae common stock issuable upon vesting of Company Performance Share Awards held in escrow.

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**FUTURE STOCKHOLDER PROPOSALS**

If the Merger is completed, we will have no public stockholders and there will be no public participation in any future meetings of stockholders of Ellie Mae. However, if the Merger is not completed, stockholders will continue to be entitled to attend and participate in stockholder meetings.

Ellie Mae will hold the regular annual meeting of its stockholders in 2019 only if the Merger is not completed.

Proposals of stockholders that are intended to be considered for inclusion in our proxy statement relating to our regular annual stockholders meeting in 2019 (if held), must have been received by us at our principal executive offices at 4420 Rosewood Drive, Suite 500, Pleasanton, California 94588, Attention: Secretary, by December 4, 2018, and must have satisfied the conditions established by the SEC, including, but not limited to, Rule 14a-8 promulgated under the Exchange Act, and in our bylaws for stockholder proposals in order to be included in our proxy statement for that meeting. Please note that if we hold our regular annual stockholders meeting in 2019, and we do so more than 30 days before or after May 18, 2019 (the one-year anniversary date of the 2018 Annual Meeting of Stockholders), we will disclose the new deadline by which stockholder proposals must be received under Item 5 of Part II of our earliest possible Quarterly Report on Form 10-Q or, if impracticable, by any means reasonably determined to inform stockholders.

Alternatively, under our bylaws, if a stockholder would like to propose a matter for presentation at our regular annual stockholders meeting in 2019 (if held), rather than for inclusion in the proxy materials, the stockholder must follow certain procedures contained in our bylaws.

Under our bylaws, in order for a matter to be deemed properly presented by a stockholder, timely notice must be received by our Secretary at our principal executive offices not later than the 90th day nor earlier than the 120th day before the one-year anniversary of the date of the preceding year's annual meeting of stockholders. Please note, however, that in the event that no annual meeting was held in the previous year or if the date of the annual meeting is advanced by more than 30 days prior to or delayed by more than 60 days after the one-year anniversary of the date of the previous year's annual meeting, then, for notice by the stockholder to be timely, it must be so received by the Secretary not earlier than the 120th day prior to such annual meeting and not later than the later of (i) the 90th day prior to such annual meeting or (ii) the tenth day on which public announcement of the date of such annual meeting is first made.

In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice under our bylaws. A copy of our amended and restated bylaws may be obtained by accessing our filings on the SEC's website at [www.sec.gov](http://www.sec.gov). You may also contact our Corporate Secretary at our principal executive offices for a copy of the relevant bylaw provisions regarding the requirements for making stockholder proposals and nominating director candidates.

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**WHERE YOU CAN FIND MORE INFORMATION**

The SEC allows us to incorporate by reference information into this proxy statement, which means that we can disclose important information to you by referring you to other documents filed separately with the SEC. The information incorporated by reference is deemed to be part of this proxy statement, except for any information superseded by information in this proxy statement or incorporated by reference subsequent to the date of this proxy statement. This proxy statement incorporates by reference the documents set forth below that we have previously filed with the SEC. These documents contain important information about us and our financial condition and are incorporated by reference into this proxy statement.

The following Ellie Mae filings with the SEC are incorporated by reference:

Ellie Mae's Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed on March 1, 2018, including the information specifically incorporated by reference into the Annual Report on Form 10-K from Ellie Mae's definitive proxy statement on Schedule 14A filed on April 4, 2018 and additional materials filed on April 4, 2018 and May 8, 2018;

Ellie Mae's Quarterly Report on Form 10-Q for the fiscal quarter ended September 30, 2018, filed on November 8, 2018; Ellie Mae's Quarterly Report on Form 10-Q for the fiscal quarter ended June 30, 2018, filed on August 7, 2018, as amended on November 8, 2018; Ellie Mae's Quarterly Report on Form 10-Q for the fiscal quarter ended March 31, 2018, filed on May 9, 2018, as amended on November 8, 2018; and

Ellie Mae's Current Report on Form 8-K, filed on February 14, 2019; Ellie Mae's Current Report on Form 8-K, filed on February 12, 2019; Ellie Mae's Current Report on Form 8-K, filed on January 24, 2019; Ellie Mae's Current Report on Form 8-K, filed on November 28, 2018; Ellie Mae's Current Report on Form 8-K, filed on November 19, 2018; Ellie Mae's Current Report on Form 8-K, filed on November 8, 2018; Ellie Mae's Current Report on Form 8-K, filed on October 25, 2018; Ellie Mae's Current Report on Form 8-K, filed on July 26, 2018; Ellie Mae's Current Report on Form 8-K, filed on May 31, 2018; Ellie Mae's Current Report on Form 8-K, filed on May 22, 2018; Ellie Mae's Current Report on Form 8-K, filed on May 8, 2018; and Ellie Mae's Current Report on Form 8-K, filed on April 26, 2018.

We also incorporate by reference into this proxy statement additional documents that we may file with the SEC between the date of this proxy statement and the earlier of the date of the Special Meeting or the termination of the Merger Agreement. These documents include periodic reports, such as Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, as well as Current Reports on Form 8-K and proxy soliciting materials. The information provided on our website is not part of this proxy statement, and therefore is not incorporated by reference herein.

Information furnished under Item 2.02 or Item 7.01 of any Current Report on Form 8-K, including related exhibits, is not and will not be incorporated by reference into this proxy statement.

You may read and copy any reports, statements or other information that we file with the SEC at the SEC's public reference room at the following location: 100 F Street, N.E., Room 1580, Washington, DC 20549. You may also obtain copies of those documents at prescribed rates by writing to the Public Reference Section of the SEC at that address. Please call the SEC at (800) SEC-0330 for further information on the public reference room. These SEC filings are also available to the public from commercial document retrieval services and at [www.sec.gov](http://www.sec.gov).





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

Ellie Mae, Inc.

Attention: Investor Relations

4420 Rosewood Drive, Suite 500

Pleasanton, California 94588

If you would like to request documents from us, please do so as soon as possible, to receive them before the Special Meeting. If you request any documents from us, we will mail them to you by first class mail, or another equally prompt method, within one business day after we receive your request. Please note that all of our documents that we file with the SEC are also promptly available through our website at [investors.elliemae.com](http://investors.elliemae.com) and clicking on the link titled "SEC Filings". The information included on our website is not incorporated by reference into this proxy statement.

If you have any questions concerning the Merger, the Special Meeting or the accompanying proxy statement, would like additional copies of the accompanying proxy statement or need help voting your shares of Ellie Mae common stock, please contact our proxy solicitor:

MacKenzie Partners, Inc.

1407 Broadway, 27th Floor

New York, NY 10018

(212) 929-5500 (Call Collect)

Call Toll-free: (800) 322-2885

[proxy@mackenziepartners.com](mailto:proxy@mackenziepartners.com).

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**MISCELLANEOUS**

Ellie Mae has supplied all information relating to Ellie Mae, and Parent has supplied, and Ellie Mae has not independently verified, all of the information relating to Parent and Merger Sub contained in this proxy statement.

You should rely only on the information contained in this proxy statement, the annexes to this proxy statement and the documents that we incorporate by reference in this proxy statement in voting on the Merger. We have not authorized anyone to provide you with information that is different from what is contained in this proxy statement. This proxy statement is dated [ ], 2019. You should not assume that the information contained in this proxy statement is accurate as of any date other than that date (or as of an earlier date if so indicated in this proxy statement), and the mailing of this proxy statement to stockholders does not create any implication to the contrary. This proxy statement does not constitute a solicitation of a proxy in any jurisdiction where, or to or from any person to whom, it is unlawful to make a proxy solicitation.

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Annex A

**Execution Version**

*Confidential*

**AGREEMENT AND PLAN OF MERGER**

**by and among**

**EM EAGLE PURCHASER, LLC**

**EM EAGLE MERGER SUB, INC.**

**and**

**ELLIE MAE, INC.**

**Dated as of February 11, 2019**

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**AGREEMENT AND PLAN OF MERGER**

THIS AGREEMENT AND PLAN OF MERGER (this **Agreement** ) is made and entered into as of February 11, 2019, by and among EM Eagle Purchaser, LLC, a Delaware limited liability company ( **Parent** ), EM Eagle Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent ( **Merger Sub** ), and Ellie Mae, Inc., a Delaware corporation (the **Company** ). Each of Parent, Merger Sub and the Company are sometimes referred to as a **Party**. All capitalized terms that are used in this Agreement have the respective meanings given to them in Article I.

**RECITALS**

A. The Company Board has unanimously (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement providing for the merger of Merger Sub with and into the Company (collectively with the other transactions contemplated by this Agreement, the **Merger** ) in accordance with the General Corporation Law of the State of Delaware (the **DGCL** ) upon the terms and subject to the conditions set forth herein; (ii) approved the execution and delivery of this Agreement by the Company, the performance by the Company of its covenants and other obligations hereunder, and the consummation of the Merger upon the terms and subject to the conditions set forth herein; and (iii) resolved to recommend that the stockholders of the Company adopt this Agreement and approve the Merger in accordance with the DGCL.

B. Each of the board of managers of Parent and the board of directors of Merger Sub have (i) declared it advisable to enter into this Agreement; and (ii) approved the execution and delivery of this Agreement, the performance of their respective covenants and other obligations hereunder, and the consummation of the Merger upon the terms and subject to the conditions set forth herein.

C. Concurrently with the execution of this Agreement, and as a condition and inducement to the Company's willingness to enter into this Agreement, Parent and Merger Sub have delivered (i) a limited guaranty (the **Guaranty** ) from Thoma Bravo Fund XIII, L.P., a Delaware limited partnership (the **Guarantor** ), in favor of the Company and pursuant to which, subject to the terms and conditions contained therein, the Guarantor is guaranteeing certain obligations of Parent and Merger Sub in connection with this Agreement and (ii) a commitment letter between Parent and the Guarantor, pursuant to which the Guarantor has committed, subject to the terms and conditions thereof, to invest in Parent, directly or indirectly, the cash amount set forth therein (the **Equity Commitment Letter** ).

D. Parent, Merger Sub and the Company desire to (i) make certain representations, warranties, covenants and agreements in connection with this Agreement and the Merger; and (ii) prescribe certain conditions with respect to the consummation of the Merger.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, and intending to be legally bound hereby, Parent, Merger Sub and the Company agree as follows:

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**ARTICLE I**

**DEFINITIONS & INTERPRETATIONS**

1.1 *Certain Definitions.* For all purposes of and pursuant to this Agreement, the following capitalized terms have the following respective meanings:

(a) **Acceptable Confidentiality Agreement** means an agreement with the Company that is either (i) in effect as of the execution and delivery of this Agreement; or (ii) executed, delivered and effective after the execution and delivery of this Agreement, in either case containing provisions that require any counterparty thereto (and any of its Affiliates and representatives named therein) that receive material non-public information of or with respect to the Company to keep such information confidential; *provided, however*, that, with respect to such agreements executed and delivered following the execution and delivery of this Agreement, the provisions contained therein are no less restrictive in any material respect in the aggregate to such counterparty (and any of its Affiliates and representatives named therein) than the terms of the Confidentiality Agreement (it being understood that such agreement need not contain any standstill or similar provisions or otherwise prohibit the making of any Acquisition Proposal).

(b) **Acquisition Proposal** means any offer, proposal or indication of interest (other than an offer, proposal or indication of interest by Parent or Merger Sub) to engage in an Acquisition Transaction.

(c) **Acquisition Transaction** means any transaction or series of related transactions (other than the Merger) involving:

(i) any direct or indirect purchase or other acquisition by any Person or group (as defined pursuant to Section 13(d) of the Exchange Act) of Persons, whether from the Company or any other Person(s), of securities representing more than 20% of the total outstanding voting power of the Company after giving effect to the consummation of such purchase or other acquisition, including pursuant to a tender offer or exchange offer by any Person or group of Persons that, if consummated in accordance with its terms, would result in such Person or group of Persons beneficially owning more than 20% of the total outstanding voting power of the Company after giving effect to the consummation of such tender or exchange offer;

(ii) any direct or indirect purchase, license or other acquisition by any Person or group (as defined pursuant to Section 13(d) of the Exchange Act) of Persons of assets constituting or accounting for more than 20% of the consolidated assets, revenue or net income of the Company (measured by the fair market value thereof as of the date of such purchase or acquisition); or

(iii) any merger, consolidation, business combination, recapitalization, reorganization, liquidation, dissolution or other transaction involving the Company pursuant to which any Person or group (as defined pursuant to Section 13(d) of the Exchange Act) of Persons would hold securities representing more than 20% of the total outstanding voting power of the Company outstanding after giving effect to the consummation of such transaction.

(d) **Affiliate** means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person. For purposes of this definition, the term control (including, with correlative meanings, the terms controlling, controlled by and under common control with ), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

(e) **Antitrust Law** means the Sherman Antitrust Act, the Clayton Antitrust Act, the HSR Act, the Federal Trade Commission Act and all other laws, whether in any domestic or foreign jurisdiction, that are designed or intended to

prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediments or lessening of competition or the creation or strengthening of a dominant position through merger or acquisition, in any case that are applicable to the Merger.

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(f) **Audited Company Balance Sheet** means the consolidated balance sheet (and the notes thereto) of the Company as of December 31, 2017 set forth in the Company's Annual Report on Form 10-K filed by the Company with the SEC for the fiscal year ended December 31, 2017.

(g) **Business Day** means each day that is not a Saturday, Sunday or other day on which the Company is closed for business or the Federal Reserve Bank of San Francisco is closed.

(h) **Business IP** means all (i) Intellectual Property used in, held for use in, or necessary for the operation of the Company's business as currently conducted and (ii) Company Intellectual Property.

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

(j) **Company Board** means the Board of Directors of the Company.

(k) **Company Capital Stock** means the Company Common Stock and the Company Preferred Stock.

(l) **Company Common Stock** means the common stock, par value \$0.0001, of the Company.

(m) **Company Equity Plans** means the equity plans set forth in Section 1.1(p) of the Company Disclosure Letter that provide for the issuance of any Company Options, Company RSU Awards, Company Restricted Stock Awards or Company Performance Share Awards (such awards, the **Company Equity Awards**), including any related sub-plans, addenda and agreements entered into and awards issued under such plan.

(n) **Company Intellectual Property** means any Intellectual Property that is owned or purported to be owned by the Company.

(o) **Company Material Adverse Effect** means any change, event, violation, inaccuracy, effect or circumstance (each, an **Effect**) that, individually or taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Company Material Adverse Effect, (A) is or would reasonably be expected to be materially adverse to the business, financial condition or results of operations of the Company; or (B) would reasonably be expected to prevent or materially impair the consummation by the Company of the Merger prior to the Termination Date; *provided, however*, that, with respect to clause (A) only, none of the following (by itself or when aggregated) will be deemed to be or constitute a Company Material Adverse Effect or will be taken into account when determining whether a Company Material Adverse Effect has occurred or may, would or could occur (subject to the limitations set forth below):

(i) changes in general economic conditions in the United States or any other country or region in the world, or changes in conditions in the global economy generally;

(ii) changes in conditions in the financial markets, credit markets or capital markets in the United States or any other country or region in the world, including (1) changes in interest rates or credit ratings in the United States or any other country; (2) changes in exchange rates for the currencies of any country; or (3) any suspension of trading in securities (whether equity, debt, derivative or hybrid securities) generally on any securities exchange or over-the-counter market operating in the United States or any other country or region in the world;

(iii) changes in conditions in the industries in which the Company or its customers generally conducts business, including changes in conditions in the software and mortgage industries;

(iv) changes in regulatory, legislative or political conditions in the United States or any other country or region in the world;

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(v) any geopolitical conditions, outbreak of hostilities, acts of war, sabotage, terrorism or military actions (including any escalation or general worsening of any such hostilities, acts of war, sabotage, terrorism or military actions) in the United States or any other country or region in the world;

(vi) earthquakes, hurricanes, tsunamis, tornadoes, floods, mudslides, wild fires or other natural disasters, weather conditions and other force majeure events in the United States or any other country or region in the world;

(vii) any Effect resulting from the announcement of this Agreement or the pendency of the Merger, including the impact thereof on the relationships, contractual or otherwise, of the Company with employees, suppliers, customers, partners, vendors or any other third Person (other than for purposes of any representation or warranty contained in Section 3.5, as modified by the Company Disclosure Letter);

(viii) the compliance by any Party with the terms of this Agreement, including any action taken or refrained from being taken pursuant to or in accordance with this Agreement;

(ix) any action taken or refrained from being taken, in each case to which Parent has expressly approved, consented to or requested in writing following the date hereof;

(x) changes or proposed changes in GAAP or other accounting standards or in any applicable laws or regulations (or the enforcement or interpretation of any of the foregoing);

(xi) changes in the price or trading volume of the Company Common Stock, in and of itself (it being understood that any cause of such change may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred);

(xii) any failure, in and of itself, by the Company to meet (A) any public estimates or expectations of the Company's revenue, earnings or other financial performance or results of operations for any period; or (B) any internal budgets, plans, projections or forecasts of its revenues, earnings or other financial performance or results of operations (it being understood that any cause of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred);

(xiii) the availability or cost of equity, debt or other financing to Parent or Merger Sub;

(xiv) any Transaction Litigation or other Legal Proceeding threatened, made or brought by any of the current or former Company Stockholders (on their own behalf or on behalf of the Company) against the Company, any of its executive officers or other employees or any member of the Company Board arising out of the Merger or any other transaction contemplated by this Agreement; and

(xv) any matters expressly disclosed in the Company Disclosure Letter;

except, with respect to clauses (i), (ii), (iii), (iv), (v), (vi) and (x) to the extent that such Effect has had a materially disproportionate adverse effect on the Company relative to other companies of a similar size operating in the industries in which the Company conducts business, in which case only the incremental disproportionate adverse impact may be taken into account in determining whether there has occurred a Company Material Adverse Effect.

(p) **Company Options** means any options to purchase shares of Company Common Stock granted under any of the Company Equity Plans.





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- (q) **Company Performance Share Award** means any performance share issued under the Ellie Mae, Inc. 2011 Equity Incentive Award Plan.
- (r) **Company Preferred Stock** means the Preferred Stock, par value \$0.0001 per share, of the Company.
- (s) **Company Registered Intellectual Property** means all of the Registered Intellectual Property owned by, or filed in the name of, the Company.
- (t) **Company Restricted Stock Award** means any restricted stock award granted under any of the Company Equity Plans.
- (u) **Company RSU Awards** means any restricted stock units granted under any of the Company Equity Plans.
- (v) **Company Stockholders** means the holders of shares of Company Capital Stock.
- (w) **Continuing Employees** means each individual who is an employee of the Company immediately prior to the Effective Time and continues to be an employee of Parent or one of its Subsidiaries (including the Surviving Corporation) immediately following the Effective Time.
- (x) **Contract** means any written contract, subcontract, note, bond, mortgage, indenture, lease, license, sublicense or other binding agreement.
- (y) **DOJ** means the United States Department of Justice or any successor thereto.
- (z) **Environmental Law** means any applicable law or order relating to pollution, the protection of the environment (including ambient air, surface water, groundwater or land) or exposure of any Person with respect to Hazardous Substances or otherwise relating to the production, use, storage, treatment, transportation, recycling, disposal, discharge, release or other handling of any Hazardous Substances, or the investigation, clean-up or remediation thereof.
- (aa) **ERISA** means the Employee Retirement Income Security Act of 1974.
- (bb) **Exchange Act** means the Securities Exchange Act of 1934.
- (cc) **Excluded Party** means any third party 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 bona fide Acquisition Proposal received after the execution of this Agreement the Company Board has reasonably 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 (1) such Acquisition Proposal made by such Person following the execution of this Agreement but prior to the start of the No-Shop Period Start Date is withdrawn by written notice to the Company at any time or (B) such Acquisition Proposal made following the execution of this Agreement, in the good faith reasonable 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 in light of the facts and circumstances available to, or known by, the Company Board.
- (dd) **FCPA** means the Foreign Corrupt Practices Act of 1977.



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(ee) **Financing Sources** means the Persons (other than Parent and its Affiliates), if any, that arrange or provide the Debt Financing in connection with the Merger and any joinder agreements, credit agreements or any other loan documents entered into pursuant thereto or relating thereto, together with their Affiliates and their and their Affiliates current, former and future officers, directors, general or limited partners, shareholders, members, controlling persons, employees, agents and representatives involved in the Debt Financing and the successors and assigns of each of the foregoing.

(ff) **FTC** means the United States Federal Trade Commission or any successor thereto.

(gg) **GAAP** means generally accepted accounting principles, consistently applied, in the United States.

(hh) **Governmental Authority** means any government, governmental or regulatory entity or body, department, commission, board, agency or instrumentality, and any court, tribunal, arbitrator (public or private) or judicial body, in each case whether federal, state, county or provincial, and whether local or foreign.

(ii) **Hazardous Substance** means any substance, material or waste that is characterized or regulated by a Governmental Authority pursuant to any Environmental Law as hazardous, pollutant, contaminant, toxic or radioactive, including petroleum and petroleum products, polychlorinated biphenyls and friable asbestos.

(jj) **HSR Act** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

(kk) **In-the-Money Company Options** means Company Options with an exercise price per share less than the Per Share Price as of the Effective Time.

(ll) **Indebtedness** means any of the following liabilities or obligations: (i) indebtedness for borrowed money (including any principal, premium, accrued and unpaid interest, related expenses, prepayment penalties, commitment and other fees, sale or liquidity participation amounts, reimbursements, indemnities and all other amounts payable in connection therewith); (ii) liabilities evidenced by bonds, debentures, notes or other similar instruments or debt securities; (iii) liabilities pursuant to or in connection with letters of credit or banker's acceptances or similar items (in each case whether or not drawn, contingent or otherwise); (iv) liabilities pursuant to capitalized leases; (v) liabilities arising out of interest rate and currency swap arrangements and any other arrangements designed to provide protection against fluctuations in interest or currency rates; (vi) deferred purchase price liabilities related to past acquisitions; (vii) payment obligations arising in connection with earnouts or other contingent payment obligations under Contracts (other than contingent indemnification obligations that have not matured and as to which no claims have been made, or to the Knowledge of the Company, threatened); (viii) liabilities arising from any breach of any of the foregoing; and (ix) indebtedness of others guaranteed by the Company or secured by any lien or security interest on the assets of the Company.

(mm) **Intellectual Property** means the rights associated with the following: (i) all United States and foreign patents and applications therefor ( **Patents** ); (ii) all copyrights, copyright registrations and applications therefor and all other rights corresponding thereto throughout the world ( **Copyrights** ); (iii) trademarks, service marks, trade dress rights and similar designation of origin and rights therein ( **Marks** ); (iv) all rights in mask works, and all mask work registrations and applications therefor; (v) rights in trade secrets and confidential information; and (vi) any other intellectual property or proprietary rights or similar, corresponding or equivalent rights to any of the foregoing anywhere in the world.

(nn) **IRS** means the United States Internal Revenue Service or any successor thereto.

(oo) **Knowledge** of the Company, with respect to any matter in question, means the actual knowledge of the Company's Chief Executive Officer; Chief Financial Officer, Executive Vice President of

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Human Resources, Chief Security Officer and Executive Vice President and General Counsel, in each case after reasonable inquiry of those employees who would reasonably be expected to have actual knowledge of the matter in question. With respect to matters involving Intellectual Property, Knowledge does not require the Company, or any of its directors, officer or employees, to have conducted or have obtained any freedom-to-operate opinions or any Patent, Trademark or other Intellectual Property clearance searches, and if not conducted or obtained, no knowledge of any third Person Patents, Trademarks or other Intellectual Property that would have been revealed by such opinions or searches will be imputed to the Company or any of its directors, officers or employees.

(pp) **Legal Proceeding** means any claim, action, charge, lawsuit, litigation, investigation (to the Knowledge of the Company, as used in relation to the Company) or other similarly formal legal proceeding brought by or pending before any Governmental Authority, arbitrator, mediator or other tribunal.

(qq) **Material Contract** means any of the following Contracts:

(i) any material contract (as defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC, other than those agreements and arrangements described in Item 601(b)(10)(iii) of Regulation S-K) with respect to the Company;

(ii) any employment, management, severance, retention, transaction bonus, change in control compensation, individual consulting, relocation, repatriation or expatriation Contract not terminable at will by the Company pursuant to which the Company has continuing obligations as of the date hereof with any executive officer or other employee at the vice president level or above, or any member of the Company Board;

(iii) any material Contract with (A) each of the ten (10) largest customers of the Company (the **Material Customers**) 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

(iv) any Contract under which the Company uses or has the right to use any Intellectual Property licensed from third parties which is material to the business or under which the Company grants any third party a license to use material Company Intellectual Property, including in each case that provides for payments by or to the Company of \$5 million or more per annum (other than nonexclusive, off-the-shelf software licenses and maintenance and customer, reseller, support and professional services Contracts by the Company in the ordinary course of business);

(v) any Contract containing any covenant or other provision (A) limiting the right of the Company to engage in any material line of business or to compete with any Person in any line of business that is material to the Company; or (B) containing and limiting the right of the Company pursuant to any most favored nation or exclusivity provisions, in each case of the above other than any such Contracts that (1) may be cancelled without material liability to the Company upon notice of 90 days or less, or (2) are not material to the Company;

(vi) any Contract (A) relating to the disposition or acquisition of assets by the Company with a value greater than \$7,000,000 after the date hereof other than in the ordinary course of business; or (B) pursuant to which the Company will acquire any material ownership interest in any other Person or other business enterprise;

(vii) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other Contracts relating to the borrowing of money or extension of credit, in each case in excess of \$5,000,000 other than (A) accounts receivables and payables in the ordinary course of business; (B) obligations incurred pursuant to business credit cards in the ordinary course of business and (C) extensions of credit to customers in the ordinary course of business;

(viii) any Lease or Sublease set forth in Section 3.14(b) or Section 3.14(c) of the Company Disclosure Letter;



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(ix) any Contract providing for the payment, increase or vesting of any material benefits or compensation in connection with the Merger (other than Contracts evidencing Company RSU Award, Company Restricted Stock Award, Company Performance Share Awards or Company Options);

(x) any Contract providing for cash severance payments in excess of \$150,000;

(xi) any Contract providing for indemnification of any officer, director or employee by the Company, other than Contracts entered into on substantially the same form as the Company's standard forms previously made available to Parent;

(xii) any Contract that is an agreement in settlement of a dispute that imposes material obligations on the Company involving (A) a payment in excess of \$1,000,000 or (B) any material ongoing requirements or restrictions on the Company, in each case, after the date hereof;

(xiii) any Contract that is a Collective Bargaining Agreement; and

(xiv) any Contract that involves a joint venture entity, limited liability company or legal partnership (excluding, for avoidance of doubt, reseller agreements and other commercial agreements that do not involve the formation of an entity with any third Person).

(rr) **NYSE** means the New York Stock Exchange.

(ss) **Permitted Liens** means any of the following: (i) liens for Taxes, assessments and governmental charges or levies either not yet delinquent or that are being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (ii) mechanics, carriers', workmen's, warehouseman's, repairmen's, materialmen's or other liens or security interests that are not yet due or that are being contested in good faith and by appropriate proceedings and for which appropriate reserves have been established to the extent required by GAAP; (iii) leases, subleases and licenses (other than capital leases and leases underlying sale and leaseback transactions); (iv) liens imposed by applicable law (other than Tax law); (v) pledges or deposits to secure obligations pursuant to workers' compensation laws or similar legislation or to secure public or statutory obligations; (vi) pledges and deposits to secure the performance of bids, trade contracts, leases, surety and appeal bonds, performance bonds and other obligations of a similar nature, in each case in the ordinary course of business; (vii) defects, imperfections or irregularities in title, easements, covenants and rights of way (unrecorded and of record) and other similar liens (or other encumbrances of any type), and zoning, building and other similar codes or restrictions, in each case that do not adversely affect in any material respect the current use or value of the applicable property owned, leased, used or held for use by the Company; (viii) liens the existence of which are disclosed in the notes to the consolidated financial statements of the Company included in the Company SEC Reports filed as of the date hereof; (ix) licenses to Company Intellectual Property; (x) any other liens that do not secure a liquidated amount, that have been incurred or suffered in the ordinary course of business, and that would not, individually or in the aggregate, have a material effect on the Company; (xi) statutory, common law or contractual liens (or other encumbrances of any type) of landlords or liens against the interests of the landlord or owner of any Leased Real Property unless caused by the Company; or (xii) liens (or other encumbrances of any type) that do not materially and adversely affect the use or operation of the property subject thereto.

(tt) **Person** means any individual, corporation (including any non-profit corporation), limited liability company, joint stock company, general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, firm, Governmental Authority or other enterprise, association, organization or entity.

(uu) **Registered Intellectual Property** means all United States, international and foreign (i) Patents and Patent applications (including provisional applications); (ii) registered Marks and applications to register Marks (including intent-to-use applications, or other registrations or applications related to Marks); and (iii) registered Copyrights and applications for Copyright registration.



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(vv) **Required Financials** means the financial statements regarding the Company necessary to satisfy the condition set forth in the debt commitment Letter related to the Debt Financing as in effect on the date hereof, and such other information customarily delivered and reasonably necessary for the preparation of a bank information memorandum, including, but not limited to, the Required Financials (or other similar term) under and as defined in the debt comment letter related to the Debt Financing.

(ww) **Restricted Party** means any Person who at any time prior to the date of this Agreement has submitted a bona fide written Acquisition Proposal, including any direct or indirect Affiliates, Subsidiaries or portfolio companies of the foregoing.

(xx) **Sarbanes-Oxley Act** means the Sarbanes-Oxley Act of 2002.

