

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM563601

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	SHARE PURCHASE AGREEMENT		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
B-LINE MEDICAL, LLC		07/15/2019	Limited Liability Company: MARYLAND
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	LAERDAL MEDICAL CORPORATION		
<b>Street Address:</b>	167 MYERS CORNERS ROAD		
<b>City:</b>	WAPPINGERS FALLS		
<b>State/Country:</b>	NEW YORK		
<b>Postal Code:</b>	12590		
<b>Entity Type:</b>	Corporation: NEW YORK		
<b>PROPERTY NUMBERS Total: 4</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	3472751	B-LINE MEDICAL	
<b>Registration Number:</b>	3488288	SIMCAPTURE	
<b>Registration Number:</b>	3752625	B-LINE MEDICAL	
<b>Registration Number:</b>	3561463		
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	2023314308		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	2022937060		
<b>Email:</b>	tm@sughrue.com, vmullineaux@sughrue.com		
<b>Correspondent Name:</b>	Kevin G. Smith/SUGHRUE MION, PLLC		
<b>Address Line 1:</b>	2000 Pennsylvania Avenue NW, Suite 900		
<b>Address Line 4:</b>	Washington, D.C. 20006		
<b>ATTORNEY DOCKET NUMBER:</b>	801232/s14097		
<b>NAME OF SUBMITTER:</b>	Kevin G. Smith		
<b>SIGNATURE:</b>	/Kevin G. Smith/		
<b>DATE SIGNED:</b>	02/25/2020		
<b>Total Attachments: 88</b>			
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# SHARE PURCHASE AGREEMENT

between

**CHAFIC KAZOUN, LUCAS K. HUANG, JOHANNA FONG, AS TRUSTEE OF THE LUCAS K. HUANG 2019 GIFT TRUST, DAVID RAMSAY AND MINH-CHAU KERCHNER**

and

**LAERDAL MEDICAL CORPORATION**

dated as of

July 15, 2019

This Share Purchase Agreement (this "**Agreement**"), dated as of July 15, 2019, is entered into by and among LAERDAL MEDICAL CORPORATION, a New York corporation ("**Buyer**"), each of CHAFIC KAZOUN ("**Kazoun**"), LUCAS K. HUANG ("**Huang**"), JOHANNA FONG, AS TRUSTEE OF THE LUCAS K. HUANG 2019 GIFT TRUST ("**2019 Trust**"), DAVID RAMSAY and MINH-CHAU KERCHNER (each a "**Seller**" and collectively referred to as "**Sellers**") and CHAFIC KAZOUN as a representative of Sellers (the "**Sellers' Representative**").

Sellers, Buyer, and Sellers' Representative are hereinafter individually referred to as a "**Party**" or collectively referred to as the "**Parties**".

## RECITALS

WHEREAS, Sellers own all of the 10,000 issued and outstanding shares of common stock, par value \$0.001 (the "**Shares**"), of **ATELLIS, INC.**, a Maryland corporation, having its registered office at 1300 19th St NW, Suite 100, Washington, DC 20036 ("**Atellis**"), and Atellis owns 8,800,000 Class A Units of B-LINE MEDICAL, LLC, a Maryland limited liability company, having its registered office at 1300 19th St NW, Suite 100, Washington, DC 20036 ("**B-Line**"), which, at the Closing, after giving effect to the Cancellation (as defined herein), shall represent all of the issued and outstanding membership interests of B-Line. Atellis and B-Line are hereinafter sometimes collectively referred to as the "**Company**".

WHEREAS, Sellers wish to sell to Buyer, and Buyer wishes to purchase from Sellers, the Shares, subject to the terms and conditions set forth herein; and

WHEREAS, a portion of the purchase price payable by Buyer to Sellers shall be placed in escrow by Buyer, the release of which shall be contingent upon certain events and conditions, all as set forth in this Agreement and the Ancillary Documents (as defined herein);

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

## **ARTICLE I DEFINITIONS**

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

- 2019 Trust:** has the meaning set forth in the preamble
- Acquisition Proposal:** has the meaning set forth in Section 5.03(a).
- Action:** means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.
- Additional Payment:** has the meaning set forth in Section 2.05(a).
- Additional Payment Recipient:** has the meaning set forth in Section 2.05(a).
- Affiliate:** Affiliate of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- Agreement:** has the meaning set forth in the preamble.
- Allocation Schedule:** has the meaning set forth in Section 6.05(b).
- Ancillary Documents:** means the Escrow Agreement, the Cancellation Agreements, and the Employment Agreements.
- Balance Sheet:** has the meaning set forth in Section 3.06.

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

**Bankruptcy and Equity Exception:** has the meaning set forth in Section 3.01(a).

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

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

**Buyer:** has the meaning set forth in the preamble.

**Buyer Indemnitees:** has the meaning set forth in Section 8.02.

**Buyer's Accountants:** means Ernst and Young LLP.

**Buyer's Fundamental Representations:** has the meaning set forth in Section 8.01.

**Cancellation:** means the cancellation, on or prior to the Closing, by B-Line of all of the outstanding Class B Units of B-Line pursuant to the terms of the Cancellation Agreements.

**Cancellation Agreements:** has the meaning set forth in Section 5.13.

**Cause:** means, in the case of an Additional Payment Recipient, that such individual: (i) has failed or refused to comply with a material directive from the Buyer's or the Company's Board of Directors or any executive officer of Buyer or any officer of the Company with supervisory authority over such individual, after being given written notice of such failure and a period of at least five (5) days to cure such failure, if capable of cure (provided that subsequent or repeated failures or refusals to comply with substantially similar such directives shall not be entitled to any cure period); (ii) has materially violated a written policy of Buyer or the Company made available in writing to such individual, after being given written notice of such failure and a period of at least ten (10) days to cure such failure, if

capable of cure (provided that subsequent or repeated violations that are substantially similar to a prior such violation shall not be entitled to any cure period); (iii) has engaged in misconduct that has resulted in material injury or damages to the business or reputation of Buyer or the Company; (iv) has been convicted of, or plead guilty or nolo contendere to, a felony or any crime involving moral turpitude; or (v) has committed any act of theft, embezzlement, fraud, misappropriation, or willful misconduct relating to the Company, the Buyer, their Affiliates or the business of any of them.

This definition of Cause is not intended to apply, and does not apply, to any aspect of the relationship between the Additional Payment Recipient, the Buyer, the Company or any of their Affiliates, except for Section 2.05 of this Agreement.

**Closing:** has the meaning set forth in Section 2.06.

**Closing Date:** has the meaning set forth in Section 2.06.

**Closing Date Payment:** has the meaning set forth in Section 2.04(a)(i).

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

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

**Closing Working Capital:** means: (a) the Current Assets of the Company, less (b) the Current Liabilities of the Company, determined in accordance with GAAP as of the close of business on

July 31, 2019. For the avoidance of doubt, it is understood that Closing Working Capital shall be calculated without regard to any changes in the Company's accounting methods (including as a result of ASC 606) between the date of the most recent Reviewed Financial Statements and July 31, 2019.

**Closing Working Capital Statement:**

has the meaning set forth in Section 2.04(b)(i).

**Code:**

means the Internal Revenue Code of 1986, as amended.

**Company:**

has the meaning set forth in the recitals.

**Company Intellectual Property:**

means all Intellectual Property that is owned by the Company.

**Company IP Agreements:**

means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to Intellectual Property to which the Company is a party, beneficiary or otherwise bound.

**Company IP Registrations:**

means all Company Intellectual Property that is subject to any issuance, registration or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including patents, trademarks, domain names and copyrights, and pending applications for any of the foregoing.

**Company IT Systems:**

means all software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) by the Company.

**Contracts:**

means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings,



indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

**Current Assets:**

means, without duplication, accounts receivable, inventory and prepaid expenses, but excluding (a) the portion of any prepaid expense of which Buyer will not receive the benefit following the Closing, (b) prepaid expenses paid on behalf of any of the Company's Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, (c) deferred Tax assets, (d) receivables from any of the Company's Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, (e) receivables from international sales, and (f) receivables from Buyer or any of its Affiliates. Current Assets shall be determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Reviewed Financial Statements for the most recent fiscal year end as if such accounts were being prepared and audited as of a fiscal year end.

**Current Liabilities:**

means, without duplication, accounts payable, accrued Taxes, accrued payroll and related liabilities, accrued expenses, Included Deferred Revenue, and Customer Deposits, but excluding (a) payables to any of the Company's Affiliates, directors, employees, officers or stockholders and any of their respective Affiliates, (b) payables for documented, out-of-pocket expenses in respect of product invoiced to Buyer or any of its Affiliates not reflected in inventory, (c) customer deposits related to Buyer or any of its Affiliates, (d) deferred Tax liabilities, (e) Transaction Expenses, and (f) the current portion of any Indebtedness of the Company. Current Liabilities shall be determined in accordance with GAAP applied using the same accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Reviewed Financial Statements for the most recent fiscal year end as if

such accounts were being prepared and audited as of a fiscal year end.

- Customer Deposits:** means items of a nature that would be booked as "deferred revenue - customer deposit" under the Company's accounting practices as of the date of the most recent Reviewed Financial Statements, and any other items that would be a "customer deposit" in accordance with GAAP. For the avoidance of doubt, Customer Deposits will be included as such regardless of whether such items would be classified as current/short-term or long-term.
- Deductible:** has the meaning set forth in Section 8.04(b).
- Deferred Revenue:** means items of a nature that would be booked as "deferred revenue" under the Company's accounting practices as of the date of the most recent Reviewed Financial Statements, and any other items that would be "deferred revenue" in accordance with GAAP.
- Direct Claim:** has the meaning set forth in Section 8.05(c).
- Disclosure Schedules:** means the Disclosure Schedules delivered by Sellers and Buyer concurrently with the execution and delivery of this Agreement.
- Disputed Amounts:** has the meaning set forth in Section 2.04(c)(iii).
- Dollars or \$:** means the lawful currency of the United States.
- Employment Agreements:** means the offer letters and Confidentiality, Non-Competition and Non-Solicitation Agreements to be entered into between the Buyer and each of Kazoun and Huang, in the forms previously agreed upon between Buyer and each of Kazoun and Huang, respectively.
- Encumbrance:** means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any

restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**Environmental Claim:**

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

**Environmental Law:**

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

Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq.