(yy) **SEC** means the United States Securities and Exchange Commission or any successor thereto.

(zz) **Securities Act** means the Securities Act of 1933, as amended.

(aaa) **Subsidiary** of any Person means (i) a corporation more than 50% of the combined voting power of the outstanding voting stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more other Subsidiaries of such Person; (ii) a partnership of which such Person or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, is the general partner and has the power to direct the policies, management and affairs of such partnership; (iii) a limited liability company of which such Person or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries of such Person, directly or indirectly, is the managing member and has the power to direct the policies, management and affairs of such company; or (iv) any other Person (other than a corporation, partnership or limited liability company) in which such Person or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries of such Person, directly or indirectly, has at least a majority ownership and the power to direct the policies, management and affairs thereof.

(bbb) **Superior Proposal** means any bona fide written Acquisition Proposal for an Acquisition Transaction that (i) was not solicited in violation of Section 5.3(b) in any material respect and (ii) is on terms that the Company Board (or a committee thereof) has determined in good faith (after consultation with its financial advisor and outside legal counsel) is reasonably likely to be consummated in accordance with its terms, taking into account all legal, regulatory and financing aspects of the proposal (including certainty of closing) and the identity of the Person making the proposal and other aspects of the Acquisition Proposal that the Company Board (or a committee thereof) deems relevant, and if consummated, would be more favorable, from a financial point of view, to the Company Stockholders (in their capacity as such) than the Merger (taking into account any revisions to this Agreement made or proposed in writing by Parent prior to the time of such determination). For purposes of the reference to an Acquisition Proposal in this definition, all references to 20% in the definition of Acquisition Transaction will be deemed to be references to 80%.

(ccc) **Tax** means any United States federal, state, local and non-United States taxes, assessments and similar governmental charges and impositions in the nature of taxes (including escheat, abandoned or unclaimed property and taxes based upon or measured by gross receipts, income, profits, sales, use and occupation and value added, ad valorem, transfer, franchise, withholding, payroll, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts).

(ddd) **Transaction Litigation** means any Legal Proceeding commenced or threatened in writing against a Party or any of its Subsidiaries or Affiliates or otherwise relating to, involving or affecting such Party or any of its Subsidiaries or

Affiliates, in each case in connection with, arising from or otherwise relating to or regarding the Merger or any other transaction contemplated by this Agreement, including any Legal Proceeding alleging or asserting any misrepresentation or omission in the Proxy Statement, any Other Required Company

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Filing or any other communications to the Company Stockholders, other than any Legal Proceedings among the Parties or with the Financing Sources related to this Agreement, the Guaranty or the Equity Commitment Letter.

(eee) **Vested Company Option** means a Company Option that is unexpired, unexercised, outstanding, and vested as of immediately prior to the Effective Time or that vests solely as a result of the consummation of the transactions contemplated hereby (and without any additional action by the Company, the Company Board or a committee thereof, including to the extent that any other conditions for vesting have been satisfied on, prior to or in connection with the Effective Time).

(fff) **Vested Company Restricted Stock Award** means a Company Restricted Stock Award that is unexpired, unexercised, outstanding, and vested as of immediately prior to the Effective Time or that vests solely as a result of the consummation of the transactions contemplated hereby (and without any additional action by the Company, the Company Board or a committee thereof, including to the extent that any other conditions for vesting have been satisfied on, prior to or in connection with the Effective Time).

(ggg) **Vested Company RSU Award** means a Company RSU Award that is unexpired, unexercised, outstanding, and vested as of immediately prior to the Effective Time or that vests solely as a result of the consummation of the transactions contemplated hereby (and without any additional action by the Company, the Company Board or a committee thereof, including to the extent that any other conditions for vesting have been satisfied on, prior to or in connection with the Effective Time).

(hhh) **WARN** means the United States Worker Adjustment and Retraining Notification Act and any similar foreign, state or local law, regulation or ordinance.

(iii) **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 result in or constitute a material breach.

1.2 *Additional Definitions.* The following capitalized terms have the respective meanings given to them in the respective Sections of this Agreement set forth opposite each of the capitalized terms below:

<b>Term</b>	<b>Section Reference</b>
Advisor	3.3(b)
Agreement	Preamble
Alternative Acquisition Agreement	5.3(a)
Bylaws	3.1
Capitalization Date	3.7(a)
Cash Replacement Company RSU/RSA Award Amounts	2.8(a)(ii)
Cash Replacement Option Amounts	2.8(b)(ii)
Certificate of Merger	2.2
Certificates	2.9(c)
Charter	2.5(a)
Chosen Courts	9.10(a)
Closing	2.3
Closing Date	2.3
Collective Bargaining Agreement	3.19(a)

Company	Preamble
Company Board Recommendation	3.3(a)
Company Board Recommendation Change	5.3(d)(i)
Company Disclosure Letter	Article III
Company Liability Limitation	8.3(f)(ii)
Company Plans	6.11(c)
Company Related Parties	8.3(f)(ii)

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<b>Term</b>	<b>Section Reference</b>
Company SEC Reports	3.9
Company Securities	3.7(c)
Company Stockholder Meeting	6.4(a)
Company Termination Fee	8.3(b)(i)
Comparable Plans	6.11(c)
Confidentiality Agreement	9.4
Consent	3.6
Copyrights	1.1(pp)
Debt Documents	6.6(a)(xii)
Debt Financing	6.6(a)(i)
DGCL	Recitals
Dissenting Company Shares	2.7(c)(i)
D&O Insurance	6.10(c)
DTC	2.9(d)
Effect	1.1(o)
Effective Time	2.2
Electronic Delivery	9.13
Employee Plans	3.18(a)
Enforceability Limitations	3.2
Equity Commitment Letter	Recitals
Equity Financing	4.11(a)
ERISA Affiliate	3.18(b)
ESPP	2.8(e)
Exchange Fund	2.9(b)
Go-Shop Period	5.3(a)
Guarantor	Recitals
Guaranty	Recitals
Indemnified Persons	6.10(a)
International Employee Plans	3.18(a)
Intervening Event	5.3(e)(i)
Lease	3.14(b)
Leased Real Property	3.14(b)
Marks	1.1(pp)
Material Customers	1.1(tt)(iii)
Maximum Annual Premium	6.10(c)
Merger	Recitals
Merger Sub	Preamble
New Plans	6.11(d)
No-Shop Period Start Date	5.3(a)
Notice Period	5.3(e)(ii)(3)
Old Plans	6.11(d)
Other Required Company Filing	6.3(b)
Other Required Parent Filing	6.3(c)
Owned Company Shares	2.7(a)(iii)
Parent	Preamble
Parent Disclosure Letter	Article IV
Parent Liability Limitation	8.3(f)(i)

Parent Related Parties  
Party  
Patents  
Payment Agent

8.3(f)(i)  
Preamble  
1.1(mm)  
2.9(a)

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<b>Term</b>	<b>Section Reference</b>
Permits	3.20
Per Share Price	2.7(a)(ii)
Proxy Statement	6.3(a)
Recent SEC Reports	Article III
Reimbursement Obligations	6.6(f)
Representatives	5.3(a)
Requisite Stockholder Approval	3.4
Sublease	3.14(c)
Surviving Corporation	Article II
Tax Returns	3.17(a)
Trade Control Laws	3.26(a)(i)
Termination Date	8.1(c)
Uncertificated Shares	2.9(c)
Unvested Company Options	2.8(b)(ii)
Unvested Company RSU/RSA Award	2.8(a)(i)
Vested Option Consideration	2.8(b)(i)
Vested RSU/RSA Consideration	2.8(a)(i)
1.3 <i>Certain Interpretations.</i>	

(a) When a reference is made in this Agreement to an Article or a Section, such reference is to an Article or a Section of this Agreement unless otherwise indicated. When a reference is made in this Agreement to a Schedule or Exhibit, such reference is to a Schedule or Exhibit to this Agreement, as applicable, unless otherwise indicated.

(b) When used herein, (i) the words hereof, herein and herewith and words of similar import will, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement; and (ii) the words include, includes and including will be deemed in each case to be followed by the words without limitation.

(c) Unless the context otherwise requires, neither, nor, any, either and or are not exclusive.

(d) The word extent in the phrase to the extent means the degree to which a subject or other thing extends, and does not simply mean if.

(e) When used in this Agreement, references to \$ or Dollars are references to U.S. dollars.

(f) The meaning assigned to each capitalized term defined and used in this Agreement is equally applicable to both the singular and the plural forms of such term, and words denoting any gender include all genders. Where a word or phrase is defined in this Agreement, each of its other grammatical forms has a corresponding meaning.

(g) When reference is made to any party to this Agreement or any other agreement or document, such reference includes such Party's successors and permitted assigns. References to any Person include the successors and permitted assigns of that Person.

(h) Unless the context otherwise requires, all references in this Agreement to the Subsidiaries of a Person will be deemed to include all direct and indirect Subsidiaries of such entity.

(i) When used herein, references to ordinary course or ordinary course of business will be construed to mean ordinary course of business, consistent with past practices.



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(j) A reference to any specific legislation or to any provision of any legislation includes any amendment to, and any modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued thereunder or pursuant thereto, except that, for purposes of any representations and warranties in this Agreement that are made as a specific date, references to any specific legislation will be deemed to refer to such legislation or provision (and all rules, regulations and statutory instruments issued thereunder or pursuant thereto) as of such date. References to any agreement or Contract are to that agreement or Contract as amended, modified or supplemented from time to time.

(k) All accounting terms used herein will be interpreted, and all accounting determinations hereunder will be made, in accordance with GAAP.

(l) The table of contents and headings set forth in this Agreement are for convenience of reference purposes only and will not affect or be deemed to affect in any way the meaning or interpretation of this Agreement or any term or provision hereof.

(m) The measure of a period of one month or year for purposes of this Agreement will be the date of the following month or year corresponding to the starting date. If no corresponding date exists, then the end date of such period being measured will be the next actual date of the following month or year (for example, one month following May 18 is June 18 and one month following May 31 is July 1).

(n) The Parties agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and therefore waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

(o) No summary of this Agreement or any Exhibit or Schedule delivered herewith prepared by or on behalf of any Party will affect the meaning or interpretation of this Agreement or such Exhibit or Schedule.

(p) The information contained in this Agreement and in the Company Disclosure Letter is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third Person of any matter whatsoever, including (i) any violation of law or breach of contract; or (ii) that such information is material or that such information is required to be referred to or disclosed under this Agreement.

(q) The representations and warranties in this Agreement are the product of negotiations among the Parties and are for the sole benefit of the Parties. Any inaccuracies in such representations and warranties are subject to waiver by the Parties in accordance with Section 8.5 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the Parties of risks associated with particular matters regardless of the knowledge of any of the Parties. Consequently, Persons other than the Parties may not rely on the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date hereof or as of any other date.

(r) Documents or other information or materials will be deemed to have been made available by the Company if such documents, information or materials have been posted to a virtual data room managed by the Company at [www.dfsvenue.com](http://www.dfsvenue.com) prior to 2:00 p.m. Pacific time on the date hereof.

**ARTICLE II**

**THE MERGER**

2.1 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of the DGCL, on the Closing Date, (a) Merger Sub will be merged with and into the Company; (b) the

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separate corporate existence of Merger Sub will thereupon cease; and (c) the Company will continue as the surviving corporation of the Merger. The Company, as the surviving corporation of the Merger, is sometimes referred to herein as the **Surviving Corporation**.

2.2 *The Effective Time*. Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Parent, Merger Sub and the Company will cause the Merger to be consummated pursuant to the DGCL by filing a certificate of merger in customary form and substance (the **Certificate of Merger** ) with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL (the time of such filing and acceptance for record by the Secretary of State of the State of Delaware, or such later time as may be agreed in writing by Parent, Merger Sub and the Company and specified in the Certificate of Merger, being referred to herein as the **Effective Time** ).

2.3 *The Closing*. The consummation of the Merger will take place at a closing (the **Closing** ) to occur at (a) 9:00 a.m., Pacific time, at the offices of Cooley LLP, 101 California Street, 5<sup>th</sup> Floor, San Francisco, California 94111, on a date to be agreed upon by Parent, Merger Sub and the Company that is no later than the second Business Day after the satisfaction or waiver (to the extent permitted hereunder) of the last to be satisfied or waived of the conditions set forth in Article VII (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver (to the extent permitted hereunder) of such conditions); or (b) such other time, location and date as Parent, Merger Sub and the Company mutually agree in writing. The date on which the Closing actually occurs is referred to as the **Closing Date**.

2.4 *Effect of the Merger*. At the Effective Time, the effect of the Merger will be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all (a) of the property, rights, privileges, powers and franchises of the Company and Merger Sub will vest in the Surviving Corporation; and (b) debts, liabilities and duties of the Company and Merger Sub will become the debts, liabilities and duties of the Surviving Corporation.

2.5 *Certificate of Incorporation and Bylaws*.

(a) *Certificate of Incorporation*. At the Effective Time, subject to the provisions of Section 6.10(a), the Amended and Restated Certificate of Incorporation of the Company, as amended (the **Charter** ), will be amended and restated in its entirety to read substantially identically to the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time, and such amended and restated certificate of incorporation will become the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the applicable provisions of the DGCL and such certificate of incorporation; *provided, however*, that at the Effective Time the certificate of incorporation of the Surviving Corporation will be amended so that the name of the Surviving Corporation will be Ellie Mae, Inc. .

(b) *Bylaws*. At the Effective Time, subject to the provisions of Section 6.10(a), the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, will become the bylaws of the Surviving Corporation until thereafter amended in accordance with the applicable provisions of the DGCL, the certificate of incorporation of the Surviving Corporation and such bylaws.

2.6 *Directors and Officers*.

(a) *Directors*. At the Effective Time, the initial directors of the Surviving Corporation will be the directors of Merger Sub as of immediately prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors are duly elected or appointed

and qualified.

(b) *Officers.* At the Effective Time, the initial officers of the Surviving Corporation will be the officers of the Company as of immediately prior to the Effective Time, each to hold office in accordance with the certificate of incorporation and bylaws of the Surviving Corporation until their respective successors are duly appointed.

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*2.7 Effect on Capital Stock.*

(a) *Capital Stock.* Unless otherwise mutually agreed by the Parties or by Parent and the applicable holder, upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following securities, the following will occur:

(i) each share of common stock, par value \$0.001 per share, of Merger Sub that is outstanding as of immediately prior to the Effective Time will be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation, and thereupon each certificate representing ownership of such shares of common stock of Merger Sub will thereafter represent ownership of shares of common stock of the Surviving Corporation;

(ii) each share of Company Common Stock that is outstanding as of immediately prior to the Effective Time (other than Owned Company Shares or Dissenting Company Shares) will be cancelled and extinguished and automatically converted into the right to receive cash in an amount equal to \$99.00, without interest thereon (the **Per Share Price** ), in accordance with the provisions of Section 2.9 (or in the case of a lost, stolen or destroyed certificate, upon delivery of an affidavit (and bond, if required) in accordance with the provisions of Section 2.11); and

(iii) each share of Company Common Stock that is (A) held by the Company as treasury stock; (B) owned by Parent or Merger Sub; or (C) owned by any direct or indirect wholly owned Subsidiary of Parent or Merger Sub as of immediately prior to the Effective Time (collectively, the **Owned Company Shares** ) will be cancelled and extinguished without any conversion thereof or consideration paid therefor.

(b) *Adjustment to the Per Share Price.* The Per Share Price will be adjusted appropriately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or other distribution of securities convertible into Company Common Stock), reorganization, recapitalization, reclassification, combination, exchange of shares or other similar change with respect to the Company Common Stock and the Company Equity Awards occurring on or after the date hereof and prior to the Effective Time.

(c) *Statutory Rights of Appraisal.*

(i) Notwithstanding anything to the contrary set forth in this Agreement, all shares of Company Common Stock that are issued and outstanding as of immediately prior to the Effective Time and held by Company Stockholders who shall have neither voted in favor of the Merger nor consented thereto in writing and who shall have properly and validly exercised their statutory rights of appraisal in respect of such shares of Company Common Stock in accordance with Section 262 of the DGCL (the **Dissenting Company Shares** ) will not be converted into, or represent the right to receive, the Per Share Price pursuant to this Section 2.7. Such Company Stockholders will be entitled to receive payment of the appraised value of such Dissenting Company Shares in accordance with the provisions of Section 262 of the DGCL, except that all Dissenting Company Shares held by Company Stockholders who shall have failed to perfect or who shall have effectively withdrawn or lost their rights to appraisal of such Dissenting Company Shares pursuant to Section 262 of the DGCL will thereupon be deemed to have been converted into, and to have become exchangeable for, as of the Effective Time, the right to receive the Per Share Price, without interest thereon, upon surrender of the Certificates or Uncertificated Shares that formerly evidenced such shares of Company Common Stock in the manner provided in Section 2.9.

(ii) The Company will give Parent (A) prompt notice of any demands for appraisal received by the Company, withdrawals of such demands and any other instruments served pursuant to the DGCL and received by the Company in respect of Dissenting Company Shares; and (B) the opportunity to participate in all negotiations and Legal

Proceedings with respect to demands for appraisal pursuant to the DGCL in respect of Dissenting

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Company Shares. The Company may not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal or settle or offer to settle any such demands for payment in respect of Dissenting Company Shares. For purposes of this Section 2.7(c)(ii), *participate* means that Parent will be kept apprised of proposed strategy and other significant decisions with respect to demands for appraisal pursuant to the DGCL in respect of Dissenting Company Shares (to the extent that the attorney-client privilege between the Company and its counsel is not undermined or otherwise affected), and Parent may offer comments or suggestions with respect to such demands but will not be afforded any decision-making power or other authority over such demands except for the payment, settlement or compromise consent set forth above.

**2.8 Equity Awards.**

(a) *Company RSU Awards, Company Restricted Stock Awards and Company Performance Share Awards.* Unless otherwise agreed to by the Parties, at the Effective Time, by virtue of the Merger, the Company RSU Awards, the Company Restricted Stock Awards and the Company Performance Share Awards that are unexpired, unexercised, and outstanding as of immediately prior to the Effective Time shall be treated as follows.

(i) Vested Company RSU Awards and Vested Company Restricted Stock Award. Each Vested Company RSU Award and Vested Company Restricted Stock Award shall be cancelled and automatically converted into the right to receive an amount in cash equal to the product of (A) the aggregate number of shares of Company Common Stock subject to the Vested Company RSU Award and/or Vested Company Restricted Stock Award, as applicable, multiplied by (B) the Per Share Price, subject to any required withholding of Taxes (the **Vested RSU/RSA Consideration** ).

(ii) Unvested Company RSU Awards and Unvested Company Restricted Stock Awards. Except as set forth in Section 2.8(a)(iii), each time-based Company RSU Award and Company Restricted Stock Award that is unexpired, unexercised, and outstanding as of immediately prior to the Effective Time that is not a Vested Company RSU Award or Vested Company Restricted Stock Award (the **Unvested Company RSU/RSA Awards** ) shall be cancelled and replaced with a right to receive an amount in cash, without interest, equal to (A) the amount of the Per Share Price multiplied by (B) the total number of shares of Company Common Stock subject to such Unvested Company RSU/RSA Award immediately prior to the Effective Time, subject to any required withholding of Taxes (the **Cash Replacement Company RSU/RSA Award Amounts** ), which Cash Replacement Company RSU/RSA Award Amounts will, subject to the holder's continued service with the Parent and its Affiliates (including the Surviving Corporation and its Subsidiaries) through the applicable vesting dates, vest and be payable at the same time as the Unvested Company RSU/RSA Awards for which such Cash Replacement RSU/RSA Award Amounts were exchanged would have vested pursuant to its terms. All Cash Replacement Company RSU/RSA Award Amounts will have the same terms and conditions (including, with respect to vesting (including accelerated vesting on specific terminations of employment, to the extent applicable)) as applied to the Unvested Company RSU/RSA Awards for which they were exchanged, except for terms rendered inoperative by reason of the transactions contemplated by this Agreement or for such other administrative or ministerial changes as in the reasonable and good faith determination of Parent are appropriate to conform the administration of the Cash Replacement Company RSU/RSA Award Amounts.

(iii) Performance-Based Company RSU Award and Company Performance Share Award. Each Company Performance Share Award and Company RSU Award that is outstanding immediately prior to the Effective Time and still subject to performance-based vesting (the **Performance-Based Equity Awards** ), shall, as of the Effective Time, become vested and nonforfeitable with respect to a number of shares of Company Common Stock subject to such Company Performance Share Award or Company RSU Award, as applicable, calculated in accordance with their respective terms, and shall be cancelled and converted automatically into the right to receive an amount in cash equal to the Per Share Price in respect of each vested share of Company Common Stock subject to such Company Performance Share Awards or Company RSU Award, subject to applicable Tax withholding (the **Performance-Based**

**Equity Award Consideration** ).

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(b) *Company Options*. Unless otherwise agreed to by the Parties, at the Effective Time, by virtue of the Merger, the Company Options that are unexpired, unexercised, and outstanding as of immediately prior to the Effective Time shall be treated as follows:

(i) Vested Options. Each Vested Company Option shall be cancelled and automatically converted into the right to receive an amount in cash equal to the product of (A) the aggregate number of shares of Company Common Stock subject to such Vested Company Option, multiplied by (B) the excess, if any, of the Per Share Price over the applicable per share exercise price under such Vested Company Option, subject to any required withholding of Taxes (the **Vested Option Consideration** ).

(ii) Unvested Options. Each Company Option that is unexpired, unexercised, and outstanding as of immediately prior to the Effective Time that is not a Vested Company Option (the **Unvested Company Options** ) shall be cancelled and replaced with a right to receive an amount in cash, without interest, equal to the product of (A) the aggregate number of shares of Company Common Stock subject to such Unvested Company Option multiplied by (B) the excess, if any, of the Per Share Price over the applicable per share exercise price under such Unvested Company Option, subject to any required withholding of Taxes (the **Cash Replacement Option Amounts** ), which Cash Replacement Option Amounts will, subject to the holder's continued service with the Parent and its Affiliates (including the Surviving Corporation and its Subsidiaries) through the applicable vesting dates, vest and be payable at the same time as the Unvested Company Option for which such Cash Replacement Option Amounts were exchanged would have vested pursuant to its terms. All Cash Replacement Option Amounts will have the same terms and conditions (including, with respect to vesting (including accelerated vesting on specific terminations of employment, to the extent applicable)) as applied to the award of Unvested Company Options for which they were exchanged, except for terms rendered inoperative by reason of the transactions contemplated by this Agreement or for such other administrative or ministerial changes as in the reasonable and good faith determination of Parent are appropriate to conform the administration of the Cash Replacement Option Amounts.

(iii) Notwithstanding the foregoing, if the per share exercise price of any Company Option that is unexpired, unexercised, and outstanding as of immediately prior to the Effective Time, is equal to or greater than the Per Share Price, such Company Option shall be cancelled immediately upon the Effective Time pursuant to this Section 2.8(b) without payment or consideration.

(c) *Payment Procedures*. The Surviving Corporation shall pay on the first payroll date following thirty days after the Closing Date the aggregate Vested Option Consideration, Vested RSU/RSA Consideration and Performance-Based Equity Award Consideration, as applicable, net of any applicable withholding Taxes, payable with respect to each of the Vested Company Options and Vested Company RSU Awards through, to the extent applicable, the Surviving Corporation's payroll (subject to any required tax withholdings) to the applicable holders of such Vested Company Options, Vested Company RSU Awards and Performance-Based Equity Awards. Notwithstanding the foregoing, if any payment owed to a holder of Company Options, Company RSU Awards, Company Restricted Stock Award or Company Performance Share Award pursuant to Section 2.8(a)(i), Section 2.8(a)(iii) or Section 2.8(b)(i), as applicable, cannot be made through the Surviving Corporation's payroll system or payroll provider, then the Surviving Corporation will issue a check for such payment to such holder, which check will be sent by overnight courier to such holder net of any applicable withholding Taxes, promptly following the Closing Date (but in no event later than the first payroll date following thirty days after the Closing Date).

(d) *Further Actions*. As of immediately prior to the Effective Time, the Company will take all action necessary to effect the cancellation and exchange, as applicable, of Company Equity Awards, all Company Equity Plans and any of the provisions in any other Employee Plan or Contract providing for the issuance or grant of any other interest in respect of the capital stock of the Company, in each case effective prior to or upon the Effective Time and to give

effect to this Section 2.8 (including the satisfaction of the requirements of Rule 16b-3(e) promulgated under the Exchange Act). The Company will ensure that following the Effective Time no

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participant in any Company Equity Plan or other Employee Plan will have any right thereunder to acquire any equity securities of the Company, the Surviving Corporation or any of their respective Subsidiaries or Affiliates.

(e) *Treatment of Employee Stock Purchase Plan.* With respect to the Company's Employee Stock Purchase Plan (the **ESPP**), as soon as practicable following the date hereof, the Company Board (or a committee thereof) will adopt resolutions or take other actions as may be required to provide that each individual participating in an Offering Period (as defined in the ESPP) in progress on the date hereof will not be permitted to (i) increase his or her payroll contribution rate pursuant to the ESPP from the rate in effect as of the date hereof; or (ii) make separate non-payroll contributions to the ESPP on or following the date hereof, except as may be required by applicable law. No individual who is not participating in the ESPP with respect to any current Offering Period as of the date hereof will be allowed to commence participation in the ESPP following the date hereof. Prior to the Effective Time, the Company will take all action that may be necessary to, effective upon the consummation of the Merger, (A) cause any Offering Period that would otherwise be outstanding at the Effective Time to terminate no later than five days prior to the date on which the Effective Time occurs; (B) make any pro rata adjustments that may be necessary to reflect the shortened Offering Period, but otherwise treat any shortened Offering Period as a fully effective and completed Offering Period for all purposes pursuant to the ESPP; (C) cause the exercise (as of no later than one Business Day prior to the date on which the Effective Time occurs) of each outstanding purchase right pursuant to the ESPP; and (D) provide that no further Offering Period or purchase period will commence pursuant to the ESPP after the date hereof. On such exercise date, the Company will apply the funds credited as of such date pursuant to the ESPP within each participant's payroll withholding account to the purchase of whole shares of Company Common Stock in accordance with the terms of the ESPP. Immediately prior to and effective as of the Effective Time (but subject to the consummation of the Merger), the Company will terminate the ESPP.

### 2.9 *Exchange of Certificates.*

(a) *Payment Agent.* Prior to the Closing, Parent will (i) select a bank or trust company reasonably acceptable to the Company to act as the payment agent for the Merger (the **Payment Agent**); and (ii) enter into a payment agent agreement, in form and substance reasonably acceptable to the Company, with such Payment Agent.

(b) *Exchange Fund.* At or prior to the Closing, Parent will deposit (or cause to be deposited) with the Payment Agent, by wire transfer of immediately available funds, for payment to the holders of shares of Company Common Stock pursuant to Section 2.7, an amount of cash equal to the aggregate consideration to which such holders of Company Common Stock become entitled pursuant to Section 2.7. Until disbursed in accordance with the terms and conditions of this Agreement, such cash will be invested by the Payment Agent, as directed by Parent or the Surviving Corporation, in (i) obligations of or fully guaranteed by the United States or any agency or instrumentality thereof and backed by the full faith and credit of the United States with a maturity of no more than 30 days; (ii) commercial paper obligations rated A-1 or P-1 or better by Moody's Investors Service, Inc. or Standard & Poor's Corporation, respectively; or (iii) certificates of deposit, bank repurchase agreements or bankers' acceptances of commercial banks with capital exceeding \$1,000,000,000 (based on the most recent financial statements of such bank that are then publicly available) (such cash and any proceeds thereon, the **Exchange Fund**). To the extent that (A) there are any losses with respect to any investments of the Exchange Fund; (B) the Exchange Fund diminishes for any reason below the level required for the Payment Agent to promptly pay the cash amounts contemplated by Section 2.7; or (C) all or any portion of the Exchange Fund is unavailable for Parent (or the Payment Agent on behalf of Parent) to promptly pay the cash amounts contemplated by Section 2.7 for any reason, Parent will, or will cause the Surviving Corporation to, promptly replace or restore the amount of cash in the Exchange Fund so as to ensure that the Exchange Fund is at all times fully available for distribution and maintained at a level sufficient for the Payment Agent to make the payments contemplated by Section 2.7. Any income from investment of the Exchange Fund will be payable to Parent or the Surviving Corporation, as Parent directs.