**Environmental Notice:**

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

**Environmental Permit:**

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

**ERISA:**

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

**ERISA Affiliate:**

means all employers (whether or not incorporated) that would be treated together with the Company or any of its Affiliates as a "single employer" within the meaning of Section 414 of the Code or Section 4001 of ERISA.

**Escrow Agent:**

means Citizens Bank, N.A.

**Escrow Agreement:**

means the Escrow Agreement to be entered into by Buyer, Sellers and Escrow Agent at the Closing, substantially in the form attached as Exhibit A.

**Estimated Closing Working Capital:**

has the meaning set forth in Section 2.04(a)(ii).

**Estimated Closing Working Capital Statement:**

has the meaning set forth in Section 2.04(a)(ii).

**Excess Losses:**

has the meaning set forth in Section 8.04(b).

**Expense Fund:** has the meaning set forth in Section 5.14(e).

**Expense Fund Amount:** means \$ [REDACTED]

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

**GAAP:** means United States generally accepted accounting principles in effect from time to time, consistently applied.

**Good Reason:** means in the case of an Additional Payment Recipient, that the Buyer or its Affiliate which employs such individual immediately following the Closing causes such individual to suffer (a) a material adverse change in authority, duties or compensation from that established for such Additional Payment Recipient immediately following the Closing and giving effect to the transactions contemplated by this Agreement without the Additional Payment Recipient's prior written consent, or (b) a required relocation of the Additional Payment Recipient's primary office by more than 30 miles from the then-current primary office of the employee.

A condition shall not be considered "Good Reason" unless (1) the Additional Payment Recipient claiming Good Reason gives the Buyer written notice of such condition within fifteen (15) days after such condition comes into existence; (2) the Buyer fails to cure such condition within thirty (30) days after receiving such written notice; and (3) the Additional Payment Recipient thereafter tenders resignation to be effective within thirty (30) days after the expiration of the Buyer's cure period.

This definition of Good Reason is not intended to apply, and does not apply, to any aspect of the relationship between the Additional Payment Recipient, the Buyer, the Company or any of their Affiliates, except for Section 2.05 of this Agreement.

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

**Governmental Authority:** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

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

**Gross-Up Payment:** has the meaning set forth in Section 6.05(c).

**Hazardous Materials:** means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls.

**Huang:** has the meaning set forth in the preamble.

**Included Deferred Revenue:** means any Deferred Revenue accruing after June 26, 2019, for which the Company has collected payment. For the avoidance of doubt, Included Deferred Revenue will be included as such regardless of whether such items would be classified as current/short-term or long-term.

**Indebtedness:** means, without duplication and with respect to the Company, all (a) all obligations for borrowed money (including current and long-term portions of bank debt, lines of credit, mortgages, member/shareholder loans and other loans, unpaid installment obligations, make-whole payments and negative cash balances); (b) obligations for the deferred purchase price of

property or services (other than Current Liabilities taken into account in the calculation of Closing Working Capital), (c) long or short-term obligations evidenced by notes, bonds, debentures or other similar instruments; (d) obligations under any interest rate, currency swap or other hedging agreement or arrangement; (e) capital lease obligations; (f) reimbursement obligations under any letter of credit, banker's acceptance or similar credit transactions; (g) all obligations by which the Company assured a creditor against loss including surety bonds, letters of credit (and reimbursement obligations thereunder), bankers' acceptances or similar instruments (to the extent drawn), (h) any interest rate swap or cap, currency swap, forward contract or other hedging arrangement of the Company; (i) all obligations (including accrued interest) without duplication under a lease agreement that would be capitalized pursuant to GAAP but excluding any breakage costs, prepayment penalties or fees or other similar amounts payable in connection with any capitalized leases unless such breakage costs, prepayment penalties, fees or other similar amounts are due at the Closing in connection with the repayment thereof; (j) guarantees made by the Company on behalf of any third party in respect of obligations of the kind referred to in the foregoing clauses (a) through (i); and (k) any unpaid interest, prepayment penalties, premiums, costs and fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (a) through (i).

**Indemnification Escrow Amount:**

means ~~REDACTED~~

**Indemnification Escrow Fund:** has the meaning set forth in Section 2.03(a)(iii)(B).

**Indemnified Party:** has the meaning set forth in Section 8.05.

**Indemnifying Party:** has the meaning set forth in Section 8.05.

**Independent Accountant:** has the meaning set forth in Section 2.04(c)(iii).

**Insurance Policies:**

has the meaning set forth in Section 3.16.

**Intellectual Property:**

means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, renewals, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) ("**Patents**"); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, corporate names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing ("**Trademarks**"); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing ("**Copyrights**"); (d) internet domain names and social media account or user names (including "**handles**"), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (f) trade secrets, arising under common law, state law, federal law or laws of foreign countries and all rights, title and interest in all know-how, ideas, concepts, know-how, inventions (whether or not patentable), designs, discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, software, technology, product roadmaps, customer lists, and other confidential and proprietary information and all rights therein ("**Trade Secrets**"); (g) computer programs, operating systems, applications, firmware, and other code, including all source code, object code, application programming interfaces, data files, databases, data templates, protocols, specifications, and other documentation



thereof; (h) rights of publicity; and (i) all other intellectual or industrial property and proprietary rights.

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

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

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

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

**Knowledge of Sellers or Sellers' Knowledge:** or any other similar knowledge qualification, means the actual knowledge of Kazoun, Huang, David Ramsay, Hartley Thompson or Thomas Hahn, and any knowledge such individuals would be expected to have in the ordinary course of the performance of their duties for the Company, after due inquiry.

**KPI:** means key performance indicators.

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

**Leave-Behind Cash:** means cash in the amount of \$750,000, *plus* the amount of any cash paid by Buyer or any of its Affiliates to the Company after April 15, 2019 and prior to the Closing, minus the amount of documented, out-of-pocket expenses actually paid by the Company after April 15, 2019 in respect of product shipped to Buyer or any of its Affiliates.

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

**Losses:** means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however,* that "**Losses**" shall not include punitive damages,

except to the extent actually awarded to a Governmental Authority or other third party.

**Majority Stockholder Agreement:**

means that certain Majority Stockholder Agreement, dated as of August 31, 2005, among Chafic Kazoun, Johanna Fong, as Trustee of the Lucas K. Huang 2019 Gift Trust (as successor in interest to Lucas Huang), and Atellis.

**Material Adverse Effect:**

means any event, occurrence, fact, condition or change that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, financial condition or assets of the Company, or (b) the ability of Sellers to consummate the transactions contemplated hereby on a timely basis; *provided, however,* that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Company operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 3.05 and Section 5.08; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however,* that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Company compared to other participants in the industries in which the Company conducts its businesses.

**Material Company IP Agreements:**

has the meaning set forth in Section 3.12(b).

<b>Material Contracts:</b>	has the meaning set forth in Section 3.09(a).
<b>Material Customers:</b>	has the meaning set forth in Section 3.15(a).
<b>Material Suppliers:</b>	has the meaning set forth in Section 3.15(b).
<b>Measuring Date:</b>	has the meaning set forth in Section 2.05(b).
<b>Membership Units:</b>	has the meaning set forth in Section 3.03(b).
<b>Minor Claim Threshold:</b>	has the meaning set forth in Section 8.04(a).
<b>Multiemployer Plan:</b>	has the meaning set forth in Section 3.20(c).
<b>Non-U.S. Benefit Plan:</b>	has the meaning set forth in Section 3.20(a).
<b>Off-the-Shelf Inbound License Agreements:</b>	means non-exclusive licenses to the Company of generally commercially available, "off-the-shelf" software used for general purposes not specific to the production or delivery of the Company's products or services (e.g., Microsoft Office).
<b>Operating Agreement:</b>	means the Operating Agreement of B-Line Medical LLC, dated as of December 21, 2011.
<b>Ordinary Course Customer Agreements:</b>	means non-exclusive licenses and other end-user agreements entered into with customers of the Company in the ordinary course of business to the extent conforming to the standard templates uploaded to the "Project Synergy" virtual data room hosted on Dropbox on or before the date hereof.
<b>Party or Parties:</b>	has the meaning set forth in the preamble.
<b>Permits:</b>	means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.
<b>Permitted Encumbrances:</b>	has the meaning set forth in Section 3.10(a).

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

**Platform Agreements:** has the meaning set forth in Section 3.12(h).

**Post-Closing Adjustment:** has the meaning set forth in Section 2.04(b)(ii).

**Post-Closing Tax Period:** means any taxable period beginning after the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period beginning after the Closing Date (or if a Section 338(h)(10) Election is not made, beginning on the Closing Date).

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

**Pre-Closing Tax Period:** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date (or if a Section 338(h)(10) Election is not made, ending on and including the day before the Closing Date).

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

**Purchase Price:** has the meaning set forth in Section 2.02.

**Purchase Price Adjustment Escrow Amount:** means ~~\_\_\_\_\_~~

**Purchase Price Adjustment Escrow Fund:** has the meaning set forth in Section 2.03(a)(iii)(A).

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

**Real Property:** means the real property owned, leased or subleased by the Company, together with all buildings,

structures and facilities located thereon.

- Release:** means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).
- Representative:** means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.
- Resignation Notice:** has the meaning set forth in Section 5.14(d).
- Resolution Period:** has the meaning set forth in Section 2.04(c)(ii).
- Restricted Business:** means the business of developing, marketing, and selling digital solutions focused on the capture, debriefing and assessment of simulation-based medical training and clinical events.
- Restricted Period:** has the meaning set forth in Section 5.07(a).
- Review Period:** has the meaning set forth in Section 2.04(c)(i).
- Reviewed Financial Statements:** has the meaning set forth in Section 3.06.
- Sample Working Capital Calculation:** means the sample calculation of working capital as of April 30, 2019 attached to this Agreement as Exhibit C.
- Section 338(h)(10) Election:** has the meaning set forth in Section 6.05(a).
- Seller Indemnitees:** has the meaning set forth in Section 8.03.
- Seller or Sellers:** has the meaning set forth in the preamble.