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(c) *Payment Procedures.* Promptly following the Effective Time (and in any event within three Business Days), Parent and the Surviving Corporation will cause the Payment Agent to mail to each holder of record (as of immediately prior to the Effective Time) of (i) a certificate or certificates that immediately prior to the Effective Time represented outstanding shares of Company Common Stock (other than Dissenting Company Shares and Owned Company Shares) (the **Certificates**); and (ii) subject to the last sentence of this Section 2.8(c), uncertificated shares of Company Common Stock that represented outstanding shares of Company Common Stock (other than Dissenting Company Shares and Owned Company Shares) (the **Uncertificated Shares**) (A) a letter of transmittal in customary form (which will specify that delivery will be effected, and risk of loss and title to the Certificates will pass, only upon delivery of the Certificates to the Payment Agent); and (B) instructions for use in effecting the surrender of the Certificates and Uncertificated Shares in exchange for the Per Share Price payable in respect thereof pursuant to Section 2.7. Upon surrender of Certificates for cancellation to the Payment Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holders of such Certificates will be entitled to receive in exchange therefor an amount in cash equal to the product obtained by multiplying (x) the aggregate number of shares of Company Common Stock represented by such Certificate; by (y) the Per Share Price (less any applicable withholding Taxes payable in respect thereof), and the Certificates so surrendered will forthwith be cancelled. Upon receipt of an agent's message by the Payment Agent (or such other evidence, if any, of transfer as the Payment Agent may reasonably request) in the case of a book-entry transfer of Uncertificated Shares, the holders of such Uncertificated Shares will be entitled to receive in exchange therefor an amount in cash equal to the product obtained by multiplying (1) the aggregate number of shares of Company Common Stock represented by such holder's transferred Uncertificated Shares; by (2) the Per Share Price (less any applicable withholding Taxes payable in respect thereof), and the transferred Uncertificated Shares so surrendered will be cancelled. The Payment Agent will accept such Certificates and transferred Uncertificated Shares upon compliance with such reasonable terms and conditions as the Payment Agent may impose to cause an orderly exchange thereof in accordance with normal exchange practices. No interest will be paid or accrued for the benefit of holders of the Certificates and Uncertificated Shares on the Per Share Price payable upon the surrender of such Certificates and Uncertificated Shares pursuant to this Section 2.9(c). Until so surrendered, outstanding Certificates and Uncertificated Shares will be deemed from and after the Effective Time to evidence only the right to receive the Per Share Price, without interest thereon, payable in respect thereof pursuant to Section 2.7. Notwithstanding anything to the contrary in this Agreement, no holder of Uncertificated Shares will be required to provide a Certificate or an executed letter of transmittal to the Payment Agent in order to receive the payment that such holder is entitled to receive pursuant to Section 2.7.

(d) *DTC Payment.* Prior to the Effective Time, Parent and the Company will cooperate to establish procedures with the Payment Agent and the Depository Trust Company (**DTC**) with the objective that (i) if the Closing occurs at or prior to 11:00 a.m., Pacific time, on the Closing Date, then the Payment Agent will transmit to DTC or its nominees on the Closing Date an amount in cash, by wire transfer of immediately available funds, equal to (A) the number of shares of Company Common Stock (other than Owned Company Shares and Dissenting Company Shares) held of record by DTC or such nominee immediately prior to the Effective Time; multiplied by (B) the Per Share Price (such amount, the **DTC Payment**); and (ii) if the Closing occurs after 11:00 a.m., Pacific time, on the Closing Date, then the Payment Agent will transmit the DTC Payment to DTC or its nominees on the first Business Day after the Closing Date.

(e) *Transfers of Ownership.* If a transfer of ownership of shares of Company Common Stock is not registered in the stock transfer books or ledger of the Company, or if the Per Share Price is to be paid in a name other than that in which the Certificates surrendered or transferred in exchange therefor are registered in the stock transfer books or ledger of the Company, the Per Share Price may be paid to a Person other than the Person in whose name the Certificate so surrendered or transferred is registered in the stock transfer books or ledger of the Company only if such Certificate is properly endorsed and otherwise in proper form for surrender and transfer and the Person requesting

such payment has paid to Parent (or any agent designated by Parent) any transfer Taxes required by reason of the payment of the Per Share Price to a Person other than the registered holder of such Certificate, or established to the satisfaction of Parent (or any agent designated by Parent) that such transfer

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Taxes have been paid or are otherwise not payable. Payment of the applicable Per Share Price with respect to Uncertificated Shares will only be made to the Person in whose name such Uncertificated Shares are registered.

(f) *No Liability.* Notwithstanding anything to the contrary set forth in this Agreement, none of the Payment Agent, Parent, the Surviving Corporation or any other Party will be liable to a holder of shares of Company Common Stock for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(g) *Distribution of Exchange Fund to Parent.* Any portion of the Exchange Fund that remains undistributed to the holders of the Certificates or Uncertificated Shares on the date that is one year after the Effective Time will be delivered to Parent upon demand, and any holders of shares of Company Common Stock that were issued and outstanding immediately prior to the Merger who have not theretofore surrendered or transferred their Certificates or Uncertificated Shares representing such shares of Company Common Stock for exchange pursuant to this Section 2.9 will thereafter look for payment of the Per Share Price payable in respect of the shares of Company Common Stock represented by such Certificates or Uncertificated Shares solely to Parent (subject to abandoned property, escheat or similar laws), solely as general creditors thereof, for any claim to the Per Share Price to which such holders may be entitled pursuant to Section 2.7. Any amounts remaining unclaimed by holders of any such Certificates or Uncertificated Shares two years after the Effective Time, or at such earlier date as is immediately prior to the time at which such amounts would otherwise escheat to, or become property of, any Governmental Authority, will, to the extent permitted by applicable law, become the property of the Surviving Corporation free and clear of any claims or interest of any such holders (and their successors, assigns or personal representatives) previously entitled thereto.

2.10 *No Further Ownership Rights in Company Common Stock.* From and after the Effective Time, (a) all shares of Company Common Stock will no longer be outstanding and will automatically be cancelled, retired and cease to exist; and (b) each holder of a Certificate or Uncertificated Shares theretofore representing any shares of Company Common Stock will cease to have any rights with respect thereto, except the right to receive the Per Share Price payable therefor in accordance with Section 2.7, or in the case of Dissenting Company Shares, the rights pursuant to Section 2.7(c). The Per Share Price paid in accordance with the terms of this Article II will be deemed to have been paid in full satisfaction of all rights pertaining to such shares of Company Common Stock. From and after the Effective Time, there will be no further registration of transfers on the records of the Surviving Corporation of shares of Company Common Stock that were issued and outstanding immediately prior to the Effective Time, other than transfers to reflect, in accordance with customary settlement procedures, trades effected prior to the Effective Time. If, after the Effective Time, Certificates or Uncertificated Shares are presented to the Surviving Corporation for any reason, they will (subject to compliance with the exchange procedures of Section 2.9(c)) be cancelled and exchanged as provided in this Article II.

2.11 *Lost, Stolen or Destroyed Certificates.* In the event that any Certificates have been lost, stolen or destroyed, the Payment Agent will issue in exchange therefor, upon the making of an affidavit of that fact by the holder thereof, the Per Share Price payable in respect thereof pursuant to Section 2.7. Parent or the Payment Agent may, in its discretion and as a condition precedent to the payment of such Per Share Price, require the owners of such lost, stolen or destroyed Certificates to deliver a bond in such amount as it may direct as indemnity against any claim that may be made against Parent, the Surviving Corporation or the Payment Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.12 *Required Withholding.* Notwithstanding anything herein to the contrary, each of the Payment Agent, Parent, the Company and the Surviving Corporation will be entitled to deduct and withhold from any cash amounts payable pursuant to this Agreement to any holder or former holder of shares of Company Common Stock or Company Equity Awards such amounts as are required to be deducted or withheld therefrom pursuant to any Tax laws. To the extent

that such amounts are so deducted or withheld and paid over to the appropriate Governmental Authority, such amounts will be treated for all purposes of this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.



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2.13 *No Dividends or Distributions.* No dividends or other distributions with respect to capital stock of the Surviving Corporation with a record date on or after the Effective Time will be paid to the holder of any unsurrendered Certificates or Uncertificated Shares.

2.14 *Necessary Further Actions.* If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, then the directors and officers of the Company and Merger Sub as of immediately prior to the Effective Time will take all such lawful and necessary action.

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

With respect to any Section of this Article III, except (a) as disclosed in the reports, statements and other documents filed by the Company with the SEC or furnished by the Company to the SEC, in each case pursuant to the Exchange Act on or after January 1, 2018 and prior to the date hereof (other than any disclosures contained or referenced therein under the captions Risk Factors, Special Note Regarding Forward-Looking Statements or Quantitative and Qualitative Disclosures About Market Risk (to the extent such disclosures are general and predictive, cautionary or forward-looking in nature) (the **Recent SEC Reports** ) (it being (i) understood that any matter disclosed in any Recent SEC Report will be deemed to be disclosed in a section of the Company Disclosure Letter only to the extent that it is reasonably apparent on the face of such disclosure in such Recent SEC Report that it is applicable to such section of the Company Disclosure Letter; and (ii) acknowledged that nothing disclosed in the Recent SEC Reports will be deemed to modify or qualify the representations and warranties set forth in Section 3.7 or Section 3.12(a)(ii)); or (b) subject to the terms of Section 9.12, as set forth in the disclosure letter delivered by the Company to Parent and Merger Sub on the date hereof (the **Company Disclosure Letter** ), the Company hereby represents and warrants to Parent and Merger Sub as follows:

3.1 *Organization; Good Standing.* The Company (a) is a corporation duly organized, validly existing and in good standing pursuant to the DGCL; and (b) has the requisite corporate power and authority to conduct its business as it is presently being conducted and to own, lease or operate its properties and assets. The Company is duly qualified to do business and is in good standing in each jurisdiction where the character of its properties owned or leased or the nature of its activities make such qualification necessary (to the extent that the concept of good standing is applicable in the case of any jurisdiction outside the United States), except where the failure to be so qualified or in good standing would not have a Company Material Adverse Effect. The Company has made available to Parent true, correct and complete copies of the Charter and the Amended and Restated Bylaws of the Company (the **Bylaws** ), each as amended to date. The Company is not in violation of the Charter or the Bylaws in any material respect.

3.2 *Corporate Power; Enforceability.* The Company has the requisite corporate power and authority to (a) execute and deliver this Agreement; (b) perform its covenants and obligations hereunder; and (c) subject to receiving the Requisite Stockholder Approval, consummate the Merger. The execution and delivery of this Agreement by the Company, the performance by the Company of its covenants and obligations hereunder, and the consummation of the Merger have been duly authorized by all necessary corporate action on the part of the Company and no additional corporate actions on the part of the Company are necessary to authorize (i) the execution and delivery of this Agreement by the Company; (ii) the performance by the Company of its covenants and obligations hereunder; or (iii) subject to the receipt of the Requisite Stockholder Approval, the consummation of the Merger. This Agreement has been duly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in

accordance with its terms, except as such enforceability (A) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting or relating to creditors' rights generally; and (B) is subject to general principles of equity (the **Enforceability Limitations** ).

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*3.3 Company Board Approval; Fairness Opinion; Anti-Takeover Laws.*

(a) *Company Board Approval.* The Company Board has unanimously (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement and consummate the Merger upon the terms and subject to the conditions set forth herein; (ii) approved the execution and delivery of this Agreement by the Company, the performance by the Company of its covenants and other obligations hereunder, and the consummation of the Merger upon the terms and conditions set forth herein; and (iii) resolved to recommend that the Company Stockholders adopt this Agreement and approve the Merger in accordance with the DGCL (collectively, the **Company Board Recommendation** ), which Company Board Recommendation has not been withdrawn, rescinded or modified in any way as of the date hereof.

(b) *Fairness Opinion.* The Company Board has received the written opinion (or an oral opinion to be confirmed in writing) of its financial advisor, J.P. Morgan Securities LLC (the **Advisor** ), to the effect that, as of the date of such opinion and based upon and subject to the various factors, qualifications, limitations and assumptions set forth therein, the Per Share Price to be paid to holders of Company Common Stock in the Merger is fair, from a financial point of view, to such holders (it being understood and agreed that such written opinion is for the benefit of the Company Board and may not be relied upon by Parent or Merger Sub).

(c) *Anti-Takeover Laws.* Assuming that the representations of Parent and Merger Sub set forth in Section 4.6 are true and correct, the Company Board has taken all necessary actions so that the restrictions on business combinations set forth in Section 203 of the DGCL and any other similar applicable anti-takeover law will not be applicable to the Merger.

*3.4 Requisite Stockholder Approval.* The affirmative vote of the holders of a majority of the voting power of the outstanding shares of Company Common Stock entitled to vote on the Merger (the **Requisite Stockholder Approval** ) is the only vote of the holders of any class or series of Company Capital Stock that is necessary pursuant to applicable law, the Charter or the Bylaws to adopt this Agreement and consummate the Merger.

*3.5 Non-Contravention.* The execution and delivery of this Agreement by the Company, the performance by the Company of its covenants and obligations hereunder, and the consummation of the Merger do not (a) violate or conflict with any provision of the Charter or the Bylaws; (b) violate, conflict with, result in the breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) pursuant to, result in the termination of, accelerate the performance required by, or result in a right of termination or acceleration pursuant to any Material Contract; (c) assuming compliance with the matters referred to in Section 3.6 and, in the case of the consummation of the Merger, subject to obtaining the Requisite Stockholder Approval, violate or conflict with any law or order applicable to the Company or by which any of its properties or assets are bound; or (d) result in the creation of any lien (other than Permitted Liens) upon any of the properties or assets of the Company, except in the case of each of clauses (b), (c) and (d) for such violations, conflicts, breaches, defaults, terminations, accelerations or liens that would not have a Company Material Adverse Effect.

*3.6 Requisite Governmental Approvals.* No consent, approval, order or authorization of, filing or registration with, or notification to (any of the foregoing, a **Consent** ) any Governmental Authority or government-sponsored entity that has jurisdiction over the Merger and the other transactions contemplated hereby is required on the part of the Company (a) in connection with the execution and delivery of this Agreement by the Company; (b) the performance by the Company of its covenants and obligations pursuant to this Agreement; or (c) the consummation of the Merger, except (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and such filings with Governmental Authorities to satisfy the applicable laws of states in which the Company is qualified to do business; (ii) such filings and approvals as may be required by any federal or state securities laws, including

compliance with any applicable requirements of the Exchange Act; (iii) compliance with any applicable requirements of the HSR Act and any other applicable Antitrust Laws; and (iv) such other Consents the failure of which to obtain would not have a Company Material Adverse Effect.

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(a) *Capital Stock.* The authorized capital stock of the Company consists of (i) 140,000,000 shares of Company Common Stock and (iii) 10,000,000 shares of Company Preferred Stock. As of 5:00 p.m., Pacific time, on February 7, 2019 (such time and date, the **Capitalization Date** ), (A) 34,936,218 shares of Company Common Stock were issued and outstanding (which excludes the shares of Company Common Stock relating to the Company Equity Awards referred to in Section 3.7(b)); (B) no shares of Company Preferred Stock were issued and outstanding; and (C) no shares of Company Capital Stock were held by the Company as treasury shares. All outstanding shares of Company Common Stock are validly issued, fully paid, nonassessable and free of any preemptive rights. From the Capitalization Date to the date hereof, the Company has not issued or granted any Company Securities other than pursuant to the exercise of Company Equity Awards granted prior to the date hereof.

(b) *Stock Reservation.* As of the Capitalization Date, the Company has reserved (i) 1,064,245 shares of Company Common Stock were reserved for issuance pursuant to outstanding Company Options, (ii) 1,394,193 shares of Company Common Stock were reserved for issuance pursuant to outstanding Company RSU Awards (including such awards issued pursuant to the terms of the Company Performance Share Awards), (iii) 168,135 shares of Company Common Stock were reserved for issuance pursuant to outstanding Company Performance Share Awards and performance-based Company RSU Awards (assuming achievement of applicable performance goals at target level) and (iv) aggregate contributions of \$5,747,828.56 were received by the Company for the current offering period pursuant to the ESPP. The Company has made available or otherwise delivered to Parent a true, correct and complete list of all Company Equity Awards as of the Capitalization Date with fields of information.

(c) *Company Securities.* Except as set forth in this Section 3.7, as of the Capitalization Date there were (i) other than the Company Common Stock, no outstanding shares of capital stock of, or other equity or voting interest in, the Company; (ii) no outstanding securities of the Company convertible into or exchangeable or exercisable for shares of capital stock of, or other equity or voting interest (including voting debt) in, the Company; (iii) no outstanding options, warrants or other rights or binding arrangements to acquire from the Company, or that obligate the Company to issue, any capital stock of, or other equity or voting interest in, or any securities convertible into or exchangeable for shares of capital stock of, or other equity or voting interest (including voting debt) in, the Company; (iv) no obligations of the Company to grant, extend or enter into any subscription, warrant, right, convertible, exchangeable or exercisable security, or other similar Contract relating to any capital stock of, or other equity or voting interest (including any voting debt) in, the Company; (v) no outstanding shares of restricted stock, restricted stock units, stock appreciation rights, performance shares, contingent value rights, phantom stock or similar securities or rights that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock of, or other securities or ownership interests in, the Company (the items in clauses (i), (ii), (iii), (iv) and (v), collectively with the Company Capital Stock, the **Company Securities** ); (vi) no voting trusts, proxies or similar arrangements or understandings to which the Company is a party or by which the Company is bound with respect to the voting of any shares of capital stock of, or other equity or voting interest in, the Company; (vii) no obligations or binding commitments of any character restricting the transfer of any shares of capital stock of, or other equity or voting interest in, the Company to which the Company is a party or by which it is bound; and (viii) no other obligations by the Company to make any payments based on the price or value of any Company Securities. The Company is not a party to any Contract that obligates it to repurchase, redeem or otherwise acquire any Company Securities. There are no accrued and unpaid dividends with respect to any outstanding shares of Company Capital Stock. The Company does not have a stockholder rights plan in effect.

(d) *Other Rights.* The Company is not a party to any Contract relating to the voting of, requiring registration of, or granting any preemptive rights, anti-dilutive rights or rights of first refusal or other similar rights with respect to any Company Securities.



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**Table of Contents****3.8 Subsidiaries.**

(a) *Subsidiaries.* The Company does not have any Subsidiaries.

(b) *Other Investments.* Other than equity securities held in the ordinary course of business for cash management purposes, the Company does not own or hold the right to acquire any equity securities, ownership interests or voting interests (including voting debt) of, or securities exchangeable or exercisable therefor, or investments in, any other Person.

**3.9 Company SEC Reports.** Since January 1, 2018, the Company has filed all forms, reports and documents with the SEC that have been required to be filed by it pursuant to applicable laws prior to the date hereof (the **Company SEC Reports** ). Each Company SEC Report complied, as of its filing date, in all material respects with the applicable requirements of the Securities Act or the Exchange Act, as the case may be, each as in effect on the date that such Company SEC Report was filed. True, correct and complete copies of all Company SEC Reports are publicly available in the Electronic Data Gathering, Analysis and Retrieval database of the SEC. As of its filing date (or, if amended or superseded by a filing prior to the date hereof, on the date of such amended or superseded filing), each Company SEC Report did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

**3.10 Company Financial Statements; Internal Controls.**

(a) *Company Financial Statements.* The consolidated financial statements (including any related notes and schedules) of the Company filed with the Company SEC Reports (i) were prepared in accordance with GAAP (except as may be indicated in the notes thereto or as otherwise permitted by Form 10-Q with respect to any financial statements filed on Form 10-Q); and (ii) fairly present, in all material respects, the consolidated financial position of the Company as of the dates thereof and the consolidated results of operations and cash flows for the periods then ended. Except as have been described in the Company SEC Reports, there are no unconsolidated Subsidiaries of the Company or any off-balance sheet arrangements of the type required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated by the SEC.

(b) *Disclosure Controls and Procedures.* The Company has established and maintains disclosure controls and procedures and internal control over financial reporting (in each case as defined pursuant to Rule 13a-15 and Rule 15d-15 promulgated under the Exchange Act). The Company's disclosure controls and procedures are reasonably designed to ensure that all (i) material information required to be disclosed by the Company in the reports and other documents that it files or furnishes pursuant to the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC; and (ii) such material information is accumulated and communicated to the Company's management as appropriate to allow timely decisions regarding required disclosure and to make the certifications required pursuant to Sections 302 and 906 of the Sarbanes-Oxley Act. The Company's management has completed an assessment of the effectiveness of the Company's internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended December 31, 2017, and such assessment concluded that such system was effective. Since January 1, 2018, the principal executive officer and principal financial officer of the Company have made all certifications required by the Sarbanes-Oxley Act. Neither the Company nor its principal executive officer or principal financial officer has received notice from any Governmental Authority challenging or questioning the accuracy, completeness, form or manner of filing of such certifications.

(c) *Internal Controls*. The Company has established and maintains a system of internal accounting controls that are effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP, including policies and procedures that (i) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and



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dispositions of the assets of the Company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and that receipts and expenditures of the Company are being made only in accordance with appropriate authorizations of the Company's management and the Company Board; and (iii) provide assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company. Neither the Company nor, to the Knowledge of the Company, the Company's independent registered public accounting firm has identified or been made aware of (A) any significant deficiency or material weakness in the system of internal control over financial reporting utilized by the Company that has not been subsequently remediated; or (B) any fraud that involves the Company's management or other employees who have a role in the preparation of financial statements or the internal control over financial reporting utilized by the Company. As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Company SEC Reports.

(d) *Indebtedness*. Section 3.10(d) of the Company Disclosure Letter contains a true, correct and complete list of all Indebtedness of the Company as of the date hereof, other than Indebtedness reflected in the Audited Company Balance Sheet or otherwise included in the Company SEC Reports.

3.11 *No Undisclosed Liabilities*. The Company has no liabilities of a nature required to be reflected or reserved against on a balance sheet (or the notes thereto) prepared in accordance with GAAP, other than liabilities (a) reflected or otherwise reserved against in the Audited Company Balance Sheet or in the consolidated financial statements of the Company (including the notes thereto) included in the Company SEC Reports filed prior to the date hereof; (b) arising pursuant to this Agreement or incurred in connection with the Merger; (c) incurred in the ordinary course of business on or after October 1, 2018; or (d) that would not have a Company Material Adverse Effect.

3.12 *Absence of Certain Changes*.

(a) *No Company Material Adverse Effect*. Since (i) October 1, 2018 through the date hereof, (i) the business of the Company has been conducted, in all material respects, in the ordinary course of business and (ii) December 31, 2017 there has not occurred a Company Material Adverse Effect.

(b) *Forbearance*. Since October 1, 2018 through the date hereof, the Company has not taken any action that would be prohibited by Section 5.2 (other than subsections 5.2(c), 5.2(i), 5.2(j), 5.2(n), 5.2(o), and 5.2(w) (to the extent related to the foregoing subsections), if taken or proposed to be taken after the date hereof.

3.13 *Material Contracts*.

(a) *List of Material Contracts*. Section 3.13(a) of the Company Disclosure Letter contains a true, correct and complete list of all Material Contracts to or by which the Company is a party or is bound as of the date hereof (other than any Material Contracts contemplated by clause (i) of the definition of Material Contract and any Material Contracts listed in Section 3.18(a) of the Company Disclosure Letter), and a true, correct and complete copy of each Material Contract has been made available to Parent, or has been publicly made available in the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) database of the SEC.

(b) *Validity*. Each Material Contract is valid and binding on the Company and is in full force and effect (except (x) as limited by the Enforceability Limitations or (y) any Contract that is terminable by any party thereto without penalty on 90 days or less notice), and neither the Company nor, to the Knowledge of the Company, any other party thereto is in breach of or default pursuant to any such Material Contract, except for such failures to be in full force and effect that would not have a Company Material Adverse Effect. No event has occurred that, with notice or lapse of time or both, would constitute such a breach or default pursuant to any Material Contract by the Company, or, to the Knowledge of

the Company, as of the date of this Agreement, any other party thereto, except for such breaches and defaults that would not have a Company Material Adverse Effect.

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(c) *Notices from Material Customers.* To the Knowledge of the Company, since the date of the Audited Company Balance Sheet to the date hereof, the Company has not received any notice in writing from or on behalf of any Material Customer indicating that such Material Customer intends to terminate, or not renew, any Material Contract with such Material Customer.

### 3.14 *Real Property.*

(a) *Owned Real Property.* The Company does not own any real property.

(b) *Leased Real Property.* Section 3.14(b) of the Company Disclosure Letter contains a true, correct and complete list, as of the date hereof, of all of the existing leases, subleases, licenses or other agreements pursuant to which the Company uses or occupies, or has the right to use or occupy, now or in the future, any real property that provides for payments by the Company in excess of \$3,000,000 per annum (such property, the **Leased Real Property**, and each such lease, sublease, license or other agreement, a **Lease** ). The Company has made available to Parent true, correct and complete copies of all Leases (including all material modifications, amendments and supplements thereto). With respect to each Lease and except as would not have a Company Material Adverse Effect or materially and adversely affect the current use by the Company of the Leased Real Property, (i) to the Knowledge of the Company, there are no disputes with respect to such Lease; (ii) the Company has not collaterally assigned or granted any other security interest in such Lease or any interest therein; and (iii) there are no liens (other than Permitted Liens) on the estate or interest created by such Lease. The Company has valid leasehold estates in the Leased Real Property, free and clear of all liens (other than Permitted Liens). Neither the Company, nor to the Knowledge of the Company, any other party to the Lease is in material breach of or default pursuant to any Lease.

(c) *Subleases.* Section 3.14(c) of the Company Disclosure Letter contains a true, correct and complete list of all of the existing material subleases, licenses or similar agreements (each, a **Sublease** ) granting to any Person, other than the Company, any right to use or occupy, now or in the future, the Leased Real Property. With respect to each of the Subleases, (i) to the Knowledge of the Company, there are no disputes with respect to such Sublease; (ii) the other party to such Sublease is not an Affiliate of, and otherwise does not have any economic interest in, the Company.

3.15 *Environmental Matters.* Except as would not have a Company Material Adverse Effect, none of the members of the Company (a) has received any written notice alleging that the Company or any former Subsidiary has violated, or has any liability under, any applicable Environmental Law; (b) has transported, produced, processed, manufactured, generated, used, treated, handled, stored, released or disposed, or arranged for the disposal, of any Hazardous Substances in violation of any applicable Environmental Law; (c) has exposed any employee or other Person to Hazardous Substances in violation of or in a manner giving rise to liability under any applicable Environmental Law; (d) is a party to or is the subject of any pending or, to the Knowledge of the Company, threatened Legal Proceeding (i) alleging the noncompliance by the Company with any Environmental Law; or (ii) seeking to impose any financial responsibility for any investigation, cleanup, removal or remediation pursuant to any Environmental Law; (e) has failed or is failing to comply with any Environmental Law; or (f) to the Company's Knowledge, does not own or operate any property or facility contaminated by any Hazardous Substance which would reasonably be expected to result in liability to the Company under Environmental Law.

### 3.16 *Intellectual Property.*

(a) *Registered Intellectual Property; Proceedings.* Except as would not constitute a Company Material Adverse Effect, the Company has provided or made available a true, correct and complete list as of the date hereof of all (i) material items of Company Registered Intellectual Property and specifies, where applicable, the jurisdictions in which each such item of Company Registered Intellectual Property has been issued or registered; and (ii) Legal

Proceedings before any Governmental Authority (other than actions related to the ordinary course prosecution of Company Registered Intellectual Property before the United States Patent and Trademark Office

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or the equivalent authority anywhere in the world) to which the Company is a party that are related to any material items of Company Registered Intellectual Property.

(b) *No Order*. Except as would not constitute a Company Material Adverse Effect, no material items of Company Intellectual Property is subject to any Legal Proceeding or outstanding order to which the Company is a named party with respect to the Company restricting in any manner the use, transfer or licensing thereof by the Company of such Company Intellectual Property or any of the Company's products.

(c) *Absence of Liens*. Except as would not constitute a Company Material Adverse Effect, the Company exclusively owns and has good and valid legal and equitable title to each item of material Company Intellectual Property and has sufficient rights to all material Business IP, in each case, free and clear of any liens (other than Permitted Liens).

(d) *No Infringement*. Except as would not constitute a Company Material Adverse Effect, to the Knowledge of the Company, the operation of the business of the Company as such business currently is conducted (including the manufacture and sale of the Company's products) as of the date hereof does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any third Person or constitute unfair competition or unfair trade practices pursuant to the laws of any jurisdiction.

(e) *No Notice of Infringement*. Except as would not constitute a Company Material Adverse Effect, since December 31, 2016, neither the Company nor any of its former Subsidiaries has received written notice from any third Person, or been involved in any Legal Proceeding, alleging that the operation of the business of the Company or its Subsidiaries or of the Company's or any of its Subsidiaries' products infringes, misappropriates, dilutes or otherwise violates the Intellectual Property of any third Person.

(f) *No Third Person Infringement*. Since December 31, 2016, the Company has not provided any third Person with written notice claiming that such third Person is infringing, misappropriating, diluting or otherwise violating any material items of Company Intellectual Property, and, to the Knowledge of the Company, no such activity is occurring as of the date of this Agreement, except, in each case, as would not have a Company Material Adverse Effect.

(g) *Proprietary Information*. Except as would not constitute a Company Material Adverse Effect, the Company and each of its former Subsidiaries have taken reasonable steps to protect and preserve the Company's and its former Subsidiaries' rights in their confidential information and trade secrets that they reasonably wish to protect and preserve.

(h) *Data Security Requirements and Privacy*. Except as would not constitute a Company Material Adverse Effect, the Company (i) maintains commercially reasonable policies and procedures designed to protect the security, integrity and privacy of personally identifiable information, as defined under any applicable law, and card account, bank account and all other financial information collected by the Company from the Company's customers ( Protected Information ); and (ii) is in compliance in all material respects with such Company policies and all applicable laws, rules and regulations related to data privacy and data security. Except as would not constitute a Company Material Adverse Effect, to the Knowledge of the Company, since December 31, 2016, there has been no unauthorized access to, or any unauthorized use, disclosure, losses or theft of, or security breaches relating to, Protected Information received, or transmitted, by, or in the possession, custody or control of the Company or its commercial clients.

(i) *Products and Source Code*. To the Knowledge of the Company, except as would not constitute a Company Material Adverse Effect, there are (i) no defects in any of the products of the Company that would prevent the same from performing materially in accordance with the Company's obligations to customers under written customer agreements; and (ii) no viruses, worms, Trojan horses or similar disabling codes or programs in any of the same. Except as would not have a Company Material Adverse Effect, as of the date hereof, the



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Company possesses all source code and other materials that embody material Company Intellectual Property used by the Company in the development and maintenance of the products of the Company and it has no duty or obligation (whether present, contingent, or otherwise) to disclose, deliver, license, or otherwise make available, any source code that embodies material Company Intellectual Property for any material product of the Company to any Person and the Company has not done the same.