<b>Sellers' Accountants:</b>	means BDO.
<b>Sellers' Fundamental Representations:</b>	has the meaning set forth in Section 8.01.
<b>Sellers' Representative:</b>	has the meaning set forth in the preamble.
<b>Shares:</b>	has the meaning set forth in the recitals.
<b>Single Employer Plan:</b>	has the meaning set forth in Section 3.20(c).
<b>Specified IP Representations:</b>	has the meaning set forth in Section 8.01.
<b>Specified Officers:</b>	means R. Drew Ogden and Johanna Fong, in each of their capacities as an officer of B-Line.
<b>Statement of Objections:</b>	has the meaning set forth in Section 2.04(c)(ii).
<b>Straddle Period:</b>	has the meaning set forth in Section 6.04.
<b>Target Working Capital:</b>	means ██████████.
<b>Taxes:</b>	means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), windfall profits, customs, duties, indirect taxes or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.
<b>Tax Claim:</b>	has the meaning set forth in Section 6.06.
<b>Tax Escrow Amount:</b>	means ██████████.
<b>Tax Escrow Fund:</b>	has the meaning set forth in Section 2.03 (a)(iii)(C).

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

**Territory:** means worldwide.

**Third Party Claim:** has the meaning set forth in Section 8.05(a).

**Transaction Expenses:** means (i) all fees and expenses incurred by the Company or Sellers at or prior to the Closing in connection with the preparation, negotiation and execution of this Agreement and the Ancillary Documents, and the performance and consummation of the transactions contemplated hereby and thereby; and (ii) all amounts (including Taxes) related to any obligation of the Company or Sellers to pay any bonuses, incentive payments, deferred compensation, phantom, stock appreciation rights or other similar bonus or compensation arrangements, including any amounts relating to the Cancellation Agreements, in connection with this Agreement or the transactions contemplated hereby whether paid prior to or following the Closing Date.

**Undisputed Amounts:** has the meaning set forth in Section 2.04(c)(iii).

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

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

**ARTICLE II  
PURCHASE AND SALE**

**Section 2.01 Purchase and Sale.**

Subject to the terms and conditions set forth herein, at the Closing, Sellers shall sell to Buyer, and Buyer shall purchase from Sellers, the Shares, free and clear of any Encumbrances, for the consideration specified in Section 2.02.

**Section 2.02 Purchase Price.**

The aggregate purchase price for the Shares shall be [REDACTED], subject to adjustment pursuant to Section 2.04 hereof (the "**Purchase Price**"). In the event that a Section 338(h)(10) Election is made, the Parties agree to allocate the Purchase Price for tax purposes as provided in Section 6.05(b).

**Section 2.03 Transactions to be Effected at the Closing.**

(a) At the Closing, Buyer shall:

(i) deliver to Sellers:

- (A) the Closing Date Payment (reduced by the Purchase Price Adjustment Escrow Amount, Indemnification Escrow Amount, Tax Escrow Amount and Expense Fund Amount which shall be delivered in accordance with Section 2.03(a)(iii) and (iv)) by wire transfer of immediately available funds to an account designated in writing by Sellers to Buyer no later than five Business Days prior to the Closing Date; and
- (B) the Ancillary Documents to which it is a party and all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 7.03 of this Agreement.

(ii) pay, on behalf of the Company or Sellers, the following amounts:

- (A) Indebtedness of the Company to be paid at Closing, by wire transfer of immediately available funds to the accounts and in the amounts specified on the Closing Indebtedness Certificate; and
- (B) any Transaction Expenses unpaid at Closing, by wire transfer of immediately available funds to the accounts and in the amounts specified on the Closing Transaction Expenses Certificate.

(iii) deliver to the Escrow Agent:



- (A) the Purchase Price Adjustment Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Purchase Price Adjustment Escrow Fund**") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the obligations of Sellers in Section 2.04(d);
  - (B) the Indemnification Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Indemnification Escrow Fund**") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the indemnification obligations of Sellers set forth in ARTICLE VIII and the obligations of Sellers in Section 2.04(d) and Section 6.09;
  - (C) the Tax Escrow Amount (such amount, including any interest or other amounts earned thereon and less any disbursements therefrom in accordance with the Escrow Agreement, the "**Tax Escrow Fund**") by wire transfer of immediately available funds to accounts designated by the Escrow Agent, to be held for the purpose of securing the indemnification obligations of Sellers set forth in ARTICLE VI and the obligations of Sellers in Section 6.09; and
  - (D) the Escrow Agreement.
- (iv) Deliver to the Sellers' Representative the Expense Fund Amount, by wire transfer of immediately available funds to an account designated by the Sellers' Representative.
- (b) At the Closing, Sellers shall deliver to Buyer:
- (i) stock certificates evidencing the Shares, free and clear of all Encumbrances, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank, with all required stock transfer tax stamps affixed thereto; and
  - (ii) the Ancillary Documents to which any Seller is a party and all other agreements, documents, instruments or certificates required to be delivered by Sellers at or prior to the Closing pursuant to Section 7.02 of this Agreement.

**Section 2.04 Purchase Price Adjustment.**

- (a) Closing Adjustment.

- (i) At the Closing, the Purchase Price payable to Sellers at the Closing shall be adjusted on a dollar-for-dollar basis in the following manner:
  - (A) either (1) an increase by the amount, if any, by which the Estimated Closing Working Capital (as determined in accordance with Section 2.04(a)(ii)) is greater than the Target Working Capital, or (2) a decrease by the amount, if any, by which the Estimated Closing Working Capital is less than the Target Working Capital;
  - (B) either (1) an increase by the amount, if any, by which the net cash in the Company's principal operating bank account as of the Closing Date is greater than the amount of Leave-Behind Cash, or (2) a decrease by the amount, if any, by which the net cash in the Company's principal operating bank account as of the Closing Date is less than the amount of Leave-Behind Cash;
  - (C) a decrease by the outstanding Indebtedness of the Company as of the close of business on the Closing Date; and
  - (D) a decrease by the amount of unpaid Transaction Expenses of the Company as of the close of business on the Closing Date.

The net amount after giving effect to the adjustments listed above shall be the "**Closing Date Payment.**"

- (ii) At least five Business Days before the Closing, Sellers' Representative shall prepare and deliver to Buyer a statement setting forth its good faith estimate of Closing Working Capital (the "**Estimated Closing Working Capital**"), which statement shall contain an estimated balance sheet of the Company as of the Closing Date in accordance with GAAP (without giving effect to the transactions contemplated herein), a calculation of Estimated Closing Working Capital (the "**Estimated Closing Working Capital Statement**"), and a certificate of the Chief Financial Officer of the Company that the Estimated Closing Working Capital Statement was prepared (A) in accordance with GAAP applied using the same GAAP-compliant accounting methods, practices, principles, policies and procedures, with consistent GAAP-compliant classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Reviewed Financial Statements for the most recent fiscal year end as if such Estimated Closing Working Capital Statement was being prepared and audited as of a fiscal year end, and (B) in a manner consistent with the Sample Working Capital Calculation.

(b) Post-Closing Adjustment.

- (i) Within 60 days after the Closing Date, Buyer shall prepare and deliver to Sellers' Representative a statement setting forth its calculation of Closing

Working Capital, which statement shall contain a balance sheet of the Company as of the Closing Date (without giving effect to the transactions contemplated herein), a calculation of Closing Working Capital (the "**Closing Working Capital Statement**") and a certificate of the Chief Financial Officer of Buyer that the Closing Working Capital Statement was prepared (A) in accordance with GAAP applied using the same GAAP-compliant accounting methods, practices, principles, policies and procedures, with consistent GAAP-compliant classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Reviewed Financial Statements for the most recent fiscal year end as if such Closing Working Capital Statement was being prepared and audited as of a fiscal year end, and (B) in a manner consistent with the Sample Working Capital Calculation.

- (ii) The post-closing adjustment shall be an amount equal to the Closing Working Capital minus the Estimated Closing Working Capital (the "**Post-Closing Adjustment**"). If the Post-Closing Adjustment is a positive number, such amount, as finally determined pursuant to subsection (c), below, shall be payable by Buyer to the Sellers in the manner set forth in subsection (d), below. If the Post-Closing Adjustment is a negative number, the absolute value of such amount, as finally determined pursuant to subsection (c), below, shall be payable by Sellers to Buyer in the manner set forth in subsection (d), below.
- (c) Examination and Review.
- (i) Examination. After receipt of the Closing Working Capital Statement, Sellers' Representative shall have 30 days (the "**Review Period**") to review the Closing Working Capital Statement. During the Review Period, Sellers' Representative and Sellers' Accountants shall have full access to the books and records of the Company, the personnel of, and work papers prepared by, Buyer and Buyer's Accountants to the extent that they relate to the Closing Working Capital Statement and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Working Capital Statement as Sellers' Representative may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not interfere with the normal business operations of Buyer or the Company.
  - (ii) Objection. On or prior to the last day of the Review Period, Sellers' Representative may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Sellers' Representative's objections in reasonable detail, indicating each disputed item or amount and the basis for Sellers' Representative's disagreement therewith (the "**Statement of Objections**"). If Sellers' Representative fails to deliver the Statement of Objections before the expiration of the Review Period, the

Closing Working Capital Statement and the Post-Closing Adjustment, as the case may be, reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Sellers. If Sellers' Representative delivers the Statement of Objections before the expiration of the Review Period, Buyer and Sellers' Representative shall negotiate in good faith to resolve such objections within 30 days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Post-Closing Adjustment and the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Sellers' Representative, shall be final and binding.

- (iii) Resolution of Disputes. If Sellers' Representative and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to the Boston office of PricewaterhouseCoopers LLP or, if PricewaterhouseCoopers LLP is unable to serve, Buyer and Sellers' Representative shall appoint by mutual agreement the office of an impartial nationally recognized firm of independent certified public accountants other than Sellers' Accountants or Buyer's Accountants (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only and make any adjustments to the Post-Closing Adjustment, as the case may be, and the Closing Working Capital Statement. The Parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the Parties and its decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively.
- (iv) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Sellers, on the one hand, and by Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Sellers or Buyer, respectively, bears to the aggregate amount actually contested by Sellers and Buyer.
- (v) Determination by Independent Accountant. The Independent Accountant shall make a determination as soon as practicable within 30 days (or such other time as the Parties hereto shall agree in writing) after its engagement, and its resolution of the Disputed Amounts and its adjustments to the Closing Working Capital Statement and the Post-Closing Adjustment shall be conclusive and binding upon the Parties.
- (d) Payments of Post-Closing Adjustment. Except as otherwise provided herein, any payment of the Post-Closing Adjustment, together with interest calculated as set forth below, shall (A) be due (x) within five Business Days of acceptance of the applicable

Closing Working Capital Statement or (y) if there are Disputed Amounts, then within five Business Days of the resolution described in clause (v) above; and (B) be paid by wire transfer of immediately available funds to such account or accounts as is directed by Buyer or Sellers' Representative, as the case may be. Any payment of the Post-Closing Adjustment owed by Sellers to Buyer shall be paid by the Escrow Agent pursuant to the terms of the Escrow Agreement: (i) from the Purchase Price Adjustment Escrow Fund; and (ii) to the extent the amount of the Post-Closing Adjustment exceeds the amount available in the Purchase Price Adjustment Escrow Fund, from the Indemnification Escrow Fund. For the avoidance of doubt, it is understood that the Post-Closing Adjustment shall not be subject to the Minor Claim Threshold or the Deductible.

- (e) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.04 shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes, unless otherwise required by Law.

#### **Section 2.05 Additional Payment.**

- (a) In General. In addition to the Purchase Price, each of Kazoun and Huang (each, an "Additional Payment Recipient") shall be eligible to receive up to [REDACTED] (i.e., [REDACTED] aggregate) (the "Additional Payment") in accordance with the terms of this Section 2.05.
- (b) Timing. Each Additional Payment Recipient shall be eligible to receive one-third (1/3) of the Additional Payment (i.e., [REDACTED] each) as of each of the first (1st), second (2nd) and third (3rd) anniversaries of the Closing Date (each, a "Measuring Date"). Any earned portions of the Additional Payment shall be paid by the Company within thirty (30) days after the applicable Measuring Date in accordance with its normal payroll practices. Notwithstanding anything herein to the contrary, neither Additional Payment Recipient will be eligible for any Additional Payment that has not been earned on or before the third (3rd) anniversary of the Closing Date.
- (c) KPIs. On or before the Closing Date, Buyer will establish the details of the KPIs for each Additional Payment Recipient with the input of that Additional Payment Recipient. The KPIs will be based on the evolving needs of the Company, but are generally anticipated to focus on the Company's overall performance together with its cloud-based video processing and future-proof technology platform, and its global health application. The KPIs will be adjusted by the Company on or before each Measuring Date for the subsequent period. Each Additional Payment Recipient and the COO of LAERDAL MEDICAL AS will meet on a quarterly basis to review the progress towards achievement of the KPIs. In the discretion of the Company, with the consent of the applicable Additional Payment Recipient, the KPIs may be revised during the year. Within 30 days after each Measuring Date, each Additional Payment Recipient and the COO of LAERDAL MEDICAL AS will review the achievement of the KPIs in order to determine whether the Additional Payment for that Measuring Date has been earned. Subject to Section 2.05(b), in the event that the KPIs for any 12-

month period are not achieved, to the extent practicable, the future KPIs will permit a "catch up" in the following year. In the case where Buyer commits in writing to any financial or other resources in connection with establishing the KPIs, Buyer will work with the Additional Payment Recipients in good faith, and will use commercially reasonable efforts to provide such committed financial and or other resources. If Buyer does not follow through in providing the agreed upon resources during a Measuring Period, then the parties agree that the KPIs for that period will be recalibrated in good faith to account for such diminished resources.

- (d) Continuing Relationship. The Additional Payment, or applicable portion thereof, shall only be payable to an Additional Payment Recipient if such recipient is employed by the Company or an Affiliate of Buyer on the applicable Measuring Date; *provided, however*, if (i) the Additional Payment Recipient has terminated his employment with the Company (or an Affiliate of Buyer, if applicable) for Good Reason, or (ii) the Additional Payment Recipient's employment with the Company (or an Affiliate of Buyer, if applicable) has been terminated by the Company (or an Affiliate of Buyer, if applicable), without Cause, the Additional Payment Recipient shall nevertheless be entitled to receive the Additional Payment, or applicable portion thereof, payable on the next Measuring Date and any subsequent Measuring Date.
- (e) Set-Off. Notwithstanding anything in this Agreement to the contrary, the Parties agree that any Losses payable to a Buyer Indemnitee that are not covered by the Indemnification Escrow Amount or the Tax Escrow Amount may, at Buyer's option, be deducted from any earned but unpaid portion of the Additional Payment, if any.

#### **Section 2.06 Closing.**

Subject to the terms and conditions of this Agreement, the purchase and sale of the Shares contemplated hereby shall take place at a closing (the "**Closing**") to be held at 12:00 a.m., New York time, no later than five Business Days after the last of the conditions to Closing set forth in ARTICLE VII have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), by remote exchange of documents and signatures between counsel to the Parties, or at such other time or on such other date or in such other manner as Sellers' Representative and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "**Closing Date**"). The Parties will work together in good faith to achieve a Closing on or about August 7, 2019.

#### **Section 2.07 Withholding Tax.**

Buyer and the Company shall be entitled to deduct and withhold from the Purchase Price and any Additional Payments all Taxes that Buyer or the Company may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to the applicable Seller hereunder.

### **ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth in the Disclosure Schedules (which disclosure should reference the appropriate section and subsection numbers, *provided, however*, that any disclosures made therein shall apply to any other section or subsection without repetition where it is reasonably clear, upon a reading of such disclosure (without investigation or reference to underlying documentation), that the disclosure relates to the subject matter of such other section or subsection), Sellers, severally and individually as to Section 3.01, and otherwise jointly and severally, represent and warrant to Buyer that the statements contained in this ARTICLE III are true and correct as of the date hereof.

#### **Section 3.01 Authority and Ownership of Shares.**

- (a) Sellers have full power and authority to enter into this Agreement and the Ancillary Documents to which they are a party, to carry out their obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Sellers of this Agreement and the Ancillary Documents to which they are a party, the performance by Sellers of their obligations hereunder and thereunder, and the consummation by Sellers of the transactions contemplated hereby and thereby have been duly authorized by all requisite action required on the part of Sellers. This Agreement has been duly executed and delivered by Sellers, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Sellers enforceable against the Sellers in accordance with its terms. When the Ancillary Documents to which they are a party have been duly executed and delivered by Sellers (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Documents will constitute a legal and binding obligation of each of the Sellers party thereto, enforceable against them in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) general equitable principles (whether considered in a proceeding in equity or at law) (the "**Bankruptcy and Equity Exception**").
- (b) Each Seller is the sole registered holder and beneficial owner of the Shares set forth on Disclosure Schedule 3.01(b) next to such Seller's name and has good and valid title to such Shares, free and clear of any Encumbrances of any other Person. With respect to each Seller, (i) such Seller's Shares are the only shares of the Company held by such Seller; (ii) such Seller has the capacity to vote all of its Shares at any meeting of the shareholders of the Company, or by written consent in lieu of any such meeting; and (iii) such Seller has not appointed or granted any proxy or entered into any agreement, contract, commitment or understanding with respect to any of its Shares.

#### **Section 3.02 Organization, Authority and Qualification of Atellis and B-Line.**

Atellis is a corporation duly organized, validly existing and in good standing under the Laws of the State of Maryland. B-Line is a limited liability company duly organized, validly

existing and in good standing under the Laws of the State of Maryland. Each of Atellis and B-Line has full corporate or limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as it has been and is currently conducted. Section 3.02 of the Disclosure Schedules sets forth each jurisdiction in which each of Atellis and B-Line is licensed or qualified to do business, and each of Atellis and B-Line is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business as currently conducted makes such licensing or qualification necessary. All corporate or limited liability company actions taken by Atellis and B-Line in connection with this Agreement and the Ancillary Documents will be duly authorized on or prior to the Closing.

### **Section 3.03 Capitalization.**

- (a) The authorized capital stock of Atellis consists of 100,000 shares of common stock, par value \$ [REDACTED], of which 10,000 shares are issued and outstanding and constitute the Shares. All of the Shares have been duly authorized, are validly issued, fully paid and non-assessable, and are owned of record and beneficially by Sellers, free and clear of any Encumbrances. Upon consummation of the transactions contemplated by this Agreement, Buyer shall own all of the Shares, free and clear of any Encumbrances.
- (b) The outstanding membership interests of B-Line consists of 8,800,000 Class A Units and 1,200,000 Class B Units (collectively the "**Membership Units**"). All of the Membership Units have been duly authorized, are validly issued, fully paid and non-assessable. All the Class A Units are owned of record and beneficially by Atellis free and clear of any Encumbrances. At or prior to Closing, B-Line shall have completed the Cancellation, and no Class B Units shall remain issued or outstanding as a result thereof. Upon consummation of the transactions contemplated by this Agreement, Buyer shall be the sole beneficial owner of all the outstanding Membership Units, free and clear of any Encumbrances, other than those arising under applicable federal and state securities laws. The Membership Units are not represented by certificates.
- (c) All of the Shares and Membership Units were issued in compliance with applicable Laws. None of the Shares or Membership Units were issued in violation of any agreement, arrangement or commitment to which Sellers or the Company is a party or is subject to or in violation of any preemptive or similar rights of any Person.
- (d) There are no outstanding or authorized options, warrants, convertible securities or other rights, agreements, arrangements or commitments of any character relating to the capital stock of Atellis or any limited liability company interests of B-Line or obligating Sellers or the Company to issue or sell any shares of capital stock, limited liability company interests, or any other interest in the Company. The Company does not have outstanding or authorized any stock appreciation, phantom stock, profit participation or similar rights, except for the Class B Units which shall be cancelled pursuant to the Cancellation Agreements on or before Closing. Except for the



Operating Agreement, and the Majority Stockholder Agreement, true and accurate copies of which were provided by Sellers to Buyer, there are no existing, and never have been any, voting trusts, stockholder agreements, proxies, operating agreements, right of first refusal or other agreements or understandings with respect to any of the Shares or Membership Units.

#### **Section 3.04 Subsidiaries.**

Except for Atellis' ownership of the Membership Units as set forth in Section 3.03(b), the Company does not own, or have any other interest in any shares or have an ownership interest in any other Person.