(j) *Open Source Software*. Except as would not constitute a Company Material Adverse Effect, to the Knowledge of the Company, no material product of the Company is distributed with any software that is licensed to the Company pursuant to an open source, public-source, freeware or other third party license agreement in a manner that, in each case, requires the Company to make available any material proprietary source code that embodies material Company Intellectual Property for any product of the Company or in a manner that requires any material product of the Company to be made available at no charge.

### 3.17 *Tax Matters*.

(a) *Tax Returns*. Except as would not have a Company Material Adverse Effect, the Company has (i) timely filed all United States federal, state, local and non-United States returns, estimates, information statements and reports (including amendments thereto) relating to any and all Taxes ( **Tax Returns** ) required to be filed by the Company; and (ii) timely paid all Taxes due and payable. The most recent financial statements contained in the Company SEC Reports reflect an adequate reserve (in accordance with GAAP) for all Taxes accrued but not then payable by the Company through the date of such financial statements. The Company has not executed any waiver, except in connection with any ongoing Tax examination, of any statute of limitations on, or extended the period for the assessment or collection of, any material Tax, in each case that has not since expired.

(b) *Taxes Paid*. Except as would not have a Company Material Adverse Effect, the Company has timely paid or withheld with respect to its employees and other third Persons (and paid over any amounts withheld to the appropriate Tax authority) all United States federal and state income taxes, Federal Insurance Contribution Act, Federal Unemployment Tax Act and other similar Taxes required to be paid or withheld.

(c) *No Audits*. No audits or other examinations with respect to Taxes of the Company are presently in progress or have been asserted or proposed in writing. No written claim has been received by the Company within the past three (3) years from a Governmental Authority in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to tax in that jurisdiction.

(d) *Spin-offs*. The Company has not constituted either a distributing corporation or a controlled corporation in a distribution of stock intended to qualify for tax-free treatment pursuant to 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).

(e) *No Listed Transaction*. The Company has not engaged in a listed transaction as set forth in Treasury Regulation § 1.6011-4(b)(2).

(f) *Tax Agreements*. The Company (i) is not a party to or bound by, or currently does not have any material liability pursuant to, any Tax sharing, allocation or indemnification agreement or obligation, other than any such agreement or obligation entered into in the ordinary course of business the primary purpose of which is unrelated to Taxes; or (ii) does not have any material liability for the Taxes of any Person other than the Company pursuant to Treasury Regulation § 1.1502-6 (or any similar provision of state, local or non-United States law) as a transferee or successor, or otherwise by operation of law.

(g) *Post-Closing Income and Deductions*. Except as would not have a Company Material Adverse Effect, the Company will not be required to include any item of income in, or exclude any item of deduction



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from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) closing agreement as described in Code §7121 (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (iii) installment sale or open transaction disposition made on or prior to the Closing Date; or (iv) prepaid amount received or deferred revenue accrued outside the ordinary course of business on or prior to the Closing Date.

**3.18 Employee Plans.**

(a) *Employee Plans.* Section 3.18(a) of the Company Disclosure Letter sets forth a true, correct and complete list, as of the date hereof, of (i) all material employee benefit plans (as defined in Section 3(3) of ERISA), whether or not subject to ERISA; and (ii) all other material employment, bonus, stock option, stock purchase or other equity-based, benefit, incentive compensation, profit sharing, savings, retirement, disability, insurance, vacation, deferred compensation, severance, termination, retention, change in control compensation and other similar material fringe, welfare or other employee benefit plans, programs, agreement, contracts, policies or binding arrangements (whether or not in writing) maintained or contributed to for the benefit of any current employee or director of the Company and with respect to which the Company has any current material liability, contingent or otherwise (collectively, the **Employee Plans**). With respect to each material Employee Plan, to the extent applicable, the Company has made available to Parent true, correct and complete copies of (A) the most recent annual report on Form 5500 required to have been filed with the IRS for each Employee Plan, including all schedules thereto; (B) the most recent determination or opinion letter, if any, from the IRS for any Employee Plan that is intended to qualify pursuant to Section 401(a) of the Code; (C) the plan documents and summary plan descriptions; (D) any related trust agreements, insurance contracts, insurance policies or other Contracts of any funding arrangements; (E) any notices to or from the IRS or any office or representative of the United States Department of Labor or any similar Governmental Authority relating to any material compliance issues in respect of any such Employee Plan during the past three years; and (F) with respect to each material Employee Plan that is maintained in any non-United States jurisdiction primarily for the benefit of any employee of the Company whose principal work location is outside of the United States (the **International Employee Plans**), to the extent applicable, (1) the most recent annual report or similar compliance documents required to be filed with any Governmental Authority with respect to such plan; and (2) any document comparable to the determination letter referenced pursuant to clause (B) above issued by a Governmental Authority relating to the satisfaction of law necessary to obtain the most favorable Tax treatment.

(b) *Absence of Certain Plans.* Except as set forth on Section 3.18(b) of the Company Disclosure Letter, neither the Company nor any other trade or business (whether or not incorporated) that would be treated as a single employer with the Company pursuant to Section 414 of the Code (an **ERISA Affiliate**) has previously maintained, sponsored or contributed to or currently maintains, sponsors or participates in, or contributes to, or has any liability or obligation with respect to, (i) a multiemployer plan (as defined in Section 3(37) of ERISA); (ii) a multiple employer plan (as defined in Section 4063 or Section 4064 of ERISA); or (iii) a defined benefit pension plan or a plan subject to Section 302 of Title I of ERISA, Section 412 of the Code or Title IV of ERISA.

(c) *Compliance.* Each Employee Plan has been maintained, funded, operated and administered in all material respects in accordance with its terms and with all applicable law, including the applicable provisions of ERISA, the Code and any applicable regulatory guidance issued by any Governmental Authority. To the Knowledge of the Company, all required contributions to the Employee Plans have been timely and accurately made, and no Employee Plan has any unfunded liabilities that have not been fully accrued.

(d) *Employee Plan Legal Proceedings.* As of the date hereof, there are no material Legal Proceedings pending or, to the Knowledge of the Company, threatened on behalf of or against any Employee Plan, the assets of any trust pursuant

to any Employee Plan, or the plan sponsor, plan administrator or any fiduciary of any Employee Plan with respect to the administration or operation of such plans, other than routine claims for benefits that have been or are being handled through an administrative claims procedure.

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(e) *No Prohibited Transactions.* Neither the Company nor, to the Knowledge of the Company, any of its directors, officers, employees or agents has, with respect to any Employee Plan, engaged in or been a party to any breach of fiduciary duty or non-exempt prohibited transaction (as defined in Section 4975 of the Code or Section 406 of ERISA) that could reasonably be expected to result in the imposition of a material penalty assessed pursuant to Section 502(i) of ERISA or a material Tax imposed by Section 4975 of the Code, in each case applicable to the Company or any Employee Plan, or for which the Company has any indemnification obligation.

(f) *No Welfare Benefit Plan.* No Employee Plan provides post-termination or retiree life insurance, health or other welfare benefits to any person, except as may be required by Section 4980B of the Code or any similar law.

(g) *No Additional Rights.* None of the execution and delivery of this Agreement or the consummation of the Merger will, either alone or in conjunction with any other event (whether contingent or otherwise), (i) result in, or accelerate the time of payment or vesting of, any payment (including severance, change in control, stay or retention bonus or otherwise) becoming due under any Employee Plan; (ii) materially increase any compensation or benefits otherwise payable under any Employee Plan; (iii) result in the acceleration of the time of payment or vesting of any such benefits under any Employee Plan; (iv) result in the forfeiture of compensation or benefits under any Employee Plan; (v) trigger any other material obligation under, or result in the breach or violation of, any Employee Plan; or (vi) limit or restrict the right of Parent to merge, amend or terminate any Employee Plan on or after the Effective Time (other than ordinary notice and administration requirements and expenses or routine claims for benefits).

(h) *Section 280G.* No payment or benefit or acceleration thereof that could be made by the Company or any ERISA Affiliate could be characterized as a parachute payment within the meaning of Section 280G of the Code, and the Company has no obligation to gross-up or indemnify any individual with respect to any Tax under Section 4999 of the Code.

(i) *Section 409A.* Each Employee Plan has been maintained, in form and operation, in all material respects in compliance with Section 409A of the Code, and the Company has no obligation to gross-up or indemnify any individual with respect to any such Tax.

(j) *International Employee Plans.* Each International Employee Plan has been established, maintained and administered in compliance in all material respects with its terms and conditions and with the requirements prescribed by any applicable laws. Furthermore, no International Employee Plan has material unfunded liabilities that as of the Effective Time will not be offset by insurance or fully accrued. Except as required by applicable law, to the Knowledge of the Company, no condition exists that would prevent the Company from terminating or amending any International Employee Plan at any time for any reason without material liability to the Company (other than ordinary notice and administration requirements and expenses or routine claims for benefits).

(k) *No New Employee Plans.* The Company has no plan or commitment to amend any material Employee Plan or establish any material new employee benefit plan or to materially increase any benefits pursuant to any material Employee Plan.

3.19 *Labor Matters.*

(a) *Union Activities.* The Company is not a party to or bound by any collective bargaining agreement, labor union contract or trade union agreement (each, a **Collective Bargaining Agreement** ). To the Knowledge of the Company, there are no activities or proceedings of any labor organization or trade union to organize any employees of the Company with regard to their employment with the Company, and no such activities or proceedings have occurred within the past three years. No Collective Bargaining Agreement is being negotiated by the Company. There is no

strike, lockout, slowdown, or work stoppage against the Company pending or, to

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the Knowledge of the Company, threatened directly against the Company, and no such labor disputes have occurred within the past three years.

(b) *Wage and Hour Compliance.* Since January 1, 2016, the Company has complied with applicable laws and orders with respect to employment (including applicable laws, rules and regulations regarding wage and hour requirements, immigration status, discrimination in employment, employee health and safety, and collective bargaining), except for instances of such noncompliance that would not have a Company Material Adverse Effect.

(c) *Other Compliance.* Except as would not have a Company Material Adverse Effect, the Company is not liable for any arrears of wages or any penalty for failure to comply with any of the foregoing. The Company is not liable for any material payment to any trust or other fund or to any Governmental Authority with respect to unemployment compensation benefits, social security or other benefits for employees (other than routine payments to be made in the ordinary course of business).

3.20 *Permits.* Except as would not have a Company Material Adverse Effect, the Company holds, to the extent legally required, all permits, licenses, variances, clearances, consents, commissions, franchises, exemptions, orders and approvals from Governmental Authorities ( **Permits** ) that are required for the operation of the business of the Company as currently conducted. The Company complies with the terms of all Permits, and no suspension or cancellation of any of the Permits is pending or, to the Knowledge of the Company, threatened, except for such noncompliance, suspensions or cancellations that would not have a Company Material Adverse Effect.

3.21 *Compliance with Laws.* The Company is in compliance with all laws, rules, regulations, requirements, written guidance and orders of any relevant Governmental Authority or government-sponsored entity that are applicable to the Company or to the products, conduct of the business or operations of the Company, except for noncompliance that would not have a Company Material Adverse Effect. No representation or warranty is made in this Section 3.21 with respect to (a) compliance with the Exchange Act, which is exclusively addressed by Section 3.9 and Section 3.10; (b) compliance with Environmental Law, which is exclusively addressed by Section 3.15; (c) compliance with applicable Tax laws, which is exclusively addressed by Section 3.17 and Section 3.18; (d) compliance with ERISA and other applicable laws relating to employee benefits, which is exclusively addressed by Section 3.18; (e) compliance with labor law matters, which is exclusively addressed by Section 3.19; or (f) compliance with trade control laws and the FCPA, which is exclusively addressed by Section 3.26. Since January 1, 2016, the Company has not materially breached or violated, and has been in compliance in all material respects with, any applicable law, certification, representation, clause, provision or requirement pertaining to or contained in any Material Contract with any Governmental Authority.

3.22 *Legal Proceedings; Orders.*

(a) *No Legal Proceedings.* Except as would not have a Company Material Adverse Effect, there are no Legal Proceedings pending or, to the Knowledge of the Company, threatened against the Company or, as of the date hereof, against any present or former officer or director of the Company in such individual's capacity as such. No examination of the Company by any Governmental Authority or any government-sponsored entity has resulted in materially negative outstanding findings, requests or orders that have not been addressed.

(b) *No Orders.* The Company is not subject to any material order of any kind or nature that would prevent or materially impair the consummation of the Merger or the ability of the Company to fully perform its covenants and obligations pursuant to this Agreement.

3.23 *Insurance*. Except as would not constitute a Company Material Adverse Effect, as of the date hereof, the Company has all policies of insurance covering the Company and any of its employees, properties or assets, including policies of life, property, fire, workers compensation, products liability, directors and officers

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liability and other casualty and liability insurance, that is customarily carried by Persons conducting business similar to that of the Company. As of the date hereof, all such insurance policies are in full force and effect, no notice of cancellation has been received and there is no existing default or event that, with notice or lapse of time or both, would constitute a default by any insured thereunder, except for such defaults that would not have a Company Material Adverse Effect.

*3.24 Related Person Transactions.* Except for indemnification, compensation or other employment arrangements in the ordinary course of business, there are no Contracts, transactions, arrangements or understandings between the Company, on the one hand, and any Affiliate (including any director or officer) thereof, on the other hand, that would be required to be disclosed pursuant to Item 404 of Regulation S-K promulgated by the SEC in the Company's Form 10-K or proxy statement pertaining to an annual meeting of stockholders.

*3.25 Brokers.* Except for the Advisor, there is no financial advisor, investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of the Company who is entitled to any financial advisor's, investment banking, brokerage, finder's or other fee or commission in connection with the Merger.

*3.26 Trade Controls; FCPA.*

(a) *Trade Controls.* Except as would not constitute a Company Material Adverse Effect,

(i) since January 1, 2016, the Company has conducted its transactions in accordance with all applicable United States export and re-export control laws, import laws, economic sanctions laws, and all other applicable export control, import and sanctions laws in other countries in which the Company conducts business (collectively, **Trade Control Laws**);

(ii) since January 1, 2016, the Company has implemented and maintained in effect written policies, procedures and internal controls reasonably designed to prevent, deter and detect violations of applicable Trade Control Laws;

(iii) to the Knowledge of the Company, as of the date hereof, there are no pending or threatened Legal Proceedings against the Company alleging any violation of any of the Trade Control Laws that are applicable to the Company; and

(iv) no licenses or approvals pursuant to the Trade Control Laws are necessary for the transfer of any export licenses or other export approvals to Parent or the Surviving Corporation in connection with the consummation of the Merger.

(b) *FCPA.* Since January 1, 2016, except as would not constitute a Company Material Adverse Effect, none of the Company or, to the Knowledge of the Company, any officer, director, agent, employee or other Person acting on their behalf, has, directly or indirectly, (i) taken any action that would cause them to be in violation of any provision of the FCPA or other applicable anti-corruption laws in other countries in which the Company conducts business; (ii) used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity; (iii) made, offered or authorized any unlawful payment, or other thing of value, to foreign or domestic government officials or employees; or (iv) made, offered or authorized any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment in violation of the FCPA or other applicable anticorruption laws.

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**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB**

Except as set forth in the disclosure letter delivered by Parent and Merger Sub to the Company on the date hereof (the **Parent Disclosure Letter** ), Parent and Merger Sub hereby represent and warrant to the Company as follows:

*4.1 Organization; Good Standing.*

(a) *Parent.* Parent (i) is duly organized, validly existing and in good standing pursuant to the laws of its jurisdiction of organization and (ii) has the requisite power and authority to conduct its business as it is presently being conducted and to own, lease or operate its properties and assets.

(b) *Merger Sub.* Merger Sub (i) is a corporation duly organized, validly existing and in good standing pursuant to the DGCL; and (ii) has the requisite corporate power and authority to conduct its business as it is presently being conducted and to own, lease or operate its properties and assets.

(c) *Organizational Documents.* Parent has made available to the Company true, correct and complete copies of the certificate of incorporation, bylaws and other similar organizational documents of Parent and Merger Sub, each as amended to date. Neither Parent nor Merger Sub is in violation of its certificate of incorporation, bylaws or other similar organizational document.

*4.2 Power; Enforceability.* Each of Parent and Merger Sub has the requisite power and authority to (a) execute and deliver this Agreement; (b) perform its covenants and obligations hereunder; and (c) consummate the Merger. The execution and delivery of this Agreement by each of Parent and Merger Sub, the performance by each of Parent and Merger Sub of its respective covenants and obligations hereunder and the consummation of the Merger have been duly authorized by all necessary action on the part of each of Parent and Merger Sub and no additional actions on the part of Parent or Merger Sub are necessary to authorize (i) the execution and delivery of this Agreement by each of Parent and Merger Sub; (ii) the performance by each of Parent and Merger Sub of its respective covenants and obligations hereunder; or (iii) the consummation of the Merger. This Agreement has been duly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery by the Company, constitutes a legal, valid and binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the Enforceability Limitations.

*4.3 Non-Contravention.* The execution and delivery of this Agreement by each of Parent and Merger Sub, the performance by each of Parent and Merger Sub of their respective covenants and obligations hereunder, and the consummation of the Merger do not (a) violate or conflict with any provision of the certificate of incorporation, bylaws or other similar organizational documents of Parent or Merger Sub; (b) violate, conflict with, result in the breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) pursuant to, or result in the termination of, or accelerate the performance required by, or result in a right of termination or acceleration pursuant to any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Parent or Merger Sub is a party or by which Parent, Merger Sub or any of their properties or assets may be bound; (c) assuming the consents, approvals and authorizations referred to in Section 4.4 have been obtained, violate or conflict with any law or order applicable to Parent or Merger Sub or by which any of their properties or assets are bound; or (d) result in the creation of any lien (other than Permitted Liens) upon any of the properties or assets of Parent or Merger Sub, except in the case of each of clauses (b), (c) and (d) for such violations, conflicts, breaches, defaults, terminations, accelerations or liens that would not, individually or in the aggregate, prevent or materially delay the consummation of the Merger or the ability of



Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to this Agreement.

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*4.4 Requisite Governmental Approvals.* No Consent of any Governmental Authority is required on the part of Parent, Merger Sub or any of their Affiliates (a) in connection with the execution and delivery of this Agreement by each of Parent and Merger Sub; (b) the performance by each of Parent and Merger Sub of their respective covenants and obligations pursuant to this Agreement; or (c) the consummation of the Merger, except (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and such filings with Governmental Authorities to satisfy the applicable laws of states in which the Company is qualified to do business; (ii) such filings and approvals as may be required by any federal or state securities laws, including compliance with any applicable requirements of the Exchange Act; (iii) compliance with any applicable requirements of the HSR Act and any other applicable Antitrust Laws; and (iv) such other Consents the failure of which to obtain would not, individually or in the aggregate, prevent or materially delay the consummation of the Merger or the ability of Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to this Agreement.

*4.5 Legal Proceedings; Orders.*

(a) *No Legal Proceedings.* There are no Legal Proceedings (other than any Transaction Litigation) pending or, to the knowledge of Parent or any of its Affiliates, threatened against Parent or Merger Sub that would, individually or in the aggregate, prevent or materially delay the consummation of the Merger or the ability of Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to this Agreement.

(b) *No Orders.* Neither Parent nor Merger Sub is subject to any order of any kind or nature that would prevent or materially delay the consummation of the Merger or the ability of Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to this Agreement.

*4.6 Ownership of Company Capital Stock.* None of Parent, Merger Sub or any of their respective directors, officers, general partners or Affiliates or, to the knowledge of Parent or any of its Affiliates, any employees of Parent, Merger Sub or any of their Affiliates (a) has owned any shares of Company Capital Stock; or (b) has been an interested stockholder (as defined in Section 203 of the DGCL) of the Company, in each case during the two years prior to the date hereof.

*4.7 Brokers.* There is no financial advisor, investment banker, broker, finder, agent or other Person that has been retained by or is authorized to act on behalf of Parent, Merger Sub or any of their Affiliates who is entitled to any financial advisor's, investment banking, brokerage, finder's or other fee or commission in connection with the Merger.

*4.8 Operations of Parent and Merger Sub.* Each of Parent and Merger Sub has been formed solely for the purpose of engaging in the Merger, and, prior to the Effective Time, neither Parent nor Merger Sub will have engaged in any other business activities and will have incurred no liabilities or obligations other than as contemplated by the Equity Commitment Letter or any agreements or arrangements entered into in connection with the Debt Financing, the Guaranty and this Agreement. Parent owns beneficially and of record all of the outstanding capital stock, and other equity and voting interest in, Merger Sub free and clear of all liens.

*4.9 No Parent Vote or Approval Required.* No vote or consent of the holders of any capital stock of, or other equity or voting interest in, Parent is necessary to approve this Agreement and the Merger. The vote or consent of Parent, as the sole stockholder of Merger Sub, is the only vote or consent of the capital stock of, or other equity interest in, Merger Sub necessary to approve this Agreement and the Merger.

*4.10 Guaranty.* Concurrently with the execution of this Agreement, the Guarantor has delivered to the Company its duly executed Guaranty. The Guaranty is in full force and effect and constitutes a legal, valid and binding obligation of the Guarantor, enforceable against it in accordance with its terms, subject to the Enforceability Limitations. No

event has occurred that, with notice or lapse of time or both, would, or would reasonably be expected to, constitute a default on the part of the Guarantor pursuant to the Guaranty.

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**Table of Contents**4.11 *Financing.*

(a) *Equity Commitment Letter.* As of the date hereof, Parent has delivered to the Company a true, correct and complete copy of the executed Equity Commitment Letter, dated as of the date hereof, pursuant to which the Guarantor has committed, subject to the terms and conditions thereof, to invest in Parent, directly or indirectly, the cash amount set forth therein for the purpose of funding up to the aggregate value of the Merger (such financing, the **Equity Financing**). The Equity Commitment Letter provides that (A) the Company is an express third party beneficiary thereof in connection with the Company's exercise of its rights under Section 9.8(b); and (B) subject in all respects to Section 9.8(b), Parent and the Guarantor will not oppose the granting of an injunction, specific performance or other equitable relief in connection with the exercise of such third party beneficiary rights.

(b) *No Amendments.* As of the date hereof, (i) the Equity Commitment Letter and the terms of the Equity Financing have not been amended or modified prior to the date hereof; (ii) no such amendment or modification is contemplated; and (iii) the respective commitments contained therein have not been withdrawn, terminated or rescinded in any respect. There are no other Contracts, agreements, side letters or arrangements to which Parent or Merger Sub is a party relating to the funding or investing, as applicable, of the full amount of the Equity Financing, other than as expressly set forth in the Equity Commitment Letter. Other than as set forth in the Equity Commitment Letter, there are no conditions precedent related to the funding or investing, as applicable, of the full amount of the Equity Financing.

(c) *Sufficiency of Equity Financing.* The net proceeds of the Equity Financing, when funded in accordance with the Equity Commitment Letter, will be, in the aggregate, sufficient to (i) make the payment of all amounts payable pursuant to Article II in connection with or as a result of the Merger and (ii) along with the cash on hand at the Company at Closing, pay all fees and expenses required to be paid at the Closing by the Company, Parent or Merger Sub in connection with the Merger and the Equity Financing.

(d) *Validity.* As of the date hereof, the Equity Commitment Letter (in the form delivered by Parent to the Company) is in full force and effect and constitutes the legal, valid and binding obligation of Parent, Merger Sub and the Guarantor, as applicable, enforceable against Parent, Merger Sub and the Guarantor, as applicable, in accordance with its terms, subject to the Enforceability Limitations. Other than as expressly set forth in the Equity Commitment Letter, there are no conditions precedent or other contingencies related to the funding of the full proceeds of the Equity Financing pursuant to any agreement relating to the Equity Financing to which the Guarantor, Parent or Merger Sub, or any of their respective Affiliates, is a party. As of the date hereof, no event has occurred that, with notice or lapse of time or both, would, or would reasonably be expected to, constitute a default or breach on the part of Parent, Merger Sub or the Guarantor pursuant to the Equity Commitment Letter (it being understood that Parent and Merger Sub are not making any representation or warranty regarding the effect of any inaccuracy of the representations and warranties in Article III or the Company's compliance hereunder). As of the date hereof, Parent has no reason to believe that it will be unable to satisfy on a timely basis any term or condition of the Equity Financing to be satisfied by it, whether or not such term or condition is contained in the Equity Commitment Letter (it being understood that Parent and Merger Sub are not making any representation or warranty regarding the effect of any inaccuracy of the representations and warranties in Article III or the Company's compliance hereunder). As of the date hereof, Parent and Merger Sub have fully paid, or caused to be fully paid, all commitment or other fees that are due and payable on or prior to the date hereof, in each case pursuant to and in accordance with the terms of the Equity Commitment Letter.

(e) *No Exclusive Arrangements.* As of the date hereof, none of the Guarantor, Parent, Merger Sub or any of their respective Affiliates has entered into any Contract, arrangement or understanding (i) awarding any agent, broker, investment banker or financial advisor any financial advisory role on an exclusive basis in connection with the Merger; or (ii) expressly prohibiting any bank, investment bank or other potential provider of debt financing from

providing or seeking to provide debt financing or financial advisory services to any Person in connection with a transaction relating to the Company in connection with the Merger.

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4.12 *Stockholder and Management Arrangements.* As of the date hereof, neither Parent or Merger Sub nor any of their respective Affiliates is a party to any Contract, or has authorized, made or entered into, or committed or agreed to enter into, any formal or informal arrangements or other understandings (whether or not binding) with any stockholder (other than any existing limited partner of the Guarantor or any of its Affiliates), director, officer, employee or other Affiliate of the Company (a) relating to (i) this Agreement or the Merger; or (ii) the Surviving Corporation or any of its Subsidiaries, businesses or operations (including as to continuing employment) from and after the Effective Time; or (b) pursuant to which any (i) such holder of Company Common Stock would be entitled to receive consideration of a different amount or nature than the Per Share Price in respect of such holder's shares of Company Common Stock; (ii) such holder of Company Common Stock has agreed to approve this Agreement or vote against any Superior Proposal; or (iii) such stockholder, director, officer, employee or other Affiliate of the Company other than the Guarantor has agreed to provide, directly or indirectly, equity investment to Parent, Merger Sub or the Company to finance any portion of the Merger.

4.13 *Solvency.* As of the Effective Time and immediately after giving effect to the Merger (including the payment of all amounts payable pursuant to Article II in connection with or as a result of the Merger and all related fees and expenses of Parent, Merger Sub, the Company and their respective Subsidiaries in connection therewith), (a) the amount of the fair saleable value of the assets of each of the Surviving Corporation and its Subsidiaries will exceed (i) the value of all liabilities of the Surviving Corporation and such Subsidiaries, including contingent and other liabilities; and (ii) the amount that will be required to pay the probable liabilities of each of the Surviving Corporation and its Subsidiaries on their existing debts (including contingent liabilities) as such debts become absolute and matured; (b) each of the Surviving Corporation and its Subsidiaries will not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged; and (c) each of the Surviving Corporation and its Subsidiaries will be able to pay its liabilities, including contingent and other liabilities, as they mature. For purposes of the foregoing, not have an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged and able to pay its liabilities, including contingent and other liabilities, as they mature means that such Person will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due.

4.14 *Exclusivity of Representations and Warranties.*

(a) *No Other Representations and Warranties.* Each of Parent and Merger Sub, on behalf of itself and its Subsidiaries, acknowledges and agrees that, except for the representations and warranties expressly set forth in Article III:

(i) the Company (or any other Person) does not make, or has not made, any representation or warranty relating to the Company, its former Subsidiaries or any of their businesses, operations or otherwise in connection with this Agreement or the Merger;

(ii) no Person has been authorized by the Company or any of its Affiliates or Representatives to make any representation or warranty relating to the Company or any of its businesses or operations or otherwise in connection with this Agreement or the Merger, and if made, such representation or warranty must not be relied upon by Parent, Merger Sub or any of their respective Affiliates or Representatives as having been authorized by the Company or any of its Affiliates or Representatives (or any other Person); and

(iii) the representations and warranties made by the Company in this Agreement are in lieu of and are exclusive of all other representations and warranties, including any express or implied or as to merchantability or fitness for a particular purpose, and the Company hereby disclaims any other or implied representations or warranties, notwithstanding the delivery or disclosure to Parent, Merger Sub or any of their respective Affiliates or Representatives of any documentation or other information (including any financial information, supplemental data or

financial projections or other forward-looking statements).

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(b) *No Reliance*. Each of Parent and Merger Sub, on behalf of itself and its Subsidiaries, acknowledges and agrees that, except for the representations and warranties expressly set forth in Article III, it is not acting (including, as applicable, by entering into this Agreement or consummating the Merger) in reliance on:

(i) any representation or warranty, express or implied;

(ii) any estimate, projection, prediction, data, financial information, memorandum, presentation or other materials or information provided or addressed to Parent, Merger Sub or any of their respective Affiliates or Representatives, including any materials or information made available in the electronic data room hosted by or on behalf of the Company in connection with the Merger, in connection with presentations by the Company's management or in any other forum or setting; or

(iii) the accuracy or completeness of any other representation, warranty, estimate, projection, prediction, data, financial information, memorandum, presentation or other materials or information.