#### **Section 3.05 No Conflicts; Consents.**

The execution, delivery and performance by Sellers of this Agreement and the Ancillary Documents, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of the Company; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Sellers or the Company; (c) other than the execution of the Cancellation Agreements by the holders of Class B Units, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which Sellers or the Company is a party or by which Sellers or the Company is bound or to which any of their respective properties and assets are subject (including any Material Contract) or any Permit affecting the properties, assets or business of the Company; or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any properties or assets of the Company. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Sellers or the Company in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

#### **Section 3.06 Financial Statements.**

Complete copies of the Company's reviewed financial statements consisting of the balance sheet of the Company as at December 31 in each of the years 2016, 2017 and 2018 and the related statements of income and retained earnings, stockholders' equity and cash flow for the years then ended (the "**Reviewed Financial Statements**"), and non-reviewed financial statements consisting of the balance sheet of the Company as at March 31, 2019 and the related statements of income and retained earnings, stockholders' equity and cash flow for the three-month period then ended (the "**Interim Financial Statements**" and together with the Reviewed Financial Statements, the "**Financial Statements**") are included in the Disclosure Schedules. The Financial Statements have been prepared in accordance with

GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Reviewed Financial Statements). The Financial Statements are based on the books and records of the Company, and fairly present in all material respects the financial condition of the Company as of the respective dates they were prepared and the results of the operations of the Company for the periods indicated. The balance sheet of the Company as of the 31<sup>st</sup> of December 2018 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Company as of 31<sup>st</sup> of March 2019 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date**". The Company maintains a standard system of accounting established and administered in a manner so as to enable the Company to prepare its financial statements in accordance with GAAP.

### **Section 3.07 Undisclosed Liabilities.**

The Company has no liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise ("**Liabilities**"), except (a) those which are adequately reflected or reserved against in the Balance Sheet as of the Balance Sheet Date, (b) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount, and (c) non-monetary contractual performance obligations arising in the ordinary course of business which are not, by their nature, required to be reflected on a balance sheet in accordance with GAAP.

### **Section 3.08 Absence of Certain Changes, Events and Conditions.**

Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been, with respect to the Company, any:

- (a) event, occurrence or development that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;
- (b) amendment of the charter, by-laws or other organizational documents of the Company;
- (c) split, combination or reclassification of any shares of its capital stock;
- (d) issuance, sale or other disposition of any of its capital stock, or grant of any options, warrants or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its capital stock;
- (e) declaration or payment of any dividends or distributions on or in respect of any of its capital stock (other than dividends or distributions to the Sellers in the ordinary course to cover Tax obligations due to the Company's subchapter S corporation status) or redemption, purchase or acquisition of its capital stock;

- (f) material change in any method of accounting or accounting practice of the Company, except as required by GAAP or as disclosed in the notes to the Financial Statements;
- (g) material change in the Company's cash management practices and its policies, practices and procedures with respect to collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of Customer Deposits;
- (h) Except as provided in Section 3.08(h) of the Disclosure Schedules or with the prior written consent of Buyer, entry into any Contract that would constitute a Material Contract.
- (i) incurrence, assumption or guarantee of any indebtedness for borrowed money except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;
- (j) transfer, assignment, sale or other disposition of any of the assets shown or reflected in the Balance Sheet or cancellation of any debts or entitlements, except for transactions in the ordinary course of business that are not material, individually or in the aggregate;
- (k) transfer or assignment of or grant of any license or sublicense under or with respect to any Company Intellectual Property or Company IP Agreements except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice;
- (l) abandonment or lapse of or failure to maintain in full force and effect any Company IP Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any Trade Secrets included in the Company Intellectual Property;
- (m) material damage, destruction or loss (whether or not covered by insurance) to its property;
- (n) any capital investment in, or any loan to, any other Person (other than advancement of business expenses to employees in the ordinary course of business consistent with Company policy);
- (o) acceleration, termination, material modification to or cancellation of any material Contract (including, but not limited to, any Material Contract) to which the Company is a party or by which it is bound;
- (p) any material capital expenditures;
- (q) imposition of any Encumbrance upon any of the Company properties, capital stock or assets, tangible or intangible;

- (r) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of its current or former employees, officers, directors, independent contractors or consultants, other than as provided for in any written agreements or plans or required by applicable Law, (ii) except as contemplated by the foregoing clause (i), change in the terms of employment for any employee or any termination of any employees for which the aggregate costs and expenses exceed [REDACTED] or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, independent contractor or consultant;
- (s) hiring or promoting any person as or to (as the case may be) an officer/manager or hiring or promoting any employee below officer/manager except to fill a vacancy in the ordinary course of business;
- (t) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant, (ii) Benefit Plan or (iii) collective bargaining or other agreement with a Union, in each case whether written or oral;
- (u) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any of its stockholders or current or former directors, officers and employees (other than advancement of business expenses to employees in the ordinary course of business consistent with Company policy);
- (v) entry into a new line of business or abandonment or discontinuance of existing lines of business;
- (w) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;
- (x) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of [REDACTED] individually (in the case of a lease, per annum) or [REDACTED] in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of inventory or supplies in the ordinary course of business consistent with past practice;
- (y) acquisition by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person or any division thereof;
- (z) action by the Company to make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer in respect of any Post-Closing Taxes or Post-Closing Tax Period; or

- (aa) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

**Section 3.09 Material Contracts.**

- (a) Section 3.09(a) of the Disclosure Schedules lists each of the following Contracts of the Company (such Contracts, together with all Contracts concerning the occupancy, management or operation of any Real Property (including without limitation, brokerage contracts) listed or otherwise disclosed in Section 3.10(b) of the Disclosure Schedules and all Company IP Agreements set forth in Section 3.12(b) of the Disclosure Schedules, being "**Material Contracts**"):
- (i) each Contract of the Company involving aggregate consideration in excess of \$50,000 and which, in each case, cannot be cancelled by the Company without penalty or without more than 90 days' notice;
  - (ii) all Contracts that require the Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;
  - (iii) all Contracts that provide for the indemnification by the Company of any Person or the assumption of any Tax, environmental or other Liability of any Person;
  - (iv) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);
  - (v) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts to which the Company is a party;
  - (vi) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party and which are not cancellable without material penalty or without more than 90 days' notice;
  - (vii) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees) of the Company;
  - (viii) all Contracts with any Governmental Authority to which the Company is a party ("**Government Contracts**");
  - (ix) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time;

- (x) any Contracts to which the Company is a party that provide for any joint venture, partnership or similar arrangement by the Company;
  - (xi) all Contracts between or among the Company on the one hand and Sellers or any their respective Affiliates (other than the Company) on the other hand;
  - (xii) all collective bargaining agreements or Contracts with any Union to which the Company is a party; and
  - (xiii) any other Contract that is material to the Company and not previously disclosed pursuant to this Section 3.09.
- (b) Each Material Contract is valid and binding on the Company in accordance with its terms and is in full force and effect, subject to the Bankruptcy and Equity Exception. None of the Company or, to Sellers' Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer.

**Section 3.10 Title to Assets; Real Property.**

- (a) The Company has good and valid title to, or a valid leasehold interest in, all personal property and other assets reflected in the Financial Statements or acquired after the Balance Sheet Date, other than properties and assets sold or otherwise disposed of in the ordinary course of business consistent with past practice since the Balance Sheet Date. The Company has a valid leasehold interest in the Real Property listed on Section 3.10(b) of the Disclosure Schedule. All such properties and assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):
- (i) liens for Taxes not yet due and payable;
  - (ii) mechanics, carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the business of the Company;
  - (iii) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property which are not, individually or in the aggregate, material to the business of the Company; or

- (iv) other than with respect to owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the business of the Company.
- (b) Section 3.10(b) of the Disclosure Schedules lists (i) the street address of each parcel of Real Property; (ii) if such property is leased or subleased by the Company, the landlord under the lease, the rental amount currently being paid, and the expiration of the term of such lease or sublease for each leased or subleased property; and (iii) the current use of such property. The Company does not own any Real Property. The Company is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property. The use and operation of the Real Property in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or agreement. No material improvements constituting a part of the Real Property encroach on real property owned or leased by a Person other than the Company. There are no Actions pending nor, to Sellers' Knowledge, threatened against or affecting the Real Property or any portion thereof or interest therein in the nature or in lieu of condemnation or eminent domain proceedings.

### **Section 3.11 Condition and Sufficiency of Assets.**

All material items of tangible personal property of the Company are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such material tangible assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property currently owned or leased by the Company are sufficient for the continued conduct of the Company's business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the tangible property and assets necessary to conduct the business of the Company as currently conducted.

### **Section 3.12 Intellectual Property.**

- (a) Section 3.12(a) of the Disclosure Schedules contains a correct, current, and complete list of: (i) all Company IP Registrations, specifying as to each, as applicable: the title, mark, or design; the record owner and inventor(s), if any; the jurisdiction by or in which it has been issued, registered, or filed; the patent, registration, or application serial number; the issue, registration, or filing date; and the current status and (ii) all unregistered Trademarks included in the Company Intellectual Property; and (iii) all proprietary software of the Company; and (iv) all other Company Intellectual Property used or held for use in the Company's business as currently conducted and as proposed to be conducted.

- (b) Section 3.12(b) of the Disclosure Schedules contains a correct, current, and complete list of all of the following Company IP Agreements, specifying for each the date, title or licensed material, and parties thereto, and separately identifying the Company IP Agreement (such agreements, the "**Material Company IP Agreements**"): (i) under which the Company is a licensor or otherwise grants to any Person any right or interest relating to any Company Intellectual Property, other than Ordinary Course Customer Agreements; (ii) under which the Company is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person, other than Off-the-Shelf Inbound License Agreements; and (iii) which otherwise relate to the Company's ownership or use of Intellectual Property, other than Ordinary Course Customer Agreements or Off-the-Shelf Inbound License Agreements, in each case identifying the Intellectual Property covered by such Material Company IP Agreement. Sellers have provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all Material Company IP Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Material Company IP Agreement is valid and binding on the Company in accordance with its terms and is in full force and effect, subject to the Bankruptcy and Equity Exception. Neither the Company nor any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any notice of breach of, default under, or intention to terminate (including by non-renewal), any Material Company IP Agreement.
- (c) The Company is the sole and exclusive legal and beneficial, and with respect to the Company IP Registrations, record, owner of all right, title, and interest in and to the Company Intellectual Property, and has the valid and enforceable right to use all Intellectual Property used or held for use in or necessary for the conduct of the Company's business as currently conducted and as proposed to be conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. The Company has entered into binding, valid and enforceable, written Contracts with each current and former employee and independent contractor who is or was involved in or has contributed to the invention, creation, or development of any Intellectual Property during the course of employment or engagement with the Company whereby such employee or independent contractor (i) acknowledges the Company's exclusive ownership of all Intellectual Property invented, created, or developed by such employee or independent contractor within the scope of his or her employment or engagement with the Company; (ii) grants to the Company a present, irrevocable assignment of any ownership interest such employee or independent contractor may have in or to such Intellectual Property, to the extent such Intellectual Property does not constitute a "work made for hire" under applicable Law; and (iii) irrevocably waives any right or interest, including any moral rights, regarding any such Intellectual Property, to the extent permitted by applicable Law. Sellers have provided Buyer with true and complete copies of all such Contracts. All assignments and other instruments necessary to establish, record, and perfect the Company's ownership interest in the Company IP Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars. No current or former director, officer, employee, consultant, contractor or



any other Person has any right, license, claim, moral right or interest whatsoever in or with respect to any Company Intellectual Property.

- (d) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of, or require the consent of any other Person, or the payment of any additional amounts, in respect of, the Company's right to own or use any (i) Company Intellectual Property or (ii) Intellectual Property licensed pursuant to a Material Company IP License Agreement.
- (e) All of the Company Intellectual Property is valid and enforceable, and all Company IP Registrations are subsisting and in full force and effect. The Company has taken all necessary steps to maintain and enforce the Company Intellectual Property and to preserve the confidentiality of all Trade Secrets included in the Company Intellectual Property, including by requiring all Persons having access thereto to execute binding, written non-disclosure agreements. All required filings and fees related to the Company IP Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars. Without limiting the foregoing, the Company has not disclosed Trade Secrets or other confidential or proprietary information to any Person, unless such disclosure was under an appropriate written nondisclosure agreement or to a Person subject to a fiduciary duty to maintain the confidentiality thereof. There has been no violation or unauthorized disclosure of any Trade Secret or confidential or proprietary information, or obligations of confidentiality with respect to such.
- (f) The conduct of the Company's business as currently and formerly conducted and as currently proposed to be conducted, including the use of the Company Intellectual Property, and to the Sellers' Knowledge, the use of any Material Company IP License Agreement, in each case in connection therewith, and the products, processes and services of the Company have not infringed, misappropriated or otherwise violated, do not infringe, misappropriate or otherwise violate, the Intellectual Property or other rights of any Person. To the Sellers' Knowledge, no Person has infringed, misappropriated or otherwise violated any Company Intellectual Property or Material Company IP License Agreement. The Company has not received any oral or written opinions of counsel relating to infringement, invalidity or unenforceability of any Company Intellectual Property.
- (g) There are no Actions (including any opposition, cancellation, revocation, review, challenge, or other proceeding), whether settled, pending, or, to the Sellers' Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation by the Company of the Intellectual Property of any Person; (ii) challenging the validity, enforceability, registrability, patentability, use, or ownership of any Company Intellectual Property or the Company's right, title, or interest in or to any Company Intellectual Property; or (iii) by the Company alleging any infringement, misappropriation, or other violation by any Person of the Company Intellectual Property. Neither Sellers nor the

Company is aware of any facts or circumstances that would reasonably be expected to give rise to any such Action. The Company is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or would reasonably be expected to restrict or impair the use of any Company Intellectual Property.

- (h) Section 3.12(h) of the Disclosure Schedules contains a correct, current, and complete list of all social media accounts used in the Company's business. The Company has complied in all material respects with all terms of use, terms of service, and other Contracts and all associated policies and guidelines relating to its use of any social media platforms, sites, or services (collectively, "**Platform Agreements**"). There are no Actions, whether settled, pending, or, to the Sellers' Knowledge, threatened, alleging any (A) breach or other violation of any Platform Agreement by the Company; or (B) defamation, violation of publicity rights of any Person, or any other violation by the Company in connection with its use of social media.
- (i) All Company IT Systems are in good working condition and are sufficient for the operation of the Company's business as currently conducted and as currently proposed to be conducted. In the past 12 months, there has been no material malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of any in-house Company IT Systems or, to the Sellers' Knowledge, any Company IT Systems provided or hosted by another Person. The Company has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of its in-house Company IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and software and hardware support arrangements.
- (j) The Company has complied with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Company's business. In the past 12 months, the Company has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Company's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, and there are no facts or circumstances that would reasonably be expected to give rise to any such Action.

### **Section 3.13 Inventory**

All inventory of the Company, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been

established. All such inventory is owned by the Company free and clear of all Encumbrances, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company.

#### **Section 3.14 Accounts Receivable.**

The accounts receivable reflected on the Interim Balance Sheet and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice, and (c) subject to any reserve for bad debts shown on the Interim Balance Sheet, or with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company, are collectible in the ordinary course of business consistent with the Company's past practices. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to accounts receivable arising after the Interim Balance Sheet Date, on the accounting records of the Company have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes. Section 3.14 of the Disclosure Schedule sets forth an accounts receivable aging as of May 31, 2019.

#### **Section 3.15 Customers and Suppliers.**

- (a) Section 3.15(a) of the Disclosure Schedules sets forth (i) the top 20 customers for each of the three most recent fiscal years (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such periods. The Company has not received any notice, and has no reason to believe, that any of its Material Customers has ceased, or intends to cease after the Closing, to use its goods or services or to otherwise terminate or materially reduce its relationship with the Company.
- (b) Section 3.15(b) of the Disclosure Schedules sets forth (i) the top 20 suppliers (other than attorneys and accountants) for each of the three most recent fiscal years (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such periods. The Company has not received any notice, and has no reason to believe, that any of its Material Suppliers has ceased, or intends to cease, to supply goods or services to the Company or to otherwise terminate or materially reduce its relationship with the Company.

#### **Section 3.16 Insurance.**

Section 3.16 of the Disclosure Schedules sets forth a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, directors' and officers' liability, fiduciary liability and other casualty and property insurance maintained by Sellers or their

respective Affiliates (including the Company) and relating to the assets, business, operations, employees, officers and directors of the Company (collectively, the "**Insurance Policies**") and true and complete copies of such Insurance Policies have been made available to Buyer. Except as set forth on Section 3.16 of the Disclosure Schedule, such Insurance Policies are in full force and effect and shall remain in full force and effect following the consummation of the transactions contemplated by this Agreement. Neither Sellers nor any of their respective Affiliates (including the Company) has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if due and payable prior to Closing, will be paid prior to Closing in accordance with the payment terms of each Insurance Policy. The Insurance Policies do not provide for any retrospective premium adjustment. All such Insurance Policies (a) are valid and binding in accordance with their terms, and (b) have not been subject to any lapse in coverage. There are no claims related to the business of the Company pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. None of Sellers or any of their respective Affiliates (including the Company) is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Company and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound.

### **Section 3.17 Legal Proceedings; Governmental Orders.**

- (a) There are no Actions pending or, to Sellers' Knowledge, threatened (a) against or by the Company affecting any of its properties or assets (or by or against Sellers or any Affiliate thereof and relating to the Company); or (b) against or by the Company, Sellers or any of their respective Affiliates that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.
- (b) There are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against or affecting the Company or any of its properties or assets.

### **Section 3.18 Compliance With Laws; Permits.**

- (a) The Company has complied, and is now complying, in all material respects with all Laws applicable to it or its business, properties or assets.
- (b) All Permits required for the Company to conduct its business have been obtained by it and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 3.18(b) of the Disclosure Schedules lists all current Permits issued to the Company, including the names of the

Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 3.18(b) of the Disclosure Schedules.

### **Section 3.19 Environmental Matters.**

- (a) The Company is currently and has been in compliance in all material respects with all Environmental Laws and has not, and Sellers have not, received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date. No Environmental Permits are required by the Company in order to operate its business as conducted.
- (b) There has been no Release of Hazardous Materials in contravention of Environmental Law with respect to the business or assets of the Company, and neither the Company nor Sellers have received an Environmental Notice that any real property currently or formerly owned, operated or leased in connection with the business of the Company (including soils, groundwater, surface water, buildings and other structure located on any such real property) has been contaminated with any Hazardous Material which would reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or term of any Environmental Permit by, Sellers or the Company. The Company's operations do not use or generate Hazardous Materials.

### **Section 3.20 Employee Benefit Matters.**

- (a) Section 3.20(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by the Company for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Company or any spouse or dependent of such individual, or under which the Company or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 3.20(a) of the Disclosure Schedules, each, a "**Benefit Plan**"). The Company has separately identified in Section 3.20(a) of the Disclosure Schedules (i) each Benefit Plan that contains a change in control provision and (ii)

each Benefit Plan that is maintained, sponsored, contributed to, or required to be contributed to by the Company primarily for the benefit of employees outside of the United States (a "**Non-U.S. Benefit Plan**").

- (b) With respect to each Benefit Plan, Sellers have made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the two most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.
- (c) Each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five year filing cycle, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that would reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or would reasonably be expected to subject the Company or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty

under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

No pension plan (other than a Multiemployer Plan) which is subject to minimum funding requirements, including any multiple employer plan, (each, a "**Single Employer Plan**") in which employees of the Company or any ERISA Affiliate participate or have participated has an "accumulated funding deficiency", whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No Single Employer Plan covering employees of the Company which is a defined benefit plan has an "adjusted funding target attainment percentage," as defined in Section 436 of the Code, less than 80%. All benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with, GAAP.

- (d) Neither the Company nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangements (MEWA).
- (e) With respect to each Benefit Plan (i) no such plan is a Multiemployer Plan or "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); (ii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (iii) no such plan or the plan of any ERISA Affiliate maintained or contributed to within the last six (6) years is a Single Employer Plan subject to Title IV of ERISA; and (iv) no "reportable event," as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived has occurred with respect to any such plan.
- (f) Each Benefit Plan can be amended, terminated or otherwise discontinued after the Closing in accordance with its terms, without material liabilities to Buyer, the Company or any of their Affiliates other than ordinary administrative expenses typically incurred in a termination event. The Company has no commitment or obligation and has not made any representations to any employee, officer, director, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

- (g) Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and neither the Company nor any of its ERISA Affiliates has any Liability to provide post-termination or retiree health benefits to any individual or ever represented, promised or contracted to any individual that such individual would be provided with post-termination or retiree health benefits.
- (h) There is no pending or, to Sellers' Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has within the three years prior to the date hereof been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.
- (i) There has been no amendment to, announcement by Sellers, the Company or any of their Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan or collective bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year (other than on a de minimis basis) with respect to any director, officer, employee, independent contractor or consultant, as applicable. None of Sellers, the Company, nor any of their Affiliates has any commitment or obligation or has made any representations to any director, officer, employee, independent contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.
- (j) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings and proposed and final regulations) thereunder. The Company does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.
- (k) Each individual who is classified by the Company as an independent contractor has been properly classified for purposes of participation and benefit accrual under each Benefit Plan.
- (l) Neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Company to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) limit or restrict the right of the Company to merge, amend, or terminate any Benefit Plan; or (iv) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan.