**ARTICLE V**

**INTERIM OPERATIONS OF THE COMPANY**

*5.1 Affirmative Obligations*. Except (a) as expressly contemplated by this Agreement; (b) as set forth in Section 5.1 or Section 5.2 of the Company Disclosure Letter; (c) as contemplated by Section 5.2; or (d) as required by applicable law or (e) as approved by Parent (which approval will not be unreasonably withheld, conditioned or delayed), at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will use its commercially reasonable efforts to (i) maintain its existence in good standing pursuant to applicable law; (ii) subject to the restrictions and exceptions set forth in Section 5.2 or elsewhere in this Agreement, conduct its business and operations in the ordinary course of business; and (iii) (a) preserve intact its material assets, properties, Contracts or other legally binding understandings, licenses and business organizations; (b) keep available the services of its current officers and key employees; and (c) preserve the current relationships with customers, vendors, distributors, partners (including platform partners, referral partners, consulting and implementation partners), lessors, licensors, licensees, creditors, contractors and other Persons with which the Company has business relations.

*5.2 Forbearance Covenants*. Except (i) as set forth in Section 5.2 of the Company Disclosure Letter; (ii) as approved by Parent (which approval will not be unreasonably withheld, conditioned or delayed); (iii) to the extent necessary to comply with the express obligations set forth in any Material Contract in effect on the date hereof (iv) as required by applicable law or (v) as expressly contemplated by the terms of this Agreement, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will not:

(a) amend the Charter, the Bylaws or any other similar organizational document;

(b) propose or adopt a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization;

(c) issue, sell, deliver or agree or commit to issue, sell or deliver (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise) any Company Securities, except (A) for the issuance pursuant to Company Equity Awards outstanding as of the Capitalization Date and reflected in the numbers and totals set forth in Section 3.7 or granted in accordance with this Agreement in accordance with their terms and



pursuant to the ESPP in accordance with its terms (as modified by Section 2.8(d) or Section 2.8(e)), including with respect to the satisfaction of Tax withholding and, with respect to the Company Options, the payment of the exercise price; or (B) as described on Section 5.2(c) of the Company Disclosure Letter;

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(d) directly or indirectly acquire, repurchase or redeem any securities, except for repurchases, withholdings, or cancellations of Company Securities pursuant to the terms and conditions of Company Equity Awards outstanding as of the date hereof in accordance with their terms as of the date hereof;

(e) (A) adjust, split, combine or reclassify any shares of capital stock, or issue or authorize or propose the issuance of any other Company Securities in respect of, in lieu of or in substitution for, shares of its capital stock or other equity or voting interest; (B) declare, set aside or pay any dividend or other distribution (whether in cash, shares or property or any combination thereof) in respect of any shares of capital stock or other equity or voting interest, or make any other actual, constructive or deemed distribution in respect of the shares of capital stock or other equity or voting interest; (C) pledge or encumber any shares of its capital stock or other equity or voting interest; or (D) modify the terms of any shares of its capital stock or other equity or voting interest;

(f) (A) incur, assume or suffer any Indebtedness (including any long-term or short-term debt) or issue any debt securities, except (1) for trade payables incurred in the ordinary course of business; and (2) obligations incurred pursuant to business credit cards in the ordinary course of business; or (B) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any other Person, in each case of (A) and (B), in an amount in excess of \$5,000,000 individually or \$10,000,000 in the aggregate;

(g) mortgage or pledge any of its assets, tangible or intangible, or create or suffer to exist any lien thereupon (other than Permitted Liens), other than in connection with financing transactions permitted by Section 5.2(f);

(h) make any loans, advances or capital contributions to, or investments in, any other Person, except for (1) extensions of credit to customers in the ordinary course of business; (2) advances to directors, officers and other employees for travel and other business-related expenses, in each case in the ordinary course of business and in compliance in all material respects with the Company's policies related thereto; and (3) investment in equity securities held in the ordinary course of business for cash management purposes;

(i) acquire, lease, license, sell, abandon, transfer, assign, guarantee, or exchange any assets, tangible or intangible (including any Company Intellectual Property), in each case in excess of \$5,000,000 individually or \$10,000,000 in the aggregate, or, in the case of the abandonment or transfer of Company Intellectual Property, which is otherwise material and other than (1) the sale, lease or licensing of products or services of the Company or other materials embodying Company Intellectual Property in the ordinary course of business; (2) the acquisition, assignment or abandonment of immaterial Company Intellectual Property in connection with the exercise of the reasonable business judgment of the Company in the ordinary course of business; (3) the abandonment of trade secrets and Company Intellectual Property in the ordinary course of business and to the extent not economically desirable to maintain for the conduct of the business of the Company; (4) acquisitions of inventory, raw materials and other property or services in the ordinary course of business; and (5) any capital expenditures permitted by (or consented to by Parent) under Section 5.2(n);

(j) (A) enter into, adopt, amend (including accelerating the vesting, payment or funding), modify or terminate any bonus, profit sharing, compensation, severance, termination, option, appreciation right, performance unit, phantom equity, stock equivalent, share purchase agreement, pension, retirement, deferred compensation, employment, severance or other Employee Plan or employee benefit agreement, trust, plan, fund or other arrangement for the compensation, benefit or welfare of any director, officer, individual consultant or employee of the Company in any manner; (B) increase the compensation of any director, officer, employee, individual consultant, former employee, individual independent contractor, or other individual service provider of the Company, pay any special bonus or special remuneration to any director, officer, employee, individual consultant, former employee, individual independent contractor, or other individual service provider of the Company, or pay any benefit not required by (or

accelerate the time of payment or vesting of any payment becoming due under) any Employee Plan as in effect as of the date hereof, except in the case of each of (A) and

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(B), (1) as may be required by applicable law or the terms of the applicable Employee Plan in effect as of the date hereof; (2) in connection with any new hires of employees of the Company in the ordinary course of business and consistent with past practice at the vice president level or below; or (3) for increases in compensation for employees of the Company at the vice president level or below in the ordinary course of business and consistent with past practice (it being understood that these exceptions in the foregoing clauses (1), (2) and (3) will not apply to any actions otherwise prohibited by Section 5.2(c) or the following sub-clause (C); or (C) enter into any change in control, severance or similar agreement or any retention or similar agreement with any officer, employee, director, individual independent contractor, individual consultant, or other individual service provider of the Company; provided that, in each case of (A) through (C), the Company (x) may change the title of its employees, provided such changes in title do not involve increases in the applicable employee's compensation or benefits, acceleration of vesting or acceleration of payment of the applicable employee's benefits or compensation, and (y) may make annual or quarterly bonus or commission payments in the ordinary course of business consistent with past practice (including with respect to timing, frequency and magnitude) pursuant to existing plans made available to Parent as of the date of this Agreement and payments to employees, and set targets and metrics therefor in the ordinary course of business or in accordance with any Employee Plans in effect as of the date of this Agreement;

(k) settle, release, waive or compromise any pending or threatened material Legal Proceeding or other claim, except for the settlement of any Legal Proceedings or other claim that is (A) reflected or reserved against in the Audited Company Balance Sheet; (B) for solely monetary payments of no more than \$1,000,000 individually and \$5,000,000 in the aggregate; or (C) settled in compliance with Section 6.15;

(l) except as required by applicable law or GAAP, (A) revalue in any material respect any of its properties or assets, including writing-off notes or accounts receivable, other than in the ordinary course of business; or (B) make any change in any of its accounting principles or practices;

(m) (A) make or change any material Tax election; (B) settle, consent to or compromise any material Tax claim or assessment or surrender a right to a material Tax refund; (C) consent to any extension or waiver of any limitation period with respect to any material Tax claim or assessment; (D) file an amended Tax Return that could materially increase the Taxes payable by the Company; (E) enter into a closing agreement with any Governmental Authority regarding any material Tax; (F) fail to pay any Tax that becomes due and payable (including any estimated tax payments) unless such amount is being contested in good faith by appropriate proceedings and appropriate reserves have been established to the extent required by GAAP; or (G) adopt or change any Tax accounting method;

(n) incur or commit to incur any capital expenditure(s) other than (1) consistent with the capital expenditure budget set forth in Section 5.2(n) of the Company Disclosure Letter or (2) to the extent that such capital expenditures do not exceed \$5,000,000 in the aggregate;

(o) enter into, modify, amend or terminate any (a) Contract (other than any Material Contract) that if so entered into, modified, amended or terminated would have a Company Material Adverse Effect; or (b) Material Contract, except in the ordinary course of business or as permitted under Section 5.2(c) and Section 5.2(j);

(p) maintain insurance at less than current levels or otherwise in a manner inconsistent with past practice in any material respect;

(q) engage in any transaction with, or enter into any agreement, arrangement or understanding with, any Affiliate of the Company or other Person covered by Item 404 of Regulation S-K promulgated by the SEC that would be required to be disclosed pursuant to Item 404;

(r) effectuate a plant closing, mass layoff (each as defined in WARN) or other employee layoff event affecting in whole or in part any site of employment, facility, operating unit or employee;

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(s) grant any material refunds, credits, rebates or other allowances to any end user, customer, reseller or distributor, in each case other than in the ordinary course of business;

(t) acquire (by merger, consolidation or acquisition of stock or assets) any other Person or any material equity interest therein or enter into any joint venture, legal partnership (excluding, for avoidance of doubt, strategic relationships, alliances, reseller agreements and similar commercial relationships), limited liability corporation or similar arrangement with any third Person, in each case, other than investment in equity securities held in the ordinary course of business for cash management purposes;

(u) enter into any Collective Bargaining Agreement or agreement to form a work council or other Contract with any labor organization or works council (except to the extent required by applicable law);

(v) adopt or implement any stockholder rights plan or similar arrangement, in each case, applicable to the Merger or any other transaction consummated pursuant to Parent's rights under Section 5.3(e)(i)(2) or Section 5.3(e)(ii)(3); or

(w) enter into, authorize any of, or agree or commit to enter into a Contract to take any of the actions prohibited by this Section 5.2.

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 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 operations.

*5.3 No Solicitation.*

(a) *Go-Shop Period.* Notwithstanding anything to the contrary set forth in this Agreement, during the period (the **Go-Shop Period**) beginning on the date of this Agreement and continuing until 12:00 p.m., Pacific time on March 18, 2019 (the **No-Shop Period Start Date**), the Company and its Affiliates, directors, officers, employees, consultants, agents, representatives and advisors (collectively, **Representatives**) shall have the right to: (i) solicit, initiate, propose or induce the making, submission or announcement of, or knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal; (ii) subject to the entry into, and in accordance with, an Acceptable Confidentiality Agreement, furnish to any Person (and its Representatives and Financing Sources subject to the terms and obligations of such Acceptable Confidentiality Agreement applicable to such Person) any non-public information relating to the Company or afford to any such Person (and such Representatives and Financing Sources) access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company, in any such case with the intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal or any inquiries or the making of any proposal that would reasonably be expected to lead to an Acquisition Proposal, provided, however, that the Company will promptly (and in any event within 24 hours) provide to Parent, or provide Parent access to, any such non-public information concerning the Company that is provided to any such Person or its Representatives that was not previously provided to Parent or its Representatives; and (iii) participate or engage in discussions or negotiations with any such Person (and such Representatives and Financing Sources) with respect to an Acquisition Proposal.

(b) *No Solicitation or Negotiation.* Subject to the terms of this Section 5.3, from the No-Shop Period Start Date until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will, will cause its directors, officers and employees to, and will instruct its other Representatives to, cease and cause to be terminated any discussions or negotiations with any Person and its Representatives (other than with respect to, in

each case, any Excluded Party and its Representatives, but only for so long as such Person is and remains an Excluded Party) that would be prohibited by this Section 5.3(b), request

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the prompt return or destruction of all non-public information concerning the Company theretofore furnished to any such Person with whom a confidentiality agreement was entered into at any time within the six month period immediately preceding the No-Shop Period Start Date and will (A) cease providing any further information with respect to the Company or any Acquisition Proposal to any such Person or its Representatives; and (B) terminate all access granted to any such Person and its Representatives to any physical or electronic data room. Subject to the terms of Section 5.3(c), from the No-Shop Period Start Date until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will not, and will not instruct, authorize or knowingly permit any of its Representatives to, directly or indirectly, (i) solicit, initiate, propose or induce the making, submission or announcement of, or knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal; (ii) other than with respect to any Excluded Party (and in the case of an Excluded Party, only for so long as the applicable Person is and remains an Excluded Party), furnish to any Person (other than to Parent, Merger Sub or any designees of Parent or Merger Sub) any non-public information relating to the Company or afford to any Person access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company (other than Parent, Merger Sub or any designees of Parent or Merger Sub), in any such case with the intent to induce the making, submission or announcement of, or to knowingly encourage, facilitate or assist, any proposal or inquiry that constitutes, or is reasonably expected to lead to, an Acquisition Proposal or any inquiries or the making of any proposal that would reasonably be expected to lead to an Acquisition Proposal; (iii) participate or engage in discussions or negotiations with any Person with respect to an Acquisition Proposal (other than informing such Persons of the provisions contained in this Section 5.3); (iv) approve, endorse or recommend any proposal that constitutes, or is reasonably expected to lead to, an Acquisition Proposal; or (v) enter into any letter of intent, memorandum of understanding, merger agreement, acquisition agreement or other Contract relating to an Acquisition Transaction, other than an Acceptable Confidentiality Agreement (any such letter of intent, memorandum of understanding, merger agreement, acquisition agreement or other Contract relating to an Acquisition Transaction, an **Alternative Acquisition Agreement** ).

(c) *Superior Proposals.* Notwithstanding anything to contrary set forth in this Section 5.3, until the Company's receipt of the Requisite Stockholder Approval, the Company and the Company Board (or a committee thereof) may, directly or indirectly, through one or more of their Representatives (including the Advisor), participate or engage in discussions or negotiations with, furnish any non-public information relating to the Company to, or afford access to the business, properties, assets, books, records or other non-public information, or to any personnel, of the Company pursuant to an Acceptable Confidentiality Agreement to any Person or its Representatives that has made or delivered to the Company an Acquisition Proposal after the No-Shop Period Start Date, and otherwise facilitate such Acquisition Proposal or assist such Person (and its Representatives and financing sources) with such Acquisition Proposal (in each case, if requested by such Person), in each case with respect to an Acquisition Proposal that did not result from any material breach of Section 5.3(b); *provided, however,* that the Company Board (or a committee thereof) has determined in good faith (after consultation with its financial advisor and outside legal counsel) that such Acquisition Proposal either constitutes a Superior Proposal or is reasonably likely to lead to a Superior Proposal, and the Company Board (or a committee thereof) has determined in good faith (after consultation with its financial advisor and outside legal counsel) that the failure to take the actions contemplated by this Section 5.3(c) would be inconsistent with its fiduciary obligations pursuant to applicable law; and *provided further, however,* that the Company will promptly (and in any event within 24 hours) make available to Parent any non-public information concerning the Company that is provided to any such Person or its Representatives that was not previously made available to Parent.

(d) *No Change in Company Board Recommendation or Entry into an Alternative Acquisition Agreement.* Except as provided by Section 5.3(e), at no time after the date hereof may the Company Board (or a committee thereof):

(i) (A) withhold, withdraw, amend, qualify or modify, or publicly propose to withhold, withdraw, amend, qualify or modify, the Company Board Recommendation in a manner adverse to Parent in any material respect; (B) adopt,



approve, endorse, recommend or otherwise declare advisable an Acquisition Proposal; (C) fail

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to publicly reaffirm the Company Board Recommendation within 10 Business Days after Parent so requests in writing (it being understood that the Company will have no obligation to make such reaffirmation on more than three separate occasions); (D) take or fail to take any formal action or make or fail to make any recommendation or public statement in connection with a tender or exchange offer, other than a recommendation against such offer or a stop, look and listen communication by the Company Board (or a committee thereof) to the Company Stockholders pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any substantially similar communication) (it being understood that the Company Board (or a committee thereof) may refrain from taking a position with respect to an Acquisition Proposal until the close of business on the 10th Business Day after the commencement of a tender or exchange offer in connection with such Acquisition Proposal without such action being considered a violation of this Section 5.3); or (E) fail to include the Company Board Recommendation in the Proxy Statement (any action described in clauses (A) through (E), a **Company Board Recommendation Change** ); *provided, however*, that, for the avoidance of doubt, none of (1) the determination by the Company Board (or a committee thereof) that an Acquisition Proposal constitutes a Superior Proposal; or (2) the delivery by the Company to Parent of any notice contemplated by Section 5.3(e) will constitute a Company Board Recommendation Change; or

(ii) cause or permit the Company to enter into an Alternative Acquisition Agreement.

(e) *Company Board Recommendation Change; Entry into Alternative Acquisition Agreement.* Notwithstanding anything to the contrary set forth in this Agreement, at any time prior to obtaining the Requisite Stockholder Approval:

(i) other than in connection with a bona fide Acquisition Proposal that constitutes a Superior Proposal, the Company Board (or a committee thereof) may effect a Company Board Recommendation Change in response to any positive material event or development or material change in circumstances with respect to the Company that was (A) not actually known to, or reasonably expected by, the Company Board as of the date hereof; and (B) does not relate to (a) any Acquisition Proposal; or (b) the mere fact, in and of itself, that the Company meets or exceeds any internal or published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics for any period ending on or after the date hereof, or changes after the date hereof in the market price or trading volume of the Company Common Stock or the credit rating of the Company (it being understood that the underlying cause of any of the foregoing in this clause (b) may be considered and taken into account) (each such event, an **Intervening Event** ), if the Company Board (or a committee thereof) determines in good faith (after consultation with its financial advisor and outside legal counsel) that the failure to do so would be inconsistent with its fiduciary obligations pursuant to applicable law and if and only if:

(1) the Company has provided prior written notice to Parent at least two Business Days in advance to the effect that the Company Board (or a committee thereof) has (A) so determined; and (B) resolved to effect a Company Board Recommendation Change pursuant to this Section 5.3(e)(i), which notice will specify the applicable Intervening Event in reasonable detail; and

(2) prior to effecting such Company Board Recommendation Change, the Company and its Representatives, during such two Business Day period, must have (A) negotiated with Parent and its Representatives in good faith (to the extent that Parent desires to so negotiate) to make such adjustments to the terms and conditions of this Agreement so that the Company Board (or a committee thereof) no longer determines that the failure to make a Company Board Recommendation Change in response to such Intervening Event would be inconsistent with its fiduciary obligations pursuant to applicable law; and (B) permitted Parent and its Representatives to make a presentation to the Company Board regarding this Agreement and any adjustments with respect thereto (to the extent that Parent requests to make such a presentation); or

(ii) if the Company has received a bona fide Acquisition Proposal, whether during the Go-Shop Period or after the No-Shop Period Start Date that the Company Board (or a committee thereof) has concluded in good faith (after consultation with its financial advisor and outside legal counsel) is a Superior Proposal, then the

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Company Board may (A) effect a Company Board Recommendation Change with respect to such Acquisition Proposal; or (B) authorize the Company to terminate this Agreement to enter into an Alternative Acquisition Agreement with respect to such Acquisition Proposal, in each case if and only if:

(1) the Company Board (or a committee thereof) determines in good faith (after consultation with its financial advisor and outside legal counsel) that the failure to do so would be inconsistent with its fiduciary obligations pursuant to applicable law;

(2) the Company and its Representatives have complied in all material respects with their obligations pursuant to this Section 5.3 with respect to such Acquisition Proposal;

(3) (i) the Company has provided prior written notice to Parent at least two Business Days in advance (the **Notice Period** ) to the effect that the Company Board (or a committee thereof) has (A) received a bona fide Acquisition Proposal that has not been withdrawn; (B) concluded in good faith that such Acquisition Proposal constitutes a Superior Proposal; and (C) resolved to effect a Company Board Recommendation Change or to terminate this Agreement pursuant to this Section 5.3(e)(ii) absent any revision to the terms and conditions of this Agreement, which notice will specify the basis for such Company Board Recommendation Change or termination, including the identity of the Person or group of Persons making such Acquisition Proposal, the material terms thereof and copies of all relevant documents relating to such Acquisition Proposal; and (ii) prior to effecting such Company Board Recommendation Change or termination, the Company and its Representatives, during the Notice Period, must have (1) negotiated with Parent and its Representatives in good faith (to the extent that Parent desires to so negotiate) to make such adjustments to the terms and conditions of this Agreement so that such Acquisition Proposal would cease to constitute a Superior Proposal; and (2) permitted Parent and its Representatives to make a presentation to the Company Board regarding this Agreement and any adjustments with respect thereto (to the extent that Parent requests to make such a presentation); *provided, however*, that in the event of any material revisions to such Acquisition Proposal, the Company will be required to deliver a new written notice to Parent and to comply with the requirements of this Section 5.3(e)(ii)(3) (other than the requirement of a presentation as contemplated by clause (ii)(3) above) with respect to such new written notice (it being understood that the Notice Period in respect of such new written notice will be one Business Day); and

(4) in the event of any termination of this Agreement in order to cause or permit the Company to enter into an Alternative Acquisition Agreement with respect to such Acquisition Proposal, the Company will have validly terminated this Agreement in accordance with Section 8.1(h), including paying the Company Termination Fee in accordance with Section 8.3(b)(iii).

(f) *Notice.* From the date of this Agreement until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will promptly (and, in any event, within 24 hours) notify Parent if any inquiries, offers or proposals that constitute an Acquisition Proposal are received by, any non-public information is requested from, or any discussions or negotiations are sought to be initiated or continued with, the Company or any of its Representatives. Such notice must include (i) the identity of the Person or group of Persons making such offers or proposals (unless, in each case, such disclosure is prohibited pursuant to the terms of any confidentiality agreement with such Person or group of Persons that is in effect on the date of this Agreement); and (ii) a summary of the material terms and conditions of such offers or proposals. Thereafter, the Company must keep Parent reasonably informed, on a prompt basis, of the status (and supplementally provide the terms) of any such offers or proposals (including any amendments thereto) and the status of any such discussions or negotiations.

(g) *Certain Disclosures.* Nothing in this Agreement will prohibit the Company or the Company Board (or a committee thereof) from (i) taking and disclosing to the Company Stockholders a position contemplated by Rule 14e-2(a)

promulgated under the Exchange Act or complying with Rule 14d-9 promulgated under the Exchange Act, including a stop, look and listen communication by the Company Board (or a committee thereof) to the Company Stockholders pursuant to Rule 14d-9(f) promulgated under the Exchange Act (or any

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substantially similar communication); (ii) complying with Item 1012(a) of Regulation M-A promulgated under the Exchange Act; (iii) informing any Person of the existence of the provisions contained in this Section 5.3; or (iv) making any disclosure to the Company Stockholders (including regarding the business, financial condition or results of operations of the Company) that the Company Board (or a committee thereof) has determined to make in good faith in order to comply with applicable law, regulation or stock exchange rule or listing agreement, it being understood that any such statement or disclosure made by the Company Board (or a committee thereof) pursuant to this Section 5.3(g) must be subject to the terms and conditions of this Agreement and will not limit or otherwise affect the obligations of the Company or the Company Board (or any committee thereof) and the rights of Parent under this Section 5.3, it being understood that nothing in the foregoing will be deemed to permit the Company or the Company Board (or a committee thereof) to effect a Company Board Recommendation Change other than in accordance with Section 5.3(e). In addition, it is understood and agreed that, for purposes of this Agreement, a factually accurate public statement by the Company or the Company Board (or a committee thereof) that describes the Company's receipt of an Acquisition Proposal, the identity of the Person making such Acquisition Proposal, the material terms of such Acquisition Proposal and the operation of this Agreement with respect thereto will not be deemed to be (A) a withholding, withdrawal, amendment, or modification, or proposal by the Company Board (or a committee thereof) to withhold, withdraw, amend or modify, the Company Board Recommendation; (B) an adoption, approval or recommendation with respect to such Acquisition Proposal; or (C) a Company Board Recommendation Change.

(h) *Breach by Representatives.* The Company agrees that any material breach of this Section 5.3 by any of its Representatives will be deemed to be a breach of this Agreement by the Company.

## ARTICLE VI

### ADDITIONAL COVENANTS

#### *6.1 Required Action and Forbearance; Efforts.*

(a) *Reasonable Best Efforts.* Upon the terms and subject to the conditions set forth in this Agreement, Parent and Merger Sub, on the one hand, and the Company, on the other hand, will use their respective reasonable best efforts (A) to take (or cause to be taken) all actions; (B) do (or cause to be done) all things; and (C) assist and cooperate with the other Parties in doing (or causing to be done) all things, in each case as are necessary, proper or advisable pursuant to applicable law or otherwise to consummate and make effective, in the most expeditious manner practicable, the Merger, including by:

(i) causing the conditions to the Merger set forth in Article VII to be satisfied;

(ii) (1) obtaining all consents, waivers, approvals, orders and authorizations from Governmental Authorities; and (2) making all registrations, declarations and filings with Governmental Authorities, in each case that are necessary or advisable to consummate the Merger;

(iii) obtaining all consents, waivers and approvals and delivering all notifications pursuant to any Material Contracts (to the extent set forth in Section 3.5 of the Company Disclosure Letter) in connection with this Agreement and the consummation of the Merger so as to maintain and preserve the benefits to the Surviving Corporation of such Material Contracts as of and following the consummation of the Merger, except where the failure to obtain such consents, waivers or approvals or to deliver such notifications would not be materially adverse to Parent, the Surviving Corporation and their respective Subsidiaries, taken as a whole immediately after the Closing; and

(iv) executing and delivering any Contracts and other instruments that are reasonably necessary to consummate the Merger.

(b) *No Failure to Take Necessary Action.* In addition to the foregoing, subject to the terms and conditions of this Agreement (including subject to clause (D) of the second sentence of Section 6.2(a)), neither

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Parent or Merger Sub, on the one hand, nor the Company, on the other hand, will take any action, or fail to take any action, that is intended to or has (or would reasonably be expected to have) the effect of (i) preventing, impairing, delaying or otherwise adversely affecting the consummation of the Merger; or (ii) the ability of such Party to fully perform its obligations pursuant to this Agreement. For the avoidance of doubt, no action by the Company taken in compliance with Section 5.3 will be considered a violation of this Section 6.1.

(c) *No Consent Fee.* Notwithstanding anything to the contrary set forth in this Section 6.1 or elsewhere in this Agreement, the Company will not be required to agree to the payment of a consent fee, profit sharing payment or other consideration (including increased or accelerated payments), or the provision of additional security (including a guaranty), in connection with the Merger, including in connection with obtaining any consent pursuant to any Material Contract.

### 6.2 *Antitrust Filings.*

(a) *Filing Under the HSR Act and Other Applicable Antitrust Laws.* Each of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company (and its Affiliates, if applicable), on the other hand, will (i) file with the FTC and the Antitrust Division of the DOJ a Notification and Report Form relating to this Agreement and the Merger as required by the HSR Act within 7 Business Days following the date hereof; and (ii) to the extent required in the reasonable judgment of counsel to Parent and the Company, promptly file comparable pre-merger or post-merger notification filings, forms and submissions with any Governmental Authority pursuant to other applicable Antitrust Laws in connection with the Merger, with Parent having primary responsibility for the making of such filings. Each of Parent and the Company will use reasonable best efforts to (A) cooperate and coordinate (and cause its respective Affiliates to cooperate and coordinate) with the other in the making of such filings; (B) supply the other (or cause the other to be supplied) with any information that may be required in order to make such filings; (C) supply (or cause the other to be supplied) any additional information that may be required or requested by the FTC, the DOJ or the Governmental Authorities of any other applicable jurisdiction in which any such filing is made; and (D) take all action necessary to (1) cause the expiration or termination of the applicable waiting periods pursuant to the HSR Act and any other Antitrust Laws applicable to the Merger; and (2) obtain any required consents pursuant to any Antitrust Laws applicable to the Merger, in each case as soon as practicable. If any Party or Affiliate thereof receives a request for additional information or documentary material from any Governmental Authority with respect to the Merger pursuant to the HSR Act or any other Antitrust Laws applicable to the Merger, then such Party will make (or cause to be made), as soon as reasonably practicable and after consultation with the other Parties, an appropriate response in compliance with such request.

(b) *Divestitures.* In furtherance and not in limitation of the foregoing, if and to the extent necessary to obtain clearance of the Merger pursuant to the HSR Act and any other Antitrust Laws applicable to the Merger, each of Parent and Merger Sub (and their respective Affiliates, if applicable) will (i) offer, negotiate, commit to and effect, by consent decree, hold separate order or otherwise, (A) the sale, divestiture, license or other disposition of any and all of the capital stock or other equity or voting interest, assets (whether tangible or intangible), rights, products or businesses of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company, on the other hand; and (B) any other restrictions on the activities of Parent and Merger Sub (and their respective Affiliates, if applicable), on the one hand, and the Company, on the other hand; and (ii) contest, defend and appeal any Legal Proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Merger; *provided* that each of Parent and the Company shall 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 such party only in the event the Closing occurs.



(c) *Cooperation.* In furtherance and not in limitation of the foregoing, the Company, Parent and Merger Sub shall (and shall cause their respective Subsidiaries to), subject to any restrictions under applicable laws, (i) promptly notify the other parties hereto of, and, if in writing, furnish the others with copies of (or, in the case

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of oral communications, advise the others of the contents of) any material communication received by such Person from a Governmental Authority in connection with the Merger and permit the other parties to review and discuss in advance (and to consider in good faith any comments made by the other parties in relation to) any proposed draft notifications, formal notifications, filing, submission or other written communication (and any analyses, memoranda, white papers, presentations, correspondence or other documents submitted therewith) made in connection with the Merger to a Governmental Authority; (ii) keep the other parties reasonably informed with respect to the status of any such submissions and filings to any Governmental Authority in connection with the Merger and any developments, meetings or discussions with any Governmental Authority in respect thereof, including with respect to (A) the receipt of any non-action, action, clearance, consent, approval or waiver, (B) the expiration of any waiting period, (C) the commencement or proposed or threatened commencement of any investigation, litigation or administrative or judicial action or proceeding under applicable laws and (D) the nature and status of any objections raised or proposed or threatened to be raised by any Governmental Authority with respect to the Merger; and (iii) not independently participate in any meeting, hearing, proceeding or discussions (whether in person, by telephone or otherwise) with or before any Governmental Authority in respect of the Merger without giving the other parties reasonable prior notice of such meeting or discussions and, unless prohibited by such Governmental Authority, the opportunity to attend or participate. However, each of the Company, Parent and Merger Sub may designate any non-public information provided to any Governmental Authority as restricted to outside counsel only and any such information shall not be shared with employees, officers or directors or their equivalents of the other party without approval of the party providing the non-public information; *provided, however*, that each of Company, Parent and Merger Sub may redact any valuation and related information before sharing any information provided to any Governmental Authority with another Party on an outside counsel only basis.