### Section 3.21 Employment Matters.

- (a) Section 3.21(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Company as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or contract fee; and (v) commission, bonus or other incentive-based compensation. As of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the date hereof have been paid in full (or accrued in full on the audited balance sheet contained in the Closing Working Capital Statement) and there are no outstanding agreements, understandings or commitments of the Company with respect to any compensation, commissions, bonuses or fees. All employees of the Company are employed on an at-will basis.
- (b) The Company is not, and has not been for the past 3 years, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not been for the past 3 years, any Union representing or purporting to represent any employee of the Company, and no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. There has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting the Company or any of its employees. The Company has no duty to bargain with any Union.
- (c) The Company is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, consultants and independent contractors of the Company, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by the Company as independent contractors or consultants are properly treated as independent contractors under all applicable Laws. All employees of the Company classified as exempt under the Fair Labor Standards Act and state and local wage and hour laws are properly classified. The Company is in compliance with and has complied with all immigration laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. There are no Actions against the Company pending, or to Sellers' Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant,

volunteer, intern or independent contractor of the Company, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

- (d) The Company has complied with the WARN Act, and it has no plans to undertake any action in the future that would trigger the WARN Act.
- (e) With respect to each Government Contract, the Company is and has been in compliance in all material respects with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("Section 503") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), including all implementing regulations. The Company maintains and complies with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. The Company is not, and has not been for the past five years, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 or VEVRAA. The Company has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor. The Company is in compliance with and has complied, in all material respects, with all immigration laws, including any applicable mandatory E-Verify obligations.

### **Section 3.22 Taxes.**

- (a) All Tax Returns required to be filed on or before the Closing Date by the Company have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all material respects. All Taxes due and owing by the Company (whether or not shown on any Tax Return) have been, or will be, timely paid on or before Closing.
- (b) The Company has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.
- (c) Since January 1, 2007, Atellis has been classified for U.S. Federal income tax purposes as an S-corporation within the meaning of Section 1361 of the Code and has had a valid S corporation election in effect under Section 1362 of the Code for all taxable years since such date, through and including the Closing (or if a Section 338(h)(10) Election is not made, through and including the day before the Closing), and such S-corporation election was not terminated or revoked prior to such date. Since January

1, 2007, Atellis has been classified as an S-corporation in all states where Atellis conducts business or is otherwise required to file any Tax Return that require or permit a state-level S corporation election, has met all applicable requirements in connection therewith.

- (d) B-Line is properly classified as disregarded as an entity separate from its owner (within the meaning of Treasury Regulation Section 301.7701-3(b)(1)(ii) and applicable state provisions) for U.S. federal and applicable state income Tax purposes. B-Line has never made any classification elections described in Treasury Regulation Section 301.7701-3.
- (e) Any transactions between the Company and its Affiliates have been undertaken on an arms-length basis, supported by all documentation required by all applicable Law, including Laws relating to transfer pricing.
- (f) No claim has been made by any Governmental Authority in any jurisdiction where the Company does not file Tax Returns that it is, or may be, subject to Tax by that jurisdiction.
- (g) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of the Company or Sellers. No power of attorney which is currently in force has been granted by or with respect to the Company with respect to any matter relating to Taxes.
- (h) The amount of the Company's Liability for unpaid Taxes for all periods ending on or before December 31, 2018, does not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Financial Statements. The amount of the Company's Liability for unpaid Taxes for all periods following the end of the recent period covered by the Financial Statements shall not, in the aggregate, exceed the amount of accruals for Taxes (excluding reserves for deferred Taxes) as adjusted for the passage of time in accordance with the past custom and practice of the Company (and which accruals shall not exceed comparable amounts incurred in similar periods in prior years).
- (i) Section 3.22(i) of the Disclosure Schedules sets forth:
  - (i) the taxable years of the Company as to which the applicable statutes of limitations on the assessment and collection of Taxes have not expired;
  - (ii) those years for which examinations by the taxing authorities have been completed; and
  - (iii) those taxable years for which examinations by taxing authorities are presently being conducted.
- (j) All deficiencies asserted, or assessments made, against the Company and Sellers as a result of any examinations by any taxing authority have been fully paid.

- (k) There are no Tax or Tax-related Actions, disputes, assessments, audits, or litigation currently pending in respect of the Company, and no such disputes, assessments, audits or litigation in respect of the Company are, to Sellers' Knowledge, threatened. There are no matters under discussion with any taxing authority or other Governmental Authority, or known non-governmental entities with respect to Taxes that are reasonably likely to result in an additional liability for Taxes.
- (l) Sellers have delivered or made available to Buyer true and accurate copies of all federal, state, local and foreign income, franchise and similar Tax Returns, examination reports, and statements of deficiencies assessed against, or agreed to by, the Company for all Tax periods ending after January 1, 2016.
- (m) There are no Encumbrances for Taxes (other than for current Taxes not yet due and payable) upon the assets of the Company or Sellers.
- (n) The Company and Sellers are not a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement.
- (o) No private letter rulings, technical advice memoranda or similar agreement or rulings have been requested, entered into or issued by any taxing authority with respect to the Company or Sellers.
- (p) The Company has not been a member of an affiliated, combined, consolidated or unitary Tax group for Tax purposes. The Company has no Liability for Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any corresponding provision of state, local or foreign Law), as transferee or successor, by contract or otherwise.
- (q) The Company will not be required to include any item of income in, or exclude any item or deduction from, taxable income for any taxable period or portion thereof ending after the Closing Date as a result of:
  - (i) any change in a method of accounting under Section 481 of the Code (or any comparable provision of state, local or foreign Tax Laws), or use of an improper method of accounting, for a taxable period ending on or prior to the Closing Date;
  - (ii) an installment sale or open transaction occurring on or prior to the Closing Date;
  - (iii) any closing agreement under Section 7121 of the Code, or similar provision of state, local or foreign Law; or
  - (iv) any election under Section 108(i) of the Code.
- (r) Each Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2. The Company is not, nor has it been, a United States real property

holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(a) of the Code.

- (s) The Company has not been a "distributing corporation" or a "controlled corporation" in connection with a distribution described in Section 355 of the Code.
- (t) The Company is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011-4(b).
- (u) The Company has not made an election under Section 897(i) of the Code or has been a U.S. real property holding company within the meaning of Section 897 of the Code.
- (v) Section 3.22(v) of the Disclosure Schedules sets forth all non-U.S. jurisdictions in which the Company is subject to Tax, is engaged in business or has a permanent establishment. The Company has not entered into a gain recognition agreement pursuant to Treasury Regulations Section 1.367(a)-8. The Company has not transferred an intangible the transfer of which would be subject to the rules of Section 367(d) of the Code.
- (w) No property owned by the Company is (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

### **Section 3.23 Books and Records.**

The minute books and stock record books of the Company, all of which have been made available to Buyer, are complete and correct and have been maintained in accordance with sound business practices. The minute books of the Company contain accurate and complete records of all meetings, and actions taken by written consent of, the members, the stockholders, the board of directors and any committees of the board of directors of the Company, and no meeting, or action taken by written consent, of any such members, stockholders, board of directors or committee has been held for which minutes have not been prepared and are not contained in such minute books. At the Closing, all of those books and records will be in the possession of the Company.

### **Section 3.24 Brokers.**

Except for Ascentage Advisors, LLC and Pickwick Capital Partners, LLC, the fees, commissions and expenses of which will constitute Seller Transaction Expenses and be paid at Closing by Sellers, no agent, broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the Ancillary Documents based upon arrangements made by or on behalf of Sellers or the Company.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Buyer represents and warrants to Sellers that the statements contained in this ARTICLE IV are true and correct as of the date hereof and as of the Closing Date.

**Section 4.01 Organization and Authority of Buyer.**

Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the state of New York. Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which it is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Ancillary Documents to which it is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Sellers) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to the Bankruptcy and Equity Exception. When the Ancillary Documents to which it is a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), the Ancillary Documents to which it is a party will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, subject to the Bankruptcy and Equity Exception.

**Section 4.02 No Conflicts; Consents.**

The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, except for such filings and such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not have a Material Adverse Effect.

**Section 4.03 Investment Purpose.**

Buyer is acquiring the Shares solely for its own account for investment purposes and not with a view to, or for offer or sale in connection with, any distribution thereof. Buyer

acknowledges that the Shares are not registered under the Securities Act of 1933, as amended, or any state securities laws, and that the Shares may not be transferred or sold except pursuant to the registration provisions of the Securities Act of 1933, as amended or pursuant to an applicable exemption therefrom and subject to state securities laws and regulations, as applicable.

**Section 4.04 Brokers.**

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or the Ancillary Documents based upon arrangements made by or on behalf of Buyer.

**Section 4.05 Sufficiency of Funds.**

Buyer has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the transactions contemplated by this Agreement.

**Section 4.06 Legal Proceedings.**

There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

**Section 4.07 Acknowledgment of Buyer.**

Buyer acknowledges that, in entering into this Agreement and the transaction contemplated hereby, Buyer is relying solely on the terms of this Agreement, the Ancillary Documents and the various agreements, certificates and instruments to be delivered by Sellers pursuant to Section 7.02 hereof, and the representations, warranties, covenants and other terms expressly set forth herein and therein, including the Disclosure Schedules; *provided, however*, that the foregoing shall not relieve the Sellers from Liability for fraud, criminal activity or willful misconduct.

**ARTICLE V  
COVENANTS**

**Section 5.01 Conduct of Business Prior to the Closing.**

From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall, and shall cause the Company to, (x) conduct the business of the Company in the ordinary course of business consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact the current organization,

business and franchise of the Company and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having business relationships with the Company. The Company and/or the Sellers (or their Representatives) will not add documents to or delete documents already uploaded to the "Project Synergy" virtual data room hosted on Dropbox after the execution and delivery of this Agreement. Without limiting the foregoing, from the date hereof until the Closing Date, Sellers shall cause the Company to use commercially reasonable efforts to:

- (a) preserve and maintain all of its material Permits;
- (b) pay its debts, Taxes and other obligations when due, except for those debts, Taxes or obligations being contested in good faith by appropriate proceedings, provided that, with respect to such contested debts, Taxes or obligations, the Company (i) establishes adequate reserves, and reflects such reserves on the Interim Balance Sheet, in an amount sufficient to satisfy any contested debts, Taxes or obligations should the Company's contest thereof not prevail; and (ii) immediately, and in any event prior to Closing, notifies Buyer in writing of the debts, Taxes or obligations that are being contested.
- (c) maintain the properties and assets owned, operated or used by the Company in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;
- (d) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;
- (e) defend and protect its properties and assets from infringement or usurpation;
- (f) perform all of its obligations under all Contracts relating to or affecting its properties, assets or business;
- (g) provide Buyer with a copy of its Tax Returns for the 2018 Tax year prior to filing same, which Tax Returns shall be prepared and filed in accordance with applicable Law and consistent with past practice on or before Closing;
- (h) maintain its books and records in accordance with past practice;
- (i) comply in all material respects with all applicable Laws; and
- (j) not to take or permit any action that would cause any of the changes, events or conditions described in Section 3.08 to occur.

#### **Section 5.02 Access to Information.**

From the date hereof until the Closing, Sellers' Representative (and all Sellers) shall, and shall cause the Company to, (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the Real Property, properties, assets, premises, books and



records, Contracts and other documents and data related to the Company; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Company as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Sellers and the Company to cooperate with Buyer in its investigation of the Company. Any investigation pursuant to this Section 5.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Sellers or the Company. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement.

#### **Section 5.03 No Solicitation of Other Bids.**

- (a) Sellers shall not, and shall not authorize or permit any of their respective Affiliates (including the Company) or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Sellers shall immediately cease and cause to be terminated, and shall cause their respective Affiliates (including the Company) and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" shall mean any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) concerning (i) a merger, consolidation, liquidation, recapitalization, joint venture, share exchange or other business combination transaction involving the Company; (ii) the issuance or acquisition of shares of capital stock or other equity securities of the Company; or (iii) the sale, lease, exchange or other disposition of any significant portion of the Company's properties or assets.
- (b) Each Seller agrees that the rights and remedies for noncompliance with this Section 5.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

#### **Section 5.04 Notice of Certain Events.**

- (a) From the date hereof until the Closing, Sellers shall promptly notify Buyer in writing of:
  - (i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or would reasonably be expected to result in, any representation or warranty made by Sellers hereunder not being true and correct or (C) has resulted in, or would

reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 to be satisfied;

- (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;
  - (iii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and
  - (iv) any Actions commenced or, to Sellers' Knowledge, threatened against, relating to or involving or otherwise affecting Sellers or the Company that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.17 or that relates to the consummation of the transactions contemplated by this Agreement.
- (b) Buyer's receipt of information pursuant to this Section 5.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement (including Section 8.02 and Section 9.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

#### **Section 5.05 Resignations.**

Sellers shall deliver to Buyer written resignations, effective as of the Closing Date, of the board of directors and officers of Atellis and the board of managers and Specified Officers of B-Line.

#### **Section 5.06 Confidentiality.**

From and after the Closing, each of the Sellers shall, and shall cause their respective Affiliates to, hold, and shall use its reasonable best efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Company, except to the extent that Sellers can show that such information (a) is generally available to and known by the public through no fault of Sellers, any of their respective Affiliates or their respective Representatives; or (b) is lawfully acquired by Sellers, any of their respective Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Sellers or any of their respective Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Sellers shall, if permitted by applicable Law, promptly notify Buyer in writing and shall disclose only that portion of such information which Sellers are advised by its counsel in writing is legally required to be disclosed, *provided that* Sellers shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

### Section 5.07 Non-Competition; Non-Solicitation.

- (a) For a period of three years commencing on the Closing Date (the "**Restricted Period**"), each Seller (other than Chau Nguyen) individually agrees that such Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, (i) engage in or assist others in engaging in the Restricted Business in the Territory; (ii) have an interest in any Person that engages directly or indirectly in the Restricted Business in the Territory in any capacity, including as a partner, shareholder, member, employee, principal, agent, trustee or consultant; or (iii) intentionally interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company and customers, suppliers, employees or contractors of the Company. Notwithstanding the foregoing, a Seller may own, directly or indirectly, solely as an investment, securities of any Person traded on any national securities exchange if such Seller is not a controlling Person of, or a member of a group which controls, such Person and does not, directly or indirectly, own 2% or more of any class of securities of such Person.
- (b) During the Restricted Period, each Seller (other than Minh-Chau Kerchner) individually agrees that such Seller shall not, and shall not permit any of its Affiliates to, directly or indirectly, hire or solicit any employee of the Company or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation which is not directed specifically to any such employees; *provided, that* nothing in this Section 5.07(b) shall prevent Sellers or any of their respective Affiliates from hiring (i) any employee whose employment has been terminated by Buyer or by the Company after the Closing or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.
- (c) During the Restricted Period, each Seller (other than Minh-Chau Kerchner) individually agrees that such Seller shall not, and shall not permit any of its respective Affiliates to, directly or indirectly, solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or potential clients or customers of the Company for purposes of diverting their business or services from the Company.
- (d) Each applicable Seller acknowledges that a breach or threatened breach of this Section 5.07 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that in the event of a breach or a threatened breach by a Seller of any such obligations, Buyer shall, in addition to any and all other rights and remedies, that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond).
- (e) Each applicable Seller acknowledges that the restrictions contained in this Section 5.07 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and

consummate the transactions contemplated by this Agreement. In the event that any covenant contained in this Section 5.07 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 5.07 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

**Section 5.08 Governmental Approvals and Consents.**

- (a) Each Party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The Parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.
- (b) Sellers and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 3.05 of the Disclosure Schedules.
- (c) Without limiting the generality of the Parties' undertakings pursuant to subsections (a) and (b) above, each of the Parties hereto shall use all commercially reasonable efforts to:
  - (i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or the Ancillary Documents;
  - (ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or the Ancillary Documents; and
  - (iii) in the event any Governmental Order adversely affecting the ability of the Parties to consummate the transactions contemplated by this Agreement or the Ancillary Documents has been issued, to have such Governmental Order vacated or lifted.

- (d) If any consent, approval or authorization necessary to preserve any right or benefit under any Contract to which the Company is a party is not obtained prior to the Closing, Sellers shall, subsequent to the Closing, cooperate with Buyer and the Company in attempting to obtain such consent, approval or authorization as promptly thereafter as practicable. If such consent, approval or authorization cannot be obtained, Sellers shall use their reasonable best efforts to provide the Company with the rights and benefits of the affected Contract for the term thereof, and, if Sellers provide such rights and benefits, the Company shall assume all obligations and burdens thereunder.
- (e) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Sellers or the Company with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.
- (f) Notwithstanding the foregoing, nothing in this Section 5.08 shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer, the Company or any of their respective Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, would reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

#### **Section 5.09 Books and Records.**

- (a) In order to facilitate the resolution of any claims made against or incurred by Sellers prior to the Closing, or for any other reasonable purpose, for a period of 6 years after the Closing, Buyer shall:

- (i) retain the books and records (including personnel files) of the Company relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of the Company; and
  - (ii) upon reasonable notice, afford the Representatives of Sellers reasonable access (including the right to make, at such Seller's expense, photocopies), during normal business hours, to such books and records;  
  
*provided, however,* that any books and records related to Tax matters shall be retained pursuant to the periods set forth in ARTICLE VI.
- (b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer or the Company after the Closing, or for any other reasonable purpose, for a period of 6 years following the Closing, Sellers shall:
- (i) retain the books and records (including personnel files) of Sellers which relate to the Company and its operations for periods prior to the Closing; and
  - (ii) upon reasonable notice, afford the Representatives of Buyer or the Company reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records;  
  
*provided, however,* that any books and records related to Tax matters shall be retained pursuant to the periods set forth in ARTICLE VI.
- (c) Neither Buyer nor Sellers shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section 5.09 where such access would violate any Law.

**Section 5.10 Closing Conditions.**

From the date hereof until the Closing, each party hereto shall, and Sellers shall cause the Company to, use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

**Section 5.11 Public Announcements.**

Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of Buyer on the one hand and the Sellers' Representative on the other hand, which consent shall not be unreasonably withheld, delayed or conditioned, and the Parties shall cooperate as to the timing and contents of any such announcement. In addition, the parties shall keep the terms of this Agreement confidential, and shall disclose such terms only to their officers, directors, employees, agents and advisors who are under an obligation of confidentiality with respect thereto.

**Section 5.12 Further Assurances.**

Following the Closing, each of the Parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement.

**Section 5.13 B-Line Class B Membership Interests.**

On or prior to the Closing, B-Line will enter into Unit Cancellation Agreements with each of the holders of Class B Units, substantially in the form attached as Exhibit B (the "Cancellation Agreements"), pursuant to which, contingent upon the Closing and effective immediately prior thereto, the holders thereof will agree to the cancellation of their Class B Units in exchange for the payments set forth therein.

**Section 5.14 Sellers' Representative.**

(a) By the execution and delivery of this Agreement, each Seller hereby irrevocably constitutes and appoints CHAFIC KAZOUN as the initial true and lawful agent and attorney-in-fact of Sellers with full authority and power of substitution to act in the name, place and stead of such Seller with respect to the consummation of the transactions contemplated hereunder, subject to the limitations contained in this Agreement. Kazoun hereby accepts his appointment as the Sellers' Representative and his authorization to act as attorney-in-fact and agent on behalf of each such Seller in accordance with the terms of this Agreement, and agrees to perform in such capacity his obligations hereunder as the Sellers' Representative, and otherwise comply with this Agreement. All such actions taken in accordance with this Agreement shall be deemed to be facts ascertainable outside of this Agreement and shall be binding on Sellers as a matter of contract Law. Without limiting the generality of the foregoing, the Sellers' Representative has full power and authority