### *6.3 Proxy Statement and Other Required SEC Filings.*

(a) *Proxy Statement.* Promptly following the date hereof, the Company will prepare and file with the SEC a preliminary proxy statement (as amended or supplemented, the **Proxy Statement** ) relating to the Company Stockholder Meeting. Subject to Section 5.3, the Company must include the Company Board Recommendation in the Proxy Statement.

(b) *Other Required Company Filing.* If the Company determines that it is required to file any document other than the Proxy Statement with the SEC in connection with the Merger pursuant to applicable law (such document, as amended or supplemented, an **Other Required Company Filing** ), then the Company will promptly prepare and file such Other Required Company Filing with the SEC. The Company will use its reasonable best efforts to cause the Proxy Statement and any Other Required Company Filing to comply as to form in all material respects with the applicable requirements of the Exchange Act and the rules of the SEC and NYSE. The Company may not file the Proxy Statement or any Other Required Company Filing with the SEC without first providing Parent and its counsel a reasonable opportunity to review and comment thereon, and the Company will give due consideration to all reasonable additions, deletions or changes suggested thereto by Parent or its counsel. On the date of filing, the date of mailing to the Company Stockholders (if applicable) and at the time of the Company Stockholder Meeting, neither the Proxy Statement nor any Other Required Company Filing will 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 false or misleading. Notwithstanding the foregoing, no covenant is made by the Company with respect to any information supplied by Parent, Merger Sub or any of their Affiliates for inclusion or incorporation by reference in the Proxy Statement or any Other Required Company Filing. The information supplied by the Company for inclusion or incorporation by reference in any Other Required Parent Filings will not, at the time that such Other Required Parent Filing is filed with the SEC, 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.

(c) *Other Required Parent Filing.* If Parent, Merger Sub or any of their respective Affiliates determines that it is required to file any document with the SEC in connection with the Merger or the Company Stockholder

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Meeting pursuant to applicable law (an **Other Required Parent Filing** ), then Parent and Merger Sub will, and will cause their respective Affiliates to, promptly prepare and file such Other Required Parent Filing with the SEC. Parent and Merger Sub will cause, and will cause their respective Affiliates to cause, any Other Required Parent Filing to comply as to form in all material respects with the applicable requirements of the Exchange Act and the rules of the SEC. Neither Parent or Merger Sub nor any of their respective Affiliates may file any Other Required Parent Filing (or any amendment thereto) with the SEC without first providing the Company and its counsel a reasonable opportunity to review and comment thereon, and Parent will give due consideration to all reasonable additions, deletions or changes suggested thereto by the Company or its counsel. On the date of filing, the date of mailing to the Company Stockholders (if applicable) and at the time of the Company Stockholder Meeting, no Other Required Parent Filing may 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 false or misleading. Notwithstanding the foregoing, no covenant is made by Parent or Merger Sub with respect to any information supplied by the Company for inclusion or incorporation by reference in any Other Required Parent Filing. The information supplied by Parent, Merger Sub and their respective Affiliates for inclusion or incorporation by reference in the Proxy Statement or any Other Required Company Filing will not, at the time that the Proxy Statement or such Other Required Company Filing is filed with the SEC, 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.

(d) *Furnishing Information.* Each of the Company, on the one hand, and Parent and Merger Sub, on the other hand, will furnish all information concerning it and its Affiliates, if applicable, as the other Party may reasonably request in connection with the preparation and filing with the SEC of the Proxy Statement and any Other Required Company Filing or any Other Required Parent Filing. If at any time prior to the Company Stockholder Meeting any information relating to the Company, Parent, Merger Sub or any of their respective Affiliates should be discovered by the Company, on the one hand, or Parent or Merger Sub, on the other hand, that should be set forth in an amendment or supplement to the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be, so that such filing would not include any misstatement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, then the Party that discovers such information will promptly notify the other, and an appropriate amendment or supplement to such filing describing such information will be promptly prepared and filed with the SEC by the appropriate Party and, to the extent required by applicable law or the SEC or its staff, disseminated to the Company Stockholders.

(e) *Consultation Prior to Certain Communications.* The Company and its Affiliates, on the one hand, and Parent, Merger Sub and their respective Affiliates, on the other hand, may not communicate in writing with the SEC or its staff with respect to the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be, without first providing the other Party a reasonable opportunity to review and comment on such written communication, and each Party will give due consideration to all reasonable additions, deletions or changes suggested thereto by the other Parties or their respective counsel.

(f) *Notices.* The Company, on the one hand, and Parent and Merger Sub, on the other hand, will advise the other, promptly after it receives notice thereof, of any receipt of a request by the SEC or its staff for (i) any amendment or revisions to the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be; (ii) any receipt of comments from the SEC or its staff on the Proxy Statement, any Other Required Company Filing or any Other Required Parent Filing, as the case may be; or (iii) any receipt of a request by the SEC or its staff for additional information in connection therewith.

(g) *Dissemination of Proxy Statement.* Subject to applicable law, the Company will use its reasonable best efforts to cause the Proxy Statement to be disseminated to the Company Stockholders as promptly as reasonably practicable following the filing thereof with the SEC and confirmation from the SEC that it will not review, or that it has completed its review of, the Proxy Statement.

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**Table of Contents****6.4 Company Stockholder Meeting.**

(a) *Call of Company Stockholder Meeting.* Subject to the provisions of this Agreement, the Company will take all action necessary in accordance with the DGCL, the Charter, the Bylaws and the rules of NYSE to establish a record date for (and the Company will not change the record date without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed)), duly call, give notice of, convene and hold a meeting of its stockholders (the **Company Stockholder Meeting**) as promptly as reasonably practicable following the mailing of the Proxy Statement to the Company Stockholders for the purpose of obtaining the Requisite Stockholder Approval. Notwithstanding anything to the contrary in this Agreement, the Company will not be required to convene and hold the Company Stockholder Meeting at any time prior to the 20th Business Day following the mailing of the Proxy Statement to the Company Stockholders. Subject to Section 5.3 and unless there has been a Company Board Recommendation Change, the Company will use its reasonable best efforts to solicit proxies to obtain the Requisite Stockholder Approval.

(b) *Adjournment of Company Stockholder Meeting.* Notwithstanding anything to the contrary in this Agreement, nothing will prevent the Company from postponing or adjourning the Company Stockholder Meeting if (i) there are holders of an insufficient number of shares of the Company Common Stock present or represented by proxy at the Company Stockholder Meeting to constitute a quorum at the Company Stockholder Meeting (it being understood that the Company may not postpone or adjourn the Company Stockholder Meeting more than two times pursuant to this clause (i) without Parent's prior written consent); or (ii) the Company is required to postpone or adjourn the Company Stockholder Meeting by applicable law, order or a request from the SEC or its staff. Unless this Agreement is validly terminated in accordance with Section 8.1, the Company will submit this Agreement and the Merger to its stockholders at the Company Stockholder Meeting even if the Company Board (or a committee thereof) has effected a Company Board Recommendation Change.

**6.5 Equity Financing.**

(a) *No Amendments to Equity Commitment Letter.* Subject to the terms and conditions of this Agreement, each of Parent and Merger Sub will not permit any amendment or modification to be made to, or any waiver of any provision or remedy pursuant to, the Equity Commitment Letter if such amendment, modification or waiver would, or would reasonably be expected to, (i) reduce the aggregate amount of the Equity Financing; (ii) impose new or additional conditions or other terms or otherwise expand, amend or modify any of the conditions to the receipt of the Equity Financing or any other terms to the Equity Financing in a manner that would reasonably be expected to (A) delay or prevent the Closing Date; or (B) make the timely funding of the Equity Financing, or the satisfaction of the conditions to obtaining the Equity Financing, less likely to occur in any respect; or (iii) adversely impact the ability of Parent, Merger Sub or the Company, as applicable, to enforce its rights against the Guarantor under the Equity Commitment Letter. Any reference in this Agreement to (1) the Equity Financing will include the financing contemplated by the Equity Commitment Letter as amended or modified in compliance with this Section 6.5; and (2) Equity Commitment Letter will include such document as amended or modified in compliance with this Section 6.5.

(b) *Taking of Necessary Actions.* Subject to the terms and conditions of this Agreement, each of Parent and Merger Sub will use its respective reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper and advisable to arrange and obtain the Equity Financing on the terms and conditions described in the Equity Commitment Letter, including using its reasonable best efforts to (i) maintain in effect the Equity Commitment Letter in accordance with the terms and subject to the conditions thereof; (ii) satisfy on a timely basis all conditions to funding that are applicable to Parent and Merger Sub in the Equity Commitment Letter; (iii) consummate the Equity Financing at or prior to the Closing; (iv) comply with its obligations pursuant to the Equity Commitment Letter; and (v) enforce its rights pursuant to the Equity Commitment Letter.

(c) *Enforcement.* Notwithstanding anything to the contrary contained in this Agreement, nothing contained in this Section 6.5 will require, and in no event will the reasonable best efforts of Parent or Merger Sub

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be deemed or construed to require, either Parent or Merger Sub to (i) bring any enforcement action against any source of the Equity Financing to enforce its rights pursuant to the Equity Commitment Letter (it being understood that Parent and Merger Sub will seek to enforce, including by bringing suit for specific performance, the Equity Commitment Letter if the Company seeks and is granted a decree of specific performance of the obligation to consummate the Merger); or (ii) seek the Equity Financing from any source other than a counterparty to, or in any amount in excess of that contemplated by, the Equity Commitment Letter.

*6.6 Cooperation With Debt Financing.*

(a) *Cooperation with Debt Financing.* From and after the date hereof until the Effective Time, the Company (x) with respect to clauses (i) - (iv) and (vi) - (xiv) below, will use its reasonable best efforts to, and will use its reasonable best efforts to cause each of its Representatives to, and (y) with respect to clause (v), shall use its best efforts to, and shall use its best efforts to cause each of its Representatives to, in each case do the following:

(i) providing Parent and Merger Sub with such reasonable cooperation as may be reasonably requested by Parent or Merger Sub to assist them in arranging the debt financing (if any) to be obtained by Parent, Merger Sub or their respective Affiliates in connection with the Merger (the **Debt Financing**);

(ii) participating (and causing senior management and Representatives, with appropriate seniority and expertise, of the Company to participate) in a reasonable number of meetings and presentations with actual or prospective lenders, road shows and due diligence sessions, drafting sessions and sessions with rating agencies, and otherwise cooperating with the marketing and due diligence efforts for any of the Debt Financing;

(iii) assisting Parent and the Financing Sources with the timely preparation of customary (A) rating agency presentations, bank information memoranda, confidential information memoranda, lender presentations and similar documents required in connection with or proper for the Debt Financing or customarily used to arrange transactions similar to the Debt Financing by companies of a comparable size in a comparable industry as the Company; and (B) pro forma financial statements and forecasts of financial statements of the Surviving Corporation for one or more periods following the Closing Date, in each case based on financial information and data derived from the Company's historical books and records; *provided, however*, that no member of the Company will be required to provide any information or assistance with respect to the preparation of pro forma financial statements and forecasts of financing statements relating to (i) the determination of the proposed aggregate amount of the Debt Financing, the interest rates thereunder or the fees and expenses relating thereto; (ii) the determination of any post-Closing or pro forma cost savings, synergies, capitalization, ownership or other pro forma adjustments desired to be incorporated into any information used in connection with the Debt Financing; or (iii) any financial information related to Parent or any of its Subsidiaries or any adjustments that are not directly related to the acquisition of the Company;

(iv) assisting Parent in connection with the preparation, registration, execution and delivery (but in the case of execution and delivery, solely to the extent any such execution and delivery would only be effective on or after the Closing Date) of any pledge and security documents, mortgages, currency or interest hedging arrangements and other definitive financing documents and certificates as may be reasonably requested by Parent or the Financing Sources (including using reasonable best efforts to obtain, to the extent applicable, consents of accountants for use of their reports in any materials relating to the Debt Financing as reasonably requested by Parent), obtaining insurance certificates and endorsements, and facilitating the delivery of all stock and other certificates representing equity interests in the Company and its Subsidiaries to the extent required in connection with the Debt Financing, and otherwise reasonably facilitating the pledging of collateral and the granting of security interests in respect of the Debt Financing, it being understood that such documents will not take effect until the Effective Time;



(v) furnishing Parent, Merger Sub and the Financing Sources, as promptly as practicable, with (A) to the extent customarily provided by companies of comparable size and comparable industry in transactions

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similar to the Debt Financing for a financing of the type being incurred, financial and other pertinent and customary information (and supplementing such information to the extent any such information contains any material misstatement of fact or omits to state a material fact necessary to make such information not misleading) regarding the Company as may be reasonably requested by Parent or the Financing Sources to the extent that such information is of the type and form customarily included in a bank confidential information memorandum in connection with the arrangement of financing similar to the Debt Financing or in rating agency presentations, lender presentations or other customary marketing materials, and (B) the Required Financials;

(vi) cooperating with Parent to obtain customary and reasonable corporate and facilities ratings, consents, landlord waivers and estoppels, non-disturbance agreements, non-invasive environmental assessments, non-imputation affidavits, legal opinions, surveys and title insurance as reasonably requested by Parent, including in connection with any sale-and-leaseback agreements or arrangements to be effected at or after the Closing;

(vii) reasonably facilitating the granting of security interests (and perfection thereof) in collateral or the reaffirmation of the pledge of collateral on or after the Closing Date, and obtaining and delivering any pay-off letters and other cooperation in connection with the repayment or other retirement of existing indebtedness required to be repaid at the Closing and the release and termination of any and all related liens and encumbrances on or prior to the Closing Date;

(viii) delivering notices of prepayment within the time periods required by the relevant agreements governing indebtedness and obtaining customary payoff letters, lien terminations and instruments of discharge to be delivered at the Closing, giving any other necessary notices, to allow for the payoff, discharge and termination in full at the Closing of all indebtedness required to be repaid at the Closing and release of all liens and encumbrances in connection therewith; and cooperating in the replacement, backstop or cash collateralization of any outstanding letters of credit issued for the account of the Company or any of its Subsidiaries;

(ix) providing customary authorization letters, confirmations and undertakings to the Financing Sources authorizing the distribution of information to prospective lenders or investors and containing a representation to the Financing Sources that the information pertaining to the Company and based on financial information and data derived from the Company's historical books and records contained in the disclosure and marketing materials related to the Debt Financing is complete and correct in all material respects and that the public side versions of such documents, if any, do not include material non-public information about the Company or its Subsidiaries or securities;

(x) facilitating and assisting in the preparation, execution and delivery of one or more credit agreements, guarantees, certificates and other definitive financing documents as may be reasonably requested by Parent (including furnishing all information relating to the Company and its Subsidiaries and their respective businesses to be included in any schedules thereto or in any perfection certificates); provided that the foregoing documentation shall be subject to the occurrence of the Closing Date and become effective no earlier than the Closing Date;

(xi) ensuring that the Debt Financing benefits from existing lending relationships of the Company and its Subsidiaries;

(xii) taking all corporate and other organizational actions, subject to the occurrence of the Closing, reasonably requested by Parent or Merger Sub to (A) permit the consummation of the Debt Financing (including distributing the proceeds of the Debt Financing, if any, obtained by any Subsidiary of the Company to the Surviving Corporation); and (B) cause the direct borrowing or incurrence of all of the proceeds of the Debt Financing by the Surviving Corporation or any of its Subsidiaries concurrently with or immediately following the Effective Time, in each case of clause (A) and (B), including, facilitating the execution and delivery at the



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Closing of definitive documents reasonably related to the Debt Financing (such documents, the **Debt Documents** ) on the terms contemplated by any debt commitment letters, in connection with the authorization of the Debt Financing and the Debt Documents and the execution and delivery of the Debt Documents in anticipation of the Closing;

(xiii) promptly furnishing (but in no event later than three Business Days prior to the Closing Date) Parent, Merger Sub and the Financing Sources with all documentation and other information about the Company as is reasonably requested by Parent, Merger Sub or the Financing Sources relating to applicable know your customer and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law on October 26, 2001), and (b) a certification regarding beneficial ownership required by 31 C.F.R. § 1010.230, in each case, at least three (3) Business Days prior to the Closing Date to the extent requested in writing at least ten Business Days prior to the Closing Date; and

(xiv) cooperating in satisfying the conditions precedent set forth in the definitive agreements relating to the Debt Financing to the extent satisfaction thereof requires the cooperation, or is within the control, of the Company, its Subsidiaries or their respective representatives.

(b) *Obligations of the Company.* Nothing in this Section 6.6 will require the Company to (i) waive or amend any terms of this Agreement or agree to pay any fees or reimburse any expenses prior to the Effective Time for which it has not received prior reimbursement or is not otherwise indemnified by or on behalf of Parent; (ii) enter into any definitive agreement or distribute any cash (except to the extent subject to concurrent reimbursement by Parent) that will be effective prior to the Closing Date; (iii) give any indemnities in connection with the Debt Financing or any action required to be taken by the Company pursuant to Section 6.6(b) that are, in each case, effective prior to the Effective Time; (iv) take any action that, in the good faith determination of the Company, would unreasonably interfere with the conduct of the business of the Company or create an unreasonable risk of damage or destruction to any property or assets of the Company; or (v) take any action that will conflict with or violate its organizational documents or any applicable laws or would result in a material violation or breach of, or default under, any material agreement to which any member of the Company is a party. In addition, (A) no action, liability or obligation of the Company or any of its Representatives pursuant to any certificate, agreement, arrangement, document or instrument relating to the Debt Financing or any of the actions required to be taken by the Company pursuant to Section 6.6(b) (other than customary representation letters, authorization letters and undertakings (including with respect to the presence or absence of material non-public information and the accuracy of the information contained in the disclosure and marketing materials related to the Debt Financing based on financial information and data derived from the Company's historical books and records)) will be effective until the Effective Time, and the Company will not be required to take any action pursuant to any certificate, agreement, arrangement, document or instrument (other than customary representation letters, authorization letters and undertakings (including with respect to the presence or absence of material non-public information and the accuracy of the information contained in the disclosure and marketing materials related to the Debt Financing based on financial information and data derived from the Company's historical books and records)) that is not contingent on the occurrence of the Closing or that must be effective prior to the Effective Time; and (B) any bank information memoranda required in relation to the Debt Financing will contain disclosure reflecting the Surviving Corporation or its Subsidiaries as the obligor. Nothing in this Section 6.6 will require (1) any officer or Representative of the Company to deliver any certificate or opinion or take any other action under this Section 6.6 that could reasonably be expected to result in personal liability to such officer or Representative; or (2) the Company Board to approve any financing or Contracts related thereto, effective prior to the Closing Date.

(c) *Use of Logos.* The Company hereby consents to the use of its and its Subsidiaries' logos in connection with the Debt Financing so long as such logos (i) are used solely in a manner that is not intended to or likely to harm or disparage the Company or the reputation or goodwill of the Company; (ii) are used solely in connection with a description of the Company, its business and products or the Merger; and (iii) are used in any other manner consistent

with the other terms and conditions that the Company reasonably imposes.

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(d) *Confidentiality.* All non-public or other confidential information provided by the Company or any of its Representatives pursuant to this Agreement will be kept confidential in accordance with the Confidentiality Agreement, except that Parent and Merger Sub will be permitted to disclose such information to any Financing Sources or prospective Financing Sources and other financial institutions and investors that may become parties to the Debt Financing (and, in each case, to their respective counsel and auditors) so long as such Persons (i) are informed of the confidential nature of such information and agree to keep information of this type confidential; and (ii) are subject to other confidentiality undertakings reasonably satisfactory to the Company and of which the Company is a beneficiary.

(e) *Reimbursement.* Promptly upon request by the Company, Parent will reimburse the Company for any documented and reasonable out-of-pocket costs and expenses (including attorneys' fees) incurred by the Company in connection with the cooperation of the Company contemplated by this Section 6.6.

(f) *Indemnification.* The Company and its Representatives will be indemnified and held harmless by Parent from and against any and all liabilities, losses, damages, claims, costs, expenses (including attorneys' fees), interest, awards, judgments, penalties and amounts paid in settlement suffered or incurred by them in connection with any cooperation provided pursuant to this Section 6.6 or the provision of information utilized in connection therewith, except to the extent resulting from the Company's or any of its Representative's gross negligence or willful and material misconduct. Parent's obligations pursuant to Section 6.6(f) and this Section 6.6(g) referred to collectively as the **Reimbursement Obligations**.

(g) *No Exclusive Arrangements.* In no event will the Guarantor, Parent, Merger Sub or any of their respective Affiliates (which for this purpose will be deemed to include each direct investor in Parent or Merger Sub and the financing sources or potential financing sources of Parent, Merger Sub and such investors) enter into any Contract (i) awarding any agent, broker, investment banker or financial advisor any financial advisory role on an exclusive basis; or (ii) prohibiting or seeking to prohibit any bank, investment bank or other potential provider of debt financing from providing or seeking to provide debt financing or financial advisory services to any Person, in each case in connection with a transaction relating to the Company or in connection with the Merger.

(h) *No Financing Condition.* Parent and Merger Sub each acknowledge and agree that obtaining the Debt Financing is not a condition to the Closing. If the Debt Financing has not been obtained, Parent and Merger Sub will each continue to be obligated, subject to the satisfaction or waiver of the conditions set forth in Article VII, to consummate the Merger.

**6.7 Anti-Takeover Laws.** The Company and the Company Board (and any committee empowered to take such action, if applicable) will (a) take all actions within their power to ensure that no anti-takeover statute or similar statute or regulation is or becomes applicable to the Merger; and (b) if any anti-takeover statute or similar statute or regulation becomes applicable to the Merger, take all action within their power to ensure that the Merger may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on the Merger.

**6.8 Access.** At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, the Company will afford Parent and its Representatives reasonable access during normal business hours, upon reasonable advance notice, to the properties, books and records and personnel of the Company, except that the Company may restrict or otherwise prohibit access to any documents or information to the extent that (a) any applicable law or regulation requires the Company to restrict or otherwise prohibit access to such documents or information; (b) access to such documents or information would give rise to a material risk of waiving any

attorney-client privilege, work product doctrine or other privilege applicable to such documents or information;  
(c) access to a Contract to which the Company is a party or otherwise bound would violate or cause a default pursuant to, or give a third Person the right terminate or accelerate the rights pursuant to, such

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Contract; (d) access would result in the disclosure of any trade secrets of third Persons; or (e) such documents or information are reasonably pertinent to any adverse Legal Proceeding between the Company and its Affiliates, on the one hand, and Parent and its Affiliates, on the other hand. Nothing in this Section 6.8 will be construed to require the Company or any of its Representatives to prepare any reports, analyses, appraisals, opinions or other information. Any investigation conducted pursuant to the access contemplated by this Section 6.8 will be conducted in a manner that does not unreasonably interfere with the conduct of the business of the Company or create a risk of damage or destruction to any property or assets of the Company. Any access to the properties of the Company will be subject to the Company's reasonable security measures and insurance requirements and will not include the right to perform invasive testing. The terms and conditions of the Confidentiality Agreement will apply to any information obtained by Parent or any of its Representatives in connection with any investigation conducted pursuant to the access contemplated by this Section 6.8. All requests for access pursuant to this Section 6.8 must be directed to the General Counsel of the Company, or another person designated by the Company.

6.9 *Section 16(b) Exemption.* The Company will take all actions reasonably necessary to cause the Merger, and any dispositions of equity securities of the Company (including derivative securities) in connection with the Merger by each individual who is a director or executive officer of the Company to be exempt pursuant to Rule 16b-3 promulgated under the Exchange Act.

6.10 *Directors and Officers Exculpation, Indemnification and Insurance.*

(a) *Indemnified Persons.* The Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) honor and fulfill, in all respects, the obligations of the Company pursuant to any indemnification agreements between a member of the Company and any of its current or former directors or officers (and any person who becomes a director or officer of a member of the Company prior to the Effective Time) (collectively, the **Indemnified Persons**) or employees for any acts or omissions by such Indemnified Persons or employees occurring prior to the Effective Time. In addition, during the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) cause the certificates of incorporation, bylaws and other similar organizational documents of the Surviving Corporation and its Subsidiaries to contain provisions with respect to indemnification, exculpation and the advancement of expenses that are at least as favorable as the indemnification, exculpation and advancement of expenses provisions set forth in the Charter, the Bylaws and the other similar organizational documents of the Subsidiaries of the Company, as applicable, as of the date hereof. During such six-year period, such provisions may not be repealed, amended or otherwise modified in any manner except as required by applicable law.

(b) *Indemnification Obligation.* Without limiting the generality of the provisions of Section 6.10(a), during the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) indemnify and hold harmless, to the fullest extent permitted by applicable law or pursuant to any indemnification agreements with the Company and any of its Subsidiaries in effect on the date hereof, each Indemnified Person from and against any costs, fees and expenses (including attorneys' fees and investigation expenses), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement or compromise in connection with any Legal Proceeding, whether civil, criminal, administrative or investigative, to the extent that such Legal Proceeding arises, directly or indirectly, out of or pertains, directly or indirectly, to (i) any action or omission, or alleged action or omission, in such Indemnified Person's capacity as a director, officer, employee or agent of the Company or its Affiliates to the extent that such action or omission, or alleged action or omission, occurred prior to or at the Effective Time; and (ii) the Merger, as well as any actions taken by the Company, Parent or Merger Sub with respect thereto (including any disposition of assets of the Surviving Corporation or any of its Subsidiaries that is alleged to have rendered the Surviving



Corporation or any of its Subsidiaries insolvent), except that if, at any time prior to the sixth anniversary of the Effective Time, any Indemnified Person delivers to Parent a written notice asserting a claim for indemnification pursuant to this Section 6.10(b), then the claim

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asserted in such notice will survive the sixth anniversary of the Effective Time until such claim is fully and finally resolved. In the event of any such Legal Proceeding, (A) the Surviving Corporation will have the right to control the defense thereof after the Effective Time (it being understood that, by electing to control the defense thereof, the Surviving Corporation will be deemed to have waived any right to object to the Indemnified Person's entitlement to indemnification hereunder with respect thereto); (B) each Indemnified Person will be entitled to retain his or her own counsel, whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding; (C) the Surviving Corporation will advance all fees and expenses (including fees and expenses of any counsel) as incurred by an Indemnified Person in the defense of such Legal Proceeding, whether or not the Surviving Corporation elects to control the defense of any such Legal Proceeding; and (D) no Indemnified Person will be liable for any settlement of such Legal Proceeding effected without his or her prior written consent (unless such settlement relates only to monetary damages for which the Surviving Corporation is entirely responsible). Notwithstanding anything to the contrary in this Agreement, none of Parent, the Surviving Corporation nor any of their respective Affiliates will settle or otherwise compromise or consent to the entry of any judgment with respect to, or otherwise seek the termination of, any Legal Proceeding for which indemnification may be sought by an Indemnified Person pursuant to this Agreement unless such settlement, compromise, consent or termination includes an unconditional release of all Indemnified Persons from all liability arising out of such Legal Proceeding. Any determination required to be made with respect to whether the conduct of any Indemnified Person complies or complied with any applicable standard will be made by independent legal counsel selected by the Surviving Corporation (which counsel will be reasonably acceptable to such Indemnified Person), the fees and expenses of which will be paid by the Surviving Corporation.

(c) *D&O Insurance.* During the period commencing at the Effective Time and ending on the sixth anniversary of the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) maintain in effect the Company's current directors' and officers' liability insurance ( **D&O Insurance** ) in respect of acts or omissions occurring at or prior to the Effective Time on terms (including with respect to coverage, conditions, retentions, limits and amounts) that are equivalent to those of the D&O Insurance. In satisfying its obligations pursuant to this Section 6.10(c), the Surviving Corporation will not be obligated to pay annual premiums in excess of 300% of the amount paid by the Company for coverage for its last full fiscal year (such 300% amount, the **Maximum Annual Premium** ). If the annual premiums of such insurance coverage exceed the Maximum Annual Premium, then the Surviving Corporation will be obligated to obtain a policy with the greatest coverage available for a cost not exceeding the Maximum Annual Premium from an insurance carrier with the same or better credit rating as the Company's current directors' and officers' liability insurance carrier. Prior to the Effective Time, the Company may purchase a prepaid tail policy with respect to the D&O Insurance from an insurance carrier with the same or better credit rating as the Company's current directors' and officers' liability insurance carrier so long as the annual cost for such tail policy does not exceed the Maximum Annual Premium. If the Company elects to purchase such a tail policy prior to the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) maintain such tail policy in full force and effect and continue to honor its obligations thereunder for so long as such tail policy is in full force and effect.

(d) *Successors and Assigns.* If Parent, the Surviving Corporation or any of their respective successors or assigns will (i) consolidate with or merge into any other Person and not be the continuing or surviving corporation or entity in such consolidation or merger; or (ii) transfer all or substantially all of its properties and assets to any Person, then proper provisions will be made so that the successors and assigns of Parent, the Surviving Corporation or any of their respective successors or assigns will assume all of the obligations of Parent and the Surviving Corporation set forth in this Section 6.10.

(e) *No Impairment.* The obligations set forth in this Section 6.10 may not be terminated, amended or otherwise modified in any manner that adversely affects any Indemnified Person (or any other person who is a beneficiary pursuant to the D&O Insurance or the tail policy referred to in Section 6.10(c) (and their heirs and representatives))

without the prior written consent of such affected Indemnified Person or other person. Each of the Indemnified Persons or other persons who are beneficiaries pursuant to the D&O Insurance or the tail

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policy referred to in Section 6.10(c) (and their heirs and representatives) are intended to be third party beneficiaries of this Section 6.10, with full rights of enforcement as if such person were a Party. The rights of the Indemnified Persons (and other persons who are beneficiaries pursuant to the D&O Insurance or the tail policy referred to in Section 6.10(c) (and their heirs and representatives)) pursuant to this Section 6.10 will be in addition to, and not in substitution for, any other rights that such persons may have pursuant to (i) the Charter and Bylaws; (ii) the similar organizational documents of the Subsidiaries of the Company; (iii) any and all indemnification agreements entered into with the Company; or (iv) applicable law (whether at law or in equity).

(f) *Joint and Several Obligations.* The obligations of the Surviving Corporation, Parent and their respective Subsidiaries pursuant to this Section 6.10 will be joint and several.

(g) *Other Claims.* Nothing in this Agreement is intended to, or will be construed to, release, waive or impair any rights to directors and officers insurance claims pursuant to any applicable insurance policy or indemnification agreement that is or has been in existence with respect to the Company for any of its directors, officers or other employees, it being understood and agreed that the indemnification provided for in this Section 6.10 is not prior to or in substitution for any such claims pursuant to such policies or agreements.

#### 6.11 *Employee Matters.*

(a) *Acknowledgement.* Parent hereby acknowledges and agrees that a change in control (or similar phrase) within the meaning of each of the Employee Plans, as applicable, will occur as of the Effective Time.

(b) *Existing Arrangements.* From and after the Effective Time, the Surviving Corporation will (and Parent will cause the Surviving Corporation to) honor all of the Employee Plans and compensation and severance arrangements in accordance with their terms as in effect on date hereof and which are set forth in Section 6.11 of the Company Disclosure Letter. Notwithstanding the foregoing, nothing will prohibit the Surviving Corporation from in any way amending, modifying or terminating any such Employee Plans or compensation or severance arrangements in accordance with their terms or if otherwise required pursuant to applicable law.

(c) *Employment; Benefits.* As of the Closing, the Surviving Corporation or one of its Subsidiaries will continue to employ the employees of the Company as of the Effective Time. From and after the Effective Time until December 31, 2019, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) either (i) maintain for the benefit of each Continuing Employee the Employee Plans and any other employee benefit plans or other compensation and severance arrangements (other than equity-based benefits and, subject to Section 6.11(b), individual employment agreements) of the Surviving Corporation or any of its Subsidiaries set forth in the Company Disclosure Letter (the **Company Plans**) at benefit levels that are substantially comparable in the aggregate to those in effect at the Company or its applicable Subsidiaries on the date hereof, and provide compensation and benefits (other than equity-based benefits and subject to Section 6.11(b), individual employment agreements) to each Continuing Employee pursuant to such Company Plans; (ii) provide compensation, benefits and severance payments (other than equity-based benefits and, subject to Section 6.11(b), individual employment agreements) to each Continuing Employee that are substantially comparable in the aggregate to the compensation, benefits and severance payments (other than equity-based benefits and individual employment agreements) provided to such Continuing Employee immediately prior to the Effective Time (**Comparable Plans**); or (iii) provide some combination of Company Plans and Comparable Plans such that each Continuing Employee receives compensation, benefits and severance payments (other than equity-based benefits and, subject to Section 6.11(b), individual employment agreements) that, taken as a whole, are substantially comparable in the aggregate to the compensation, benefits and severance payments (other than equity-based benefits and subject to Section 6.11(b), and individual employment agreements) provided to such Continuing Employee immediately prior to

the Effective Time. In each case, each of base compensation and target incentive compensation opportunity will not be decreased from and after the Effective Time until December 31, 2019 for any Continuing Employee employed during that period. From and after the Effective Time until December 31, 2019, the Surviving Corporation will (and Parent will cause the

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Surviving Corporation to) provide severance benefits to eligible employees in accordance with the Company's severance plans, guidelines and practices as in effect on the date hereof and which are described on Section 6.11(c) of the Company Disclosure Letter.

(d) *New Plans*. To the extent that a Company Plan or Comparable Plan is made available to any Continuing Employee at or after the Effective Time, the Surviving Corporation and its Subsidiaries will (and Parent will cause the Surviving Corporation and its Subsidiaries to) cause to be granted to such Continuing Employee credit for all service with the Company prior to the Effective Time for purposes of eligibility to participate, vesting and entitlement to benefits where length of service is relevant (including for purposes of vacation accrual and severance pay entitlement), except that such service need not be credited to the extent that it would result in duplication of coverage or benefits. In addition, and without limiting the generality of the foregoing, (i) each Continuing Employee will be immediately eligible to participate, without any waiting period, in any and all employee benefit plans sponsored by the Surviving Corporation and its Subsidiaries (other than the Company Plans) (such plans, the **New Plans**) to the extent that coverage pursuant to any such New Plan replaces coverage pursuant to a comparable Company Plan in which such Continuing Employee participates immediately before the Effective Time (such plans, the **Old Plans**); (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, vision or disability benefits to any Continuing Employee, the Surviving Corporation cause all waiting periods, pre-existing condition exclusions, evidence of insurability requirements and actively-at-work or similar requirements of such New Plan to be waived for such Continuing Employee and his or her covered dependents, and the Surviving Corporation will cause any eligible expenses incurred by such Continuing Employee and his or her covered dependents during the portion of the plan year of the Old Plan ending on the date that such Continuing Employee's participation in the corresponding New Plan begins to be given full credit pursuant to such New Plan for purposes of satisfying all deductible, coinsurance, co-pay, offsets and maximum out-of-pocket requirements applicable to such Continuing Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan (provided that, in each case, the Surviving Corporation shall only be required to use commercially reasonable efforts to take such actions to the extent not otherwise permitted under the terms of the plans); and (iii) credit the accounts of such Continuing Employees pursuant to any New Plan that is a flexible spending plan with any unused balance in the account of such Continuing Employee. Any vacation or paid time off accrued but unused by a Continuing Employee as of immediately prior to the Effective Time will be credited to such Continuing Employee following the Effective Time, and will not be subject to accrual limits or other forfeiture and will not limit future accruals (except to the extent that such limits or forfeitures applied under the Company Plans in effect as of the date hereof).

(e) *No Third Party Beneficiary Rights*. Notwithstanding anything to the contrary set forth in this Agreement, this Section 6.11 will not be deemed to (i) guarantee employment for any period of time for, or preclude the ability of Parent, the Surviving Corporation or any of their respective Subsidiaries to terminate any Continuing Employee for any reason; (ii) subject to the limitations and requirements specifically set forth in this Section 6.11, require Parent, the Surviving Corporation or any of their respective Subsidiaries to continue any Company Plan or prevent the amendment, modification or termination thereof after the Effective Time; (iii) create any third party beneficiary rights in any Person; or (iv) establish, amend or modify any benefit plan, program, agreement or arrangement.

6.12 *Obligations of Merger Sub*. Parent will take all action necessary to cause Merger Sub and the Surviving Corporation to perform their respective obligations pursuant to this Agreement and to consummate the Merger upon the terms and subject to the conditions set forth in this Agreement. Parent and Merger Sub will be jointly and severally liable for the failure by either of them to perform and discharge any of their respective covenants, agreements and obligations pursuant to this Agreement.

6.13 *Notification of Certain Matters*.

(a) *Notification by the Company.* At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant

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to Article VIII and the Effective Time, the Company will give prompt notice to Parent upon becoming aware that any representation or warranty made by it in this Agreement has become untrue or inaccurate in any material respect, or of any failure by the Company to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement, in each case if and only to the extent that such untruth, inaccuracy, or failure would reasonably be expected to cause any of the conditions to the obligations of Parent and Merger Sub to consummate the Merger set forth in Section 7.2(a) or Section 7.2(b) to fail to be satisfied at the Closing, except that no such notification will affect or be deemed to modify any representation or warranty of the Company set forth in this Agreement or the conditions to the obligations of Parent and Merger Sub to consummate the Merger or the remedies available to the Parties under this Agreement. The terms and conditions of the Confidentiality Agreement apply to any information provided to Parent pursuant to this Section 6.13(a).

(b) *Notification by Parent.* At all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, Parent will give prompt notice to the Company upon becoming aware that any representation or warranty made by Parent or Merger Sub in this Agreement has become untrue or inaccurate in any material respect, or of any failure by Parent or Merger Sub to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it pursuant to this Agreement, in each case if and only to the extent that such untruth, inaccuracy or failure would reasonably be expected to cause any of the conditions to the obligations of the Company to consummate the Merger set forth in Section 7.3(a) or Section 7.3(b) to fail to be satisfied at the Closing, except that no such notification will affect or be deemed to modify any representation or warranty of Parent or Merger Sub set forth in this Agreement or the conditions to the obligations of the Company to consummate the Merger or the remedies available to the Parties under this Agreement. The terms and conditions of the Confidentiality Agreement apply to any information provided to the Company pursuant to this Section 6.13(b).

6.14 *Public Statements and Disclosure.* The initial press release concerning this Agreement and the Merger of the Company, on the one hand, and Parent and Merger Sub, on the other hand, will each be reasonably acceptable to the other Party. Thereafter, the Company (other than with respect to the portion of any communication relating to a Company Board Recommendation Change), on the one hand, and Parent and Merger Sub, on the other hand, will use their respective reasonable best efforts to consult with the other Parties before (a) participating in any media interviews; (b) engaging in any meetings or calls with analysts, institutional investors or other similar Persons; or (c) providing any statements that are public or are reasonably likely to become public, in any such case to the extent relating to the Merger, except that the Company will not be obligated to engage in such consultation with respect to communications that are (i) required by applicable law, regulation or stock exchange rule or listing agreement; (ii) principally directed to employees, suppliers, customers, partners or vendors so long as such communications are consistent with the previous press releases, public disclosures or public statements made jointly by the Parties (or individually if approved by the other Party); or (iii) solely to the extent related to a Superior Proposal or Company Board Recommendation Change.

6.15 *Transaction Litigation.* Prior to the Effective Time, the Company will provide Parent with prompt notice of all Transaction Litigation (including by providing copies of all pleadings with respect thereto) and keep Parent reasonably informed with respect to the status thereof. The Company will (a) give Parent the opportunity to participate in the defense, settlement or prosecution of any Transaction Litigation; and (b) consult with Parent with respect to the defense, settlement and prosecution of any Transaction Litigation. The Company may not compromise, settle or come to an arrangement regarding, or agree to compromise, settle or come to an arrangement regarding, any Transaction Litigation unless Parent has consented thereto in writing (which consent will not be unreasonably withheld, conditioned or delayed). For purposes of this Section 6.15, *participate* means that Parent will be kept apprised of proposed strategy and other significant decisions with respect to the Transaction Litigation by the Company (to the extent that the attorney-client privilege between the Company and its counsel is not undermined or otherwise



affected), and Parent may offer comments or suggestions with respect

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to such Transaction Litigation but will not be afforded any decision-making power or other authority over such Transaction Litigation except for the settlement or compromise consent set forth above.

6.16 *Stock Exchange Delisting; Deregistration.* Prior to the Effective Time, the Company will cooperate with Parent and use its reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, all things reasonably necessary, proper or advisable on its part pursuant to applicable law and the rules and regulations of NYSE to cause (a) the delisting of the Company Common Stock from NYSE as promptly as practicable after the Effective Time; and (b) the deregistration of the Company Common Stock pursuant to the Exchange Act as promptly as practicable after such delisting.

6.17 *Additional Agreements.* If at any time after the Effective Time any further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full title to all properties, assets, rights, approvals, immunities and franchises of either of the Company or Merger Sub, then the proper officers and directors of each Party will use their reasonable best efforts to take such action.

6.18 *Parent Vote.* Immediately following the execution and delivery of this Agreement, Parent, in its capacity as the sole stockholder of Merger Sub, will execute and deliver to Merger Sub and the Company a written consent approving the Merger in accordance with the DGCL.

6.19 *No Control of the Other Party's Business.* The Parties acknowledge and agree that the restrictions set forth in this Agreement are not intended to give Parent or Merger Sub, on the one hand, or the Company, on the other hand, directly or indirectly, the right to control or direct the business or operations of the other at any time prior to the Effective Time. Prior to the Effective Time, each of Parent and the Company will exercise, consistent with the terms, conditions and restrictions of this Agreement, complete control and supervision over their own business and operations.

6.20 *No Employment Discussions.* Except as approved by the Company Board, at all times during the period commencing with the execution and delivery of this Agreement and continuing until the earlier to occur of the termination of this Agreement pursuant to Article VIII and the Effective Time, Parent and Merger Sub will not, and will not permit any of their Subsidiaries or controlled Affiliates to authorize, make or enter into, or commit or agree to enter into, any formal or informal arrangements or other understandings (whether or not binding) with any executive officer of the Company (i) regarding any continuing employment or consulting relationship with the Surviving Corporation from and after the Effective Time; or (ii) pursuant to which any such individual would be entitled to receive consideration of a different amount or nature than the Per Share Price in respect of such holder's shares of Company Common Stock; or (iii) pursuant to which such individual would agree to provide, directly or indirectly, equity investment to Parent, Merger Sub or the Company to finance any portion of the Merger.

**ARTICLE VII**

**CONDITIONS TO THE MERGER**

7.1 *Conditions to Each Party's Obligations to Effect the Merger.* The respective obligations of Parent, Merger Sub and the Company to consummate the Merger are subject to the satisfaction or waiver (where permissible pursuant to applicable law) prior to the Effective Time of each of the following conditions:

(a) *Requisite Stockholder Approval.* The Company will have received the Requisite Stockholder Approval at the Company Stockholder Meeting.

(b) *Antitrust Laws.* The waiting periods (and any extensions thereof), if any, applicable to the Merger pursuant to the HSR Act will have expired or otherwise been terminated, or all requisite consents pursuant thereto will have been obtained.

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(c) *No Prohibitive Laws or Injunctions.* No temporary restraining order, preliminary or permanent injunction or other judgment or order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, nor will any action have been taken by any Governmental Authority of competent jurisdiction, and no statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Merger, that in each case prohibits, makes illegal, or enjoins the consummation of the Merger.

*7.2 Conditions to the Obligations of Parent and Merger Sub.* The obligations of Parent and Merger Sub to consummate the Merger will be subject to the satisfaction or waiver (where permissible pursuant to applicable law) prior to the Effective Time of each of the following conditions, any of which may be waived exclusively by Parent:

(a) *Representations and Warranties.*

(i) Other than the representations and warranties listed in Section 7.2(a)(ii) and Section 7.2(a)(iii), the representations and warranties of the Company set forth in this Agreement will be true and correct (without giving effect to any materiality or Company Material Adverse Effect qualifications set forth therein) as of the Closing Date as if made at and as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty will be true and correct as of such earlier date), except for such failures to be true and correct that would not have a Company Material Adverse Effect.

(ii) The representations and warranties set forth in Section 3.1, Section 3.2, Section 3.3(c), Section 3.7(c) (other than the first sentence thereof), Section 3.7(d), Section 3.12(a)(ii) and Section 3.25 that (A) are not qualified by Company Material Adverse Effect or other materiality qualifications will be true and correct in all material respects as of the Closing Date as if made at and as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty will be true and correct in all material respects as of such earlier date); and (B) that are qualified by Company Material Adverse Effect or other materiality qualifications will be true and correct in all respects (without disregarding such Company Material Adverse Effect or other materiality qualifications) as of the Closing Date as if made at and as of the Closing Date (except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty will be true and correct in all respects as of such earlier date).

(iii) The representations and warranties set forth in Section 3.7(a) and Section 3.7(b), the first sentence of Section 3.7(c) will be true and correct in all respects as of the Closing Date (in each case (A) without giving effect to any Company Material Adverse Effect or other materiality qualifications; and (B) except to the extent that any such representation and warranty expressly speaks as of an earlier date, in which case such representation and warranty will be true and correct as of such earlier date), except where the failure to be so true and correct in all respects would not reasonably be expected to result in additional cost, expense or liability to the Company, Parent and their Affiliates, individually or in the aggregate, that is more than \$10,000,000.

(b) *Performance of Obligations of the Company.* The Company will have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it at or prior to the Closing.

(c) *Officer's Certificate.* Parent and Merger Sub will have received a certificate of the Company, validly executed for and on behalf of the Company and in its name by a duly authorized executive officer thereof, certifying that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied.

(d) *Company Material Adverse Effect*. No Company Material Adverse Effect will have occurred after the date hereof that is continuing.

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*7.3 Conditions to the Company's Obligations to Effect the Merger.* The obligations of the Company to consummate the Merger are subject to the satisfaction or waiver (where permissible pursuant to applicable law) prior to the Effective Time of each of the following conditions, any of which may be waived exclusively by the Company:

(a) *Representations and Warranties.* The representations and warranties of Parent and Merger Sub set forth in this Agreement will be true and correct on and as of the Closing Date with the same force and effect as if made on and as of such date, except for (i) any failure to be so true and correct that would not, individually or in the aggregate, prevent or materially delay the consummation of the Merger or the ability of Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to this Agreement; and (ii) those representations and warranties that address matters only as of a particular date, which representations will have been true and correct as of such particular date, except for any failure to be so true and correct that would not, individually or in the aggregate, prevent or materially delay the consummation of the Merger or the ability of Parent and Merger Sub to fully perform their respective covenants and obligations pursuant to this Agreement.

(b) *Performance of Obligations of Parent and Merger Sub.* Parent and Merger Sub will have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by Parent and Merger Sub at or prior to the Closing.

(c) *Officer's Certificate.* The Company will have received a certificate of Parent and Merger Sub, validly executed for and on behalf of Parent and Merger Sub and in their respective names by a duly authorized officer thereof, certifying that the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied.

**ARTICLE VIII**

**TERMINATION, AMENDMENT AND WAIVER**

8.1 *Termination.* This Agreement may be validly terminated only as follows (it being understood and agreed that this Agreement may not be terminated for any other reason or on any other basis):

(a) at any time prior to the Effective Time (whether prior to or after the receipt of the Requisite Stockholder Approval) by mutual written agreement of Parent and the Company;

(b) by either Parent or the Company, at any time prior to the Effective Time (whether prior to or after the receipt of the Requisite Stockholder Approval) if (i) any permanent injunction or other judgment or order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger will be in effect, or any action has been taken by any Governmental Authority of competent jurisdiction, that, in each case, prohibits, makes illegal or enjoins the consummation of the Merger and has become final and non-appealable; or (ii) any statute, rule, regulation or order will have been enacted, entered, enforced or deemed applicable to the Merger that prohibits, makes illegal or enjoins the consummation of the Merger, except that the right to terminate this Agreement pursuant to this Section 8.1(b) will not be available to any Party that has failed to use its reasonable best efforts to resist, appeal, obtain consent pursuant to, resolve or lift, as applicable, such injunction, action, statute, rule, regulation or order;

(c) by either Parent or the Company, at any time prior to the Effective Time (whether prior to or after the receipt of the Requisite Stockholder Approval) if the Effective Time has not occurred by 11:59 p.m., Pacific time, on August 11, 2019 (the **Termination Date**), it being understood that the right to terminate this Agreement pursuant to this Section 8.1(c) will not be available to (i) (1) Parent if the Company (x) has the valid right to terminate this Agreement pursuant to Section 8.1(g) and/or (y) has perfected its right to terminate this Agreement pursuant to Section 8.1(i); or

(2) the Company if Parent has the valid right to terminate this Agreement pursuant to Section 8.1(e); and (ii) any Party whose action or failure to act (which action or failure to act constitutes a breach by such Party of this Agreement) has been the primary cause of, or primarily resulted in, either (A) the failure to satisfy the conditions to the obligations of the terminating Party to consummate the

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Merger set forth in Article VII prior to the Termination Date; or (B) the failure of the Effective Time to have occurred prior to the Termination Date;

(d) by either Parent or the Company, at any time prior to the Effective Time if the Company fails to obtain the Requisite Stockholder Approval at the Company Stockholder Meeting (or any adjournment or postponement thereof) at which a vote is taken on the Merger, except that the right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to any Party whose action or failure to act (which action or failure to act constitutes a breach by such Party of this Agreement) has been the cause of, or resulted in, the failure to obtain the Requisite Stockholder Approval at the Company Stockholder Meeting (or any adjournment or postponement thereof);

(e) by Parent (whether prior to or after the receipt of the Requisite Stockholder Approval), if the Company has breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform would result in a failure of a condition set forth in Section 7.1 or Section 7.2, except that if such breach is capable of being cured by the Termination Date, Parent will not be entitled to terminate this Agreement pursuant to this Section 8.1(e) prior to the delivery by Parent to the Company of written notice of such breach, delivered at least 45 days prior to such termination (or such shorter period of time as remains prior to the Termination Date, the shorter of such periods, the Company Breach Notice Period ), stating Parent's intention to terminate this Agreement pursuant to this Section 8.1(e) and the basis for such termination, it being understood that Parent will not be entitled to terminate this Agreement if such breach has been cured within the Company Breach Notice Period (to the extent capable of being cured);

(f) by Parent, if at any time the Company Board (or a committee thereof) has effected a Company Board Recommendation Change, except that Parent's right to terminate this Agreement pursuant to this Section 8.1(f) will expire at 5:00 p.m., Pacific time, on the 10th Business Day following the date on which such right to terminate first arose;

(g) by the Company (whether prior to or after the receipt of the Requisite Stockholder Approval), if Parent or Merger Sub has breached or failed to perform in any material respect any of its respective representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform would result in a failure of a condition set forth in Section 7.1 or Section 7.3, except that if such breach is capable of being cured by the Termination Date, the Company will not be entitled to terminate this Agreement pursuant to this Section 8.1(g) prior to the delivery by the Company to Parent of written notice of such breach, delivered at least 45 days prior to such termination (or such shorter period of time as remains prior to the Termination Date, the shorter of such periods, the Parent Breach Notice Period ), stating the Company's intention to terminate this Agreement pursuant to this Section 8.1(g) and the basis for such termination, it being understood that the Company will not be entitled to terminate this Agreement if such breach has been cured within the Parent Breach Notice Period (to the extent capable of being cured);

(h) by the Company, at any time prior to receiving the Requisite Stockholder Approval if (i) the Company has received a Superior Proposal; (ii) the Company Board (or a committee thereof) has authorized the Company to enter into a definitive Alternative Acquisition Agreement to consummate the Acquisition Transaction contemplated by that Superior Proposal; (iii) the Company has complied in all material respects with Section 5.3 with respect to such Superior Proposal; and (iv) concurrently with such termination the Company pays the Company Termination Fee due to Parent in accordance with Section 8.3(b); or

(i) by the Company, at any time prior to the Effective Time, if (A) all of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied (other than those conditions that by their terms are to be satisfied by actions taken at the Closing, each of which is capable of being satisfied at the Closing) or, to the extent permitted by law, waived,



(B) Parent shall have failed to consummate the Merger by the time the Closing was required to occur under Section 2.3; (C) the Company has irrevocably notified Parent in writing that, if Parent

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performs its obligations hereunder and the Equity Financing contemplated by the Equity Commitment Letter and the Debt Financing (if any) is funded, the Company stands ready, willing and able to consummate the Merger; (D) the Company shall have given Parent written notice at least three (3) Business Days prior to such termination stating the Company's intention to terminate this Agreement pursuant to this Section 8.1(i) and (E) the Merger shall not have been consummated by the end of such three (3) Business Day period.

***8.2 Manner and Notice of Termination; Effect of Termination.***

(a) *Manner of Termination.* The Party terminating this Agreement pursuant to Section 8.1 (other than pursuant to Section 8.1(a)) must deliver prompt written notice thereof to the other Parties setting forth in reasonable detail the provision of Section 8.1 pursuant to which this Agreement is being terminated and the facts and circumstances forming the basis for such termination pursuant to such provision.

(b) *Effect of Termination.* Any proper and valid termination of this Agreement pursuant to Section 8.1 will be effective immediately upon the delivery of written notice by the terminating Party to the other Parties. In the event of the termination of this Agreement pursuant to Section 8.1, this Agreement will be of no further force or effect without liability of any Party (or any partner, member, manager, stockholder, director, officer, employee, Affiliate, agent or other representative of such Party) to the other Parties, as applicable, except that Section 6.6(f), Section 6.6(g), Section 6.14, this Section 8.2, Section 8.3 and Article IX will each survive the termination of this Agreement in accordance with their respective terms. Notwithstanding the foregoing but subject to Section 8.3(f), nothing in this Agreement will relieve any Party from any liability for any Willful Breach of this Agreement. For the avoidance of doubt, in the event of termination of this Agreement, the Financing Sources will have no liability to the Company, any of its Affiliates or any of its or their direct or indirect equityholders hereunder or otherwise relating to or arising out of the transactions contemplated hereby or any Debt Financing (including for any Willful Breach), *provided* that the foregoing shall not preclude any liability of the Financing Sources to the Company and its Affiliates under any definitive agreements relating to any Debt Financing. In addition to the foregoing, no termination of this Agreement will affect the rights or obligations of any Party pursuant to the Confidentiality Agreement or the Guaranty, which rights, obligations and agreements will survive the termination of this Agreement in accordance with their respective terms.

***8.3 Fees and Expenses.***

(a) *General.* Except as set forth in this Section 8.3, all fees and expenses incurred in connection with this Agreement and the Merger will be paid by the Party incurring such fees and expenses whether or not the Merger is consummated. For the avoidance of doubt, Parent or the Surviving Corporation will be responsible for all fees and expenses of the Payment Agent. Parent will pay or cause to be paid all (i) transfer, stamp and documentary Taxes or fees; and (ii) sales, use, real property transfer and other similar Taxes or fees arising out of or in connection with entering into this Agreement and the consummation of the Merger.

***(b) Company Payments.***

(i) If (A) this Agreement is validly terminated pursuant to Section 8.1(c), Section 8.1(d) or Section 8.1(e); (B) at the time of such termination, the conditions set forth in Sections 7.1(b) and Section 7.1(c) have been satisfied or are capable of being satisfied and the conditions set forth in Section 7.3(a) and Section 7.3(b) would be satisfied if the date of such termination was the Closing Date; (C) following the execution and delivery of this Agreement and prior to the termination of this Agreement pursuant to Section 8.1(c), Section 8.1(d) or Section 8.1(e), an Acquisition Proposal for an Acquisition Transaction has been publicly announced or disclosed and not withdrawn or otherwise abandoned; and (D) within one year following the termination of this Agreement pursuant to Section 8.1(c),

Section 8.1(d) or Section 8.1(e), as applicable, either an Acquisition Transaction is consummated or the Company enters into a definitive agreement providing for the consummation of an Acquisition Transaction, then the Company will concurrently with the consummation of such Acquisition Transaction pay to Parent an amount equal to \$110,000,000.00 (the **Company Termination**

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**Fee** ). For purposes of this Section 8.3(b)(i), all references to 20% in the definition of Acquisition Transaction will be deemed to be references to 50%.

(ii) If this Agreement is validly terminated pursuant to Section 8.1(f), then the Company must promptly (and in any event within five Business Days) following such termination pay to Parent the Company Termination Fee.

(iii) If this Agreement is validly terminated pursuant to Section 8.1(h), then the Company must prior to or concurrently with such termination pay to Parent the Company Termination Fee; *provided*, that if (A) such termination occurs prior to the No-Shop Period Start Date and (B) the Company has entered into a definitive Alternative Acquisition Agreement to consummate an Acquisition Transaction with any Person who is not a Restricted Party at the time of such termination, then the **Company Termination Fee** shall mean an amount equal to \$55,000,000.00.

(c) **Parent Payment.** If this Agreement is validly terminated pursuant to Section 8.1(g) or Section 8.1(i), then Parent must promptly (and in any event within five Business Days) following such termination pay to the Company \$256,000,000.00 in cash (the **Parent Termination Fee** ).

(d) *Single Payment Only.* The Parties acknowledge and agree that in no event will the Company or Parent, as applicable, be required to pay the Company Termination Fee or the Parent Termination Fee, as applicable, on more than one occasion, whether or not the Company Termination Fee or the Parent Termination Fee, as applicable, may be payable pursuant to more than one provision of this Agreement at the same or at different times and upon the occurrence of different events.

(e) *Payments; Default.* The Parties acknowledge that the agreements contained in this Section 8.3 are an integral part of the Merger, and that, without these agreements, the Parties would not enter into this Agreement. Accordingly, if either Party fails to promptly pay any amount due pursuant to Section 8.3 and, in order to obtain such payment, the payee Party commences a Legal Proceeding that results in a judgment against the payor Party for the amount set forth in Section 8.3 or any portion thereof, the payor Party will pay to the payee Party its reasonable and documented out-of-pocket costs and expenses (including reasonable and documented attorneys' fees) in connection with such Legal Proceeding, together with interest on such amount or portion thereof at the annual rate of 5% plus the prime rate as published in *The Wall Street Journal* in effect on the date that such payment or portion thereof was required to be made through the date that such payment or portion thereof was actually received, or a lesser rate that is the maximum permitted by applicable law. All payments under this Section 8.3 shall be made by the payor Party to the payee Party by wire transfer of immediately available funds to an account designated in writing by Parent.

(f) *Sole and Exclusive Remedy.*

(i) Under no circumstances will the collective monetary damages payable by Parent, Merger Sub or any of their Affiliates for breaches under this Agreement, the Guaranty or the Equity Commitment Letter exceed an amount equal to \$256,000,000.00 plus the Reimbursement Obligations in the aggregate for all such breaches (the **Parent Liability Limitation** ). In no event will any of the Company Related Parties seek or obtain, nor will they permit any of their Representatives or any other Person acting on their behalf to seek or obtain, nor will any Person be entitled to seek or obtain, any monetary recovery or award in excess of the Parent Liability Limitation against (A) Parent, Merger Sub or the Guarantor; or (B) the former, current and future holders of any equity, controlling persons, directors, officers, employees, agents, attorneys, Financing Sources, Affiliates (other than Parent, Merger Sub or the Guarantor), members, managers, general or limited partners, stockholders and assignees of each of Parent, Merger Sub and the Guarantor (the Persons in clauses (A) and (B) collectively, the **Parent Related Parties** ), and in no event will the Company be entitled to seek or obtain any monetary damages of any kind, including consequential, special, indirect or

punitive damages, in excess of the Parent Liability Limitation against the Parent Related Parties for, or with respect to, this Agreement, the Equity

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Commitment Letter, the Guaranty or the transactions contemplated hereby and thereby (including, any breach by the Guarantor, Parent or Merger Sub), the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable law arising out of any such breach, termination or failure; *provided* that the foregoing shall not preclude any liability of the Financing Sources to the Company, Parent or Merger Sub under the definitive agreements relating to the Debt Financing, nor limit the Company, Parent or Merger Sub from seeking to recover any such damages or obtain equitable relief from or with respect to any Financing Source pursuant to the definitive agreements relating to the Debt Financing. Other than the Guarantor's obligations under the Guaranty and the Equity Commitment Letter and other than the obligations of Parent and Merger Sub to the extent expressly provided in this Agreement, in no event will any Parent Related Party or any other Person other than the Guarantor, Parent and Merger Sub have any liability for monetary damages to the Company or any other Person relating to or arising out of this Agreement or the Merger.

(ii) Parent's receipt of the Company Termination Fee to the extent owed pursuant to Section 8.3(b) will be the only monetary damages of Parent and Merger Sub and each of their respective Affiliates may recover from (A) the Company and its Affiliates; and (B) the former, current and future holders of any equity, controlling persons, directors, officers, employees, agents, attorneys, Affiliates, members, managers, general or limited partners, stockholders and assignees of each of the Company and its Affiliates (the Persons in clauses (A) and (B) collectively, the **Company Related Parties**) in respect of this Agreement, any agreement executed in connection herewith and the transactions contemplated hereby and thereby, the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable law arising out of any such breach, termination or failure, and upon payment of such amount, (1) none of the Company Related Parties will have any further liability or obligation to Parent or Merger Sub relating to or arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby and thereby or any matters forming the basis of such termination (except that the Parties (or their Affiliates) will remain obligated with respect to, and the Company may be entitled to remedies with respect to, the Confidentiality Agreement, Section 8.3(a) and Section 8.3(e), as applicable); and (2) none of Parent, Merger Sub or any other Person will be entitled to bring or maintain any claim, action or proceeding against the Company or any Company Related Party arising out of this Agreement, any agreement executed in connection herewith or the transactions contemplated hereby and thereby or any matters forming the basis for such termination (except that the Parties (or their Affiliates) will remain obligated with respect to, and the Company may be entitled to remedies with respect to, the Confidentiality Agreement, Section 8.3(a) and Section 8.3(e), as applicable). Under no circumstances will the collective monetary damages payable by the Company for breaches under this Agreement (taking into account the payment of the Company Termination Fee pursuant to this Agreement) exceed an amount equal to \$110,000,000.00 in the aggregate for all such breaches (and any indemnification pursuant to Section 8.3(e)) (the **Company Liability Limitation**). In no event will any of the Parent Related Parties seek or obtain, nor will they permit any of their Representatives or any other Person acting on their behalf to seek or obtain, nor will any Person be entitled to seek or obtain, any monetary recovery or award in excess of the Company Liability Limitation against any of the Company Related Parties, and in no event will Parent or Merger Sub be entitled to seek or obtain any monetary damages of any kind, including consequential, special, indirect or punitive damages, in excess of the Company Liability Limitation against the Company Related Parties for, or with respect to, this Agreement or the Merger, the termination of this Agreement, the failure to consummate the Merger or any claims or actions under applicable law arising out of any such breach, termination or failure.

(iii) Each of the parties hereto acknowledges that any amount payable by the Company or Parent pursuant to this Section 8.3, including the Company Termination Fee and the Parent Termination Fee, does not constitute a penalty, but rather shall constitute liquidated damages in a reasonable amount that will compensate a party for the disposition of its rights under this Agreement in the circumstances in which such amounts are due and payable, which amounts would otherwise be impossible to calculate with precision.

(g) *Acknowledgement Regarding Specific Performance*. Notwithstanding anything to the contrary in Section 8.3(f), it is agreed that Parent, Merger Sub and the Company will be entitled to an injunction, specific

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performance or other equitable relief as provided in Section 9.8(b), except that, although the Company, in its sole discretion, may determine its choice of remedies hereunder, including by pursuing specific performance in accordance with, but subject to the limitations of, Section 9.8(b), under no circumstances will the Company be permitted or entitled to receive both specific performance of the type contemplated by Section 9.8(b) and any monetary damages (or payment of the Parent Termination Fee).

(h) *Non-Recourse Parent Party*. In no event will the Company seek or obtain, nor will it permit any of its Representatives to seek or obtain, nor will any Person be entitled to seek or obtain, any monetary recovery or monetary award against any Non-Recourse Parent Party (as defined in the Equity Commitment Letter, which excludes, for the avoidance of doubt, the Guarantor, Parent and Merger Sub) with respect to this Agreement, the Equity Commitment Letter or the Guaranty or the transactions contemplated hereby and thereby (including any breach by the Guarantor, Parent or Merger Sub), the termination of this Agreement, the failure to consummate the transactions contemplated hereby or any claims or actions under applicable laws arising out of any such breach, termination or failure, other than from Parent or Merger Sub to the extent expressly provided for in this Agreement or the Guarantor to the extent expressly provided for in the Guaranty and the Equity Commitment Letter.

8.4 *Amendment*. Subject to applicable law and subject to the other provisions of this Agreement, this Agreement may be amended by the Parties at any time by execution of an instrument in writing signed on behalf of each of Parent, Merger Sub and the Company (pursuant to authorized action by the Company Board (or a committee thereof)), except that in the event that the Company has received the Requisite Stockholder Approval, no amendment may be made to this Agreement that requires the approval of the Company Stockholders pursuant to the DGCL without such approval. Notwithstanding anything to the contrary in this Agreement, the provisions relating to the Financing Sources set forth in Section 6.6(a), Section 8.2, Section 8.3(f), Section 8.6, Section 9.3, Section 9.6, Section 9.8, Section 9.9, Section 9.10, Section 9.11 and this Section 8.4 (and any provision of this Agreement to the extent an amendment, modification, waiver or termination of such provision would modify the substance of the provisions relating to the Financing Sources set forth in Sections 6.6(a), Section 8.2, Section 8.3(f), Section 8.6, Section 9.3, Section 9.6, Section 9.8, Section 9.9, Section 9.10, Section 9.11 or this Section 8.4) may not be amended, modified or altered without the prior written consent of the Financing Sources.

8.5 *Extension; Waiver*. At any time and from time to time prior to the Effective Time, any Party may, to the extent legally allowed and except as otherwise set forth herein, (a) extend the time for the performance of any of the obligations or other acts of the other Parties, as applicable; (b) waive any inaccuracies in the representations and warranties made to such Party contained herein or in any document delivered pursuant hereto; and (c) subject to the requirements of applicable law, waive compliance with any of the agreements or conditions for the benefit of such Party contained herein. Any agreement on the part of a Party to any such extension or waiver will be valid only if set forth in an instrument in writing signed by such Party. Any delay in exercising any right pursuant to this Agreement will not constitute a waiver of such right.

8.6 *No Liability of Financing Sources*. None of the Financing Sources will have any liability to the Company or any of its Affiliates relating to or arising out of this Agreement, the Debt Financing or otherwise, whether at law or equity, in contract, in tort or otherwise, and neither the Company nor any of its Affiliates will have any rights or claims against any of the Financing Sources hereunder or thereunder; *provided*, that nothing in this Section 8.6 shall limit the rights of the Company and its Affiliates from and after the Effective Time under any debt commitment letter or the definitive Debt Documents executed in connection with the Debt Financing (but not, for the avoidance of doubt, under this Agreement) to the extent the Company and/or its Affiliates are party thereto.





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**ARTICLE IX**

**GENERAL PROVISIONS**

9.1 *Survival of Representations, Warranties and Covenants.* The representations, warranties and covenants of the Company, Parent and Merger Sub contained in this Agreement will terminate at the Effective Time, except that any covenants that by their terms survive the Effective Time will survive the Effective Time in accordance with their respective terms.

9.2 *Notices.* All notices and other communications hereunder must be in writing and will be deemed to have been duly delivered and received hereunder (i) four Business Days after being sent by registered or certified mail, return receipt requested, postage prepaid; (ii) one Business Day after being sent for next Business Day delivery, fees prepaid, via a reputable nationwide overnight courier service; or (iii) immediately upon delivery by hand or by email transmission, in each case to the intended recipient as set forth below:

(a) if to Parent or Merger Sub to:

c/o Thoma Bravo, LLC

600 Montgomery Street, 20th Floor

San Francisco, CA 91444

Attention: Holden Spaht and Brian Jaffee

Email: hspaht@thomabravo.com and bjaffee@thomabravo.com

with a copy (which will not constitute notice) to:

Kirkland & Ellis LLP

300 N. LaSalle Street

Chicago, Illinois 60654

Attention: Theodore A. Peto, P.C. and Peter Stach

Email: theodore.peto@kirkland.com and peter.stach@kirkland.com

(b) if to the Company (prior to the Effective Time) to:

Ellie Mae, Inc.

4420 Rosewood Drive, Suite 500,

Pleasanton, CA 94588

Attention: Brian Brown, EVP & General Counsel

Email: brian.brown@elliemae.com

with a copy (which will not constitute notice) to:

Cooley LLP

101 California Street, 5<sup>th</sup> Floor

San Francisco, CA 94111

Attention: Jamie Leigh and Jon Avina

Email: jleigh@cooley.com; javina@cooley.com

Any notice received by fax or otherwise at the addressee's location, or by email at the addressee's email address, on any Business Day after 5:00 p.m., addressee's local time, or on any day that is not a Business Day will be deemed to have been received at 9:00 a.m., addressee's local time, on the next Business Day. From time to time, any Party may provide notice to the other Parties of a change in its address, email address, or fax number through a notice given in accordance with this Section 9.2, except that notice of any change to the address, email address or any of the other details specified in or pursuant to this Section 9.2 will not be deemed to have been received until, and will be deemed to have been received upon, the later of the date (A) specified in such notice; or (B) that is five Business Days after such notice would otherwise be deemed to have been received pursuant to this Section 9.2.

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**9.3 Assignment.** No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Parties, except that Parent and Merger Sub will have the right to assign all or any portion of their respective rights and obligations pursuant to this Agreement from and after the Effective Time (a) in connection with a merger or consolidation involving Parent or Merger Sub or other disposition of all or substantially all of the assets of Parent, Merger Sub or the Surviving Corporation; (b) to any of their respective Affiliates; or (c) to any Financing Source pursuant to the terms of the Debt Financing for purposes of creating a security interest herein or otherwise assigning as collateral in respect of the Debt Financing, it being understood that, in each case, such assignment will not (i) affect the obligations of the parties to the Equity Commitment Letter or the Guaranty pursuant to the Guaranty; or (ii) impede or delay the consummation of the Merger or otherwise materially impede the rights of the holders of shares of Company Common Stock and Company Equity Awards pursuant to this Agreement. Subject to the preceding sentence, this Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns. No assignment by any Party will relieve such Party of any of its obligations hereunder.

**9.4 Confidentiality.** Parent, Merger Sub and the Company hereby acknowledge that Thoma Bravo, LLC, a Delaware limited liability company, and the Company have previously executed a Confidentiality Agreement, dated December 7, 2018 (as amended, the **Confidentiality Agreement** ), that will continue in full force and effect in accordance with its terms. Each of Parent, Merger Sub and their respective Representatives will hold and treat all documents and information concerning the Company furnished or made available to Parent, Merger Sub or their respective Representatives in connection with the Merger in accordance with the Confidentiality Agreement. By executing this Agreement, each of Parent and Merger Sub agree to be bound by, and to cause their Representatives to be bound by, the terms and conditions of the Confidentiality Agreement as if they were parties thereto.

**9.5 Entire Agreement.** This Agreement and the documents and instruments and other agreements among the Parties as contemplated by or referred to herein, including the Confidentiality Agreement, the Company Disclosure Letter, the Guaranty and the Equity Commitment Letter, constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the Parties with respect to the subject matter hereof. Notwithstanding anything to the contrary in this Agreement, the Confidentiality Agreement will (a) not be superseded; (b) survive any termination of this Agreement; and (c) continue in full force and effect until the earlier to occur of the Effective Time and the date on which the Confidentiality Agreement expires in accordance with its terms or is validly terminated by the parties thereto.

**9.6 Third Party Beneficiaries.** Except as set forth in Section 6.10 and this Section 9.6, the Parties agree that their respective representations, warranties and covenants set forth in this Agreement are solely for the benefit of the other Parties in accordance with and subject to the terms of this Agreement. This Agreement is not intended to, and will not, confer upon any other Person any rights or remedies hereunder, except (a) as set forth in or contemplated by Section 6.10; and (b) from and after the Effective Time, the rights of the holders of shares of Company Common Stock and the Company Equity Awards to receive the Per Share Price set forth in Article II. The provisions of Section 6.6(a), Section 8.2, Section 8.3(f), Section 8.4, Section 8.6, Section 9.3, Section 9.8, Section 9.9, Section 9.10, Section 9.11 and this Section 9.6 will inure to the benefit of the Financing Sources and their successors and assigns, each of whom are intended to be third party beneficiaries thereof (it being understood and agreed that the provisions of such Sections will be enforceable by the Financing Sources and their respective successors and assigns).

**9.7 Severability.** In the event that any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent

possible, the economic, business and other purposes of such void or unenforceable provision.

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(a) *Remedies Cumulative.* Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. Although the Company may pursue both a grant of specific performance and monetary damages, under no circumstances will the Company be permitted or entitled to receive both a grant of specific performance that results in the occurrence of the Closing and monetary damages (including any monetary damages in lieu of specific performance).

(b) *Specific Performance.*

(i) 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 do not perform the provisions of this Agreement (including any Party failing to take such actions as are required of it hereunder in order to consummate this Agreement) in accordance with its specified terms or otherwise breach such provisions. The Parties acknowledge and agree that, subject to Section 8.6, (A) the Parties will 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; (B) the provisions of Section 8.3 are not intended to and do not adequately compensate the Company, on the one hand, or Parent and Merger Sub, on the other hand, for the harm that would result from a breach of this Agreement, and will not be construed to diminish or otherwise impair in any respect any Party's right to an injunction, specific performance and other equitable relief; and (C) the right of specific enforcement is an integral part of the Merger and without that right, neither the Company nor Parent would have entered into this Agreement. It is explicitly agreed that the Company shall have the right to an injunction, specific performance or other equitable remedies in connection with enforcing Parent's and Merger Sub's obligations to consummate the Merger and cause the Equity Financing to be funded to fund the Merger (including to cause Parent to enforce the obligations of the Guarantor under the Equity Commitment Letter in order to cause the Equity Financing to be timely completed in accordance with and subject to the terms and conditions set forth in the Equity Commitment Letter). Notwithstanding the foregoing and subject to the rights of the parties to the definitive agreements for any Debt Financing under the terms thereof, none of the Company and its Affiliates and their direct and indirect equityholders shall have any rights or claims (whether in contract or in tort or otherwise) against any Financing Source, solely in their respective capacities as lenders or arrangers in connection with the Debt Financing, and in no event shall the Company, any of its Affiliates or its or their direct or indirect equityholders be entitled to directly seek the remedy of specific performance of this Agreement against any Financing Source.

(ii) The Parties agree not to raise any objections to (A) the granting of an injunction, specific performance or other equitable relief to prevent or restrain breaches or threatened breaches of this Agreement by the Company, on the one hand, or Parent and Merger Sub, on the other hand; and (B) the specific performance of the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants, obligations and agreements of Parent and Merger Sub pursuant to this Agreement. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement will not be required to provide any bond or other security in connection with such injunction or enforcement, and each Party irrevocably waives any right that it may have to require the obtaining, furnishing or posting of any such bond or other security.

**9.9 Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Delaware.



**Table of Contents**9.10 *Consent to Jurisdiction.*

(a) *General Jurisdiction.* Each of the Parties (i) irrevocably consents to the service of the summons and complaint and any other process (whether inside or outside the territorial jurisdiction of the Chosen Courts) in any Legal Proceeding relating to the Merger and the Guaranty, for and on behalf of itself or any of its properties or assets, in accordance with Section 9.2 or in such other manner as may be permitted by applicable law, and nothing in this Section 9.10 will affect the right of any Party to serve legal process in any other manner permitted by applicable law; (ii) irrevocably and unconditionally consents and submits itself and its properties and assets in any Legal Proceeding to the exclusive general jurisdiction of the Court of Chancery of the State of Delaware and any state appellate court therefrom within the State of Delaware (or, if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware) (the **Chosen Courts**) in the event that any dispute or controversy arises out of this Agreement, the Guaranty or the transactions contemplated hereby or thereby; (iii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court; (iv) agrees that any Legal Proceeding arising in connection with this Agreement, the Guaranty or the transactions contemplated hereby or thereby will be brought, tried and determined only in the Chosen Courts; (v) waives any objection that it may now or hereafter have to the venue of any such Legal Proceeding in the Chosen Courts or that such Legal Proceeding was brought in an inconvenient court and agrees not to plead or claim the same; and (vi) agrees that it will not bring any Legal Proceeding relating to this Agreement, the Guaranty or the transactions contemplated hereby or thereby in any court other than the Chosen Courts. Each of Parent, Merger Sub and the Company agrees that a final judgment in any Legal Proceeding in the Chosen Courts will be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law.

(b) *Jurisdiction for Financing Sources.* Notwithstanding anything in this Agreement to the contrary but subject to Section 8.6, the Parties acknowledge and irrevocably agree (i) that any Legal Proceeding, whether in law or in equity, in contract, in tort or otherwise, involving the Financing Sources arising out of, or relating to, the Merger, the Debt Financing or the performance of services thereunder or related thereto will be subject to the exclusive jurisdiction of the Supreme Court of the State of New York, County of New York sitting in the Borough of Manhattan and any appellate court thereof, and each Party submits for itself and its property with respect to any such Legal Proceeding to the exclusive jurisdiction of such court; (ii) not to bring or permit any of their Affiliates to bring or support anyone else in bringing any such Legal Proceeding in any other court; (iii) that service of process, summons, notice or document by registered mail addressed to them at their respective addresses provided in any applicable debt commitment letter will be effective service of process against them for any such Legal Proceeding brought in any such court; (iv) to waive and hereby waive, to the fullest extent permitted by law, any objection which any of them may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such Legal Proceeding in any such court; and (v) any such Legal Proceeding will be governed by, construed in accordance with and enforced under the laws of the State of New York.

9.11 *WAIVER OF JURY TRIAL.* EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY OR LITIGATION THAT MAY ARISE OUT OF OR RELATE TO THIS AGREEMENT, OR THE NEGOTIATION, VALIDITY OR PERFORMANCE OF THIS AGREEMENT, OR THE MERGER, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL PROCEEDING (WHETHER FOR BREACH OF CONTRACT, TORTIOUS CONDUCT OR OTHERWISE) DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE MERGER, THE GUARANTIES, THE EQUITY COMMITMENT LETTERS, THE DEBT FINANCING OR THE EQUITY FINANCING (INCLUDING ANY SUCH LEGAL PROCEEDING INVOLVING FINANCING SOURCES IN CONNECTION WITH THE FINANCING DESCRIBED IN THIS AGREEMENT). EACH PARTY ACKNOWLEDGES AND AGREES THAT (i) NO REPRESENTATIVE,



AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE,  
THAT SUCH OTHER PARTY WOULD NOT, IN THE

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EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER; (iii) IT MAKES THIS WAIVER VOLUNTARILY; AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.11.

9.12 *Company Disclosure Letter References.* The Parties agree that the disclosure set forth in any particular section or subsection of the Company Disclosure Letter will be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (a) the representations and warranties (or covenants, as applicable) of the Company that are set forth in the corresponding Section or subsection of this Agreement; and (b) any other representations and warranties (or covenants, as applicable) of the Company that are set forth in this Agreement, but in the case of this clause (b) only if the relevance of that disclosure as an exception to (or a disclosure for purposes of) such other representations and warranties (or covenants, as applicable) is reasonably apparent on the face of such disclosure.

9.13 *Counterparts.* This Agreement and any amendments hereto may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Any such counterpart, to the extent delivered by fax or .pdf, .tif, .gif, .jpg or similar attachment to electronic mail (any such delivery, an **Electronic Delivery** ), will be treated in all manner and respects as an original executed counterpart and will be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party may raise the use of an Electronic Delivery to deliver a signature, or the fact that any signature or agreement or instrument was transmitted or communicated through the use of an Electronic Delivery, as a defense to the formation of a contract, and each Party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

9.14 *No Limitation.* It is the intention of the Parties that, to the extent possible, unless provisions are mutually exclusive and effect cannot be given to both or all such provisions, the representations, warranties, covenants and closing conditions in this Agreement will be construed to be cumulative and that each representation, warranty, covenant and closing condition in this Agreement will be given full, separate and independent effect and nothing set forth in any provision herein will in any way be deemed to limit the scope, applicability or effect of any other provision hereof.

[Signature page follows.]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their respective duly authorized officers as of the date first written above.

**EM EAGLE PURCHASER, LLC**

By: /s/ Holden Spaht  
Name: Holden Spaht  
Title: President and Assistant Secretary

**EM EAGLE MERGER SUB, INC.**

By: /s/ Holden Spaht  
Name: Holden Spaht  
Title: President and Assistant Secretary

[Signature Page to Agreement and Plan of Merger]

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**ELLIE MAE, INC.**

By: /s/ Jonathan H. Corr

Name: Jonathan H. Corr

Title: President and Chief Executive Officer

[Signature Page to Agreement and Plan of Merger]

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**Annex B**

February 11, 2019

The Board of Directors

Ellie Mae, Inc.

4420 Rosewood Drive, Suite 500

Pleasanton, California 94588

Members of the Board of Directors:

You have requested our opinion as to the fairness, from a financial point of view, to the holders of common stock, par value \$0.0001 per share (the Company Common Stock), of Ellie Mae, Inc. (the Company) of the consideration to be paid to such holders in the proposed merger (the Transaction) of the Company with a wholly-owned subsidiary (Merger Sub) of EM Eagle Purchaser, LLC (the Acquiror). Pursuant to the Agreement and Plan of Merger, dated as of February 11, 2019 (the Agreement), among the Company, the Acquiror and Merger Sub, the Company will become a wholly-owned subsidiary of the Acquiror, and each outstanding share of Company Common Stock, other than shares of Company Common Stock held in treasury, owned by the Acquiror or Merger Sub or any direct or indirect wholly owned subsidiary of the Acquiror or Merger Sub and Dissenting Company Shares (as defined in the Agreement), will be cancelled and extinguished and automatically converted into the right to receive \$99.00 per share in cash, without interest thereon (the Consideration). In connection with entering into the Agreement, Thoma Bravo Fund XIII, L.P. (the Guarantor) has made an equity commitment to the Acquiror pursuant to an equity commitment letter, dated as of the date of the Agreement (the Equity Commitment Letter) and has agreed to enter into a limited guarantee, dated as of the date of the Agreement (the Guarantee) with respect to certain of the obligations of the Acquiror and Merger Sub under the Agreement.

In connection with preparing our opinion, we have (i) reviewed the Agreement, the Equity Commitment Letter and the Guarantee; (ii) reviewed certain publicly available business and financial information concerning the Company and the industries in which it operates; (iii) compared the proposed financial terms of the Transaction with the publicly available financial terms of certain transactions involving companies we deemed relevant and the consideration paid for such companies; (iv) compared the financial and operating performance of the Company with publicly available information concerning certain other companies we deemed relevant and reviewed the current and historical market prices of the Company Common Stock and certain publicly traded securities of such other companies; (v) reviewed certain internal financial analyses and forecasts prepared by the management of the Company relating to its business; and (vi) performed such other financial studies and analyses and considered such other information as we deemed appropriate for the purposes of this opinion.

In addition, we have held discussions with certain members of the management of the Company with respect to certain aspects of the Transaction, and the past and current business operations of the Company, the financial condition and future prospects and operations of the Company, and certain other matters we believed necessary or appropriate to our inquiry.

In giving our opinion, we have relied upon and assumed the accuracy and completeness of all information that was publicly available or was furnished to or discussed with us by the Company or otherwise reviewed by or for us. We

have not independently verified any such information or its accuracy or completeness and, pursuant to our engagement letter with the Company, we did not assume any obligation to undertake any such independent verification. We have not conducted or been provided with any valuation or appraisal of any assets or liabilities, nor have we evaluated the solvency of Acquiror, Merger Sub or the Guarantor (collectively, the Acquiror

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Group ) or the Company under any state or federal laws relating to bankruptcy, insolvency or similar matters. In relying on financial analyses and forecasts provided to us or derived therefrom, we have assumed that they have been reasonably prepared based on assumptions reflecting the best currently available estimates and judgments by management as to the expected future results of operations and financial condition of the Company to which such analyses or forecasts relate. We express no view as to such analyses or forecasts or the assumptions on which they were based. We have also assumed that the Transaction and the other transactions contemplated by the Agreement will be consummated as described in the Agreement. We have also assumed that the representations and warranties made by the Company and the members of the Acquiror Group in the Agreement, the Equity Commitment Letter, the Guarantee and the related agreements are and will be true and correct in all respects material to our analysis. We are not legal, regulatory or tax experts and have relied on the assessments made by advisors to the Company with respect to such issues. We have further assumed that all material governmental, regulatory or other consents and approvals necessary for the consummation of the Transaction will be obtained without any adverse effect on the Company or on the contemplated benefits of the Transaction.

Our opinion is necessarily based on economic, market and other conditions as in effect on, and the information made available to us as of, the date hereof. It should be understood that subsequent developments may affect this opinion and that we do not have any obligation to update, revise, or reaffirm this opinion. Our opinion is limited to the fairness, from a financial point of view, of the Consideration to be paid to the holders of the Company Common Stock in the proposed Transaction and we express no opinion as to the fairness of any consideration paid in connection with the Transaction to the holders of any other class of securities, creditors or other constituencies of the Company or as to the underlying decision by the Company to engage in the Transaction. Furthermore, we express no opinion with respect to the amount or nature of any compensation to any officers, directors, or employees of any party to the Transaction, or any class of such persons relative to the Consideration to be paid to the holders of the Company Common Stock in the Transaction or with respect to the fairness of any such compensation.

We have acted as financial advisor to the Company with respect to the proposed Transaction and will receive a fee from the Company for our services, a substantial portion of which will become payable only if the proposed Transaction is consummated. In addition, the Company has agreed to indemnify us for certain liabilities arising out of our engagement and also agreed to reimburse us for reasonable costs and expenses in connection with our engagement. During the two years preceding the date of this letter, we and our affiliates have had commercial or investment banking relationships with the Company and certain members of the Acquiror Group and/or their portfolio companies or other affiliates, for which we and our affiliates have received customary compensation. In addition, our commercial banking affiliate is an agent bank and/or a lender under outstanding credit facilities of certain portfolio companies or other affiliates of members of the Acquiror Group, for which it receives customary compensation or other financial benefits. In addition, we and our affiliates hold, on a proprietary basis, less than 1% of the outstanding common stock of the Company and an employee of one of our affiliates serves as a member of an advisory board of the Company. In the ordinary course of our businesses, we and our affiliates may actively trade the debt and equity securities or financial instruments (including derivatives, bank loans or other obligations) of the Company or members of the Acquiror Group and/or their portfolio companies for our own account or for the accounts of customers and, accordingly, we may at any time hold long or short positions in such securities or other financial instruments.

On the basis of and subject to the foregoing, it is our opinion as of the date hereof that the Consideration to be paid to the holders of the Company Common Stock in the proposed Transaction is fair, from a financial point of view, to such holders.

The issuance of this opinion has been approved by a fairness opinion committee of J.P. Morgan Securities LLC. This letter is provided to the Board of Directors of the Company (in its capacity as such) in connection with and for the purposes of its evaluation of the Transaction. This opinion does not constitute a recommendation to any stockholder of

the Company as to how such stockholder should vote with respect to the Transaction or any other matter. This opinion may not be disclosed, referred to, or communicated (in whole or in part) to any third party



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for any purpose whatsoever except with our prior written approval. This opinion may be reproduced in full in any proxy or information statement mailed to stockholders of the Company but may not otherwise be disclosed publicly in any manner without our prior written approval.

Very truly yours,

J.P. MORGAN SECURITIES LLC

/s/ J.P. MORGAN SECURITIES LLC

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ANNEX C

**SECTION 262 OF THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE**

- (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

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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

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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 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

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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, 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

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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.

- (1) 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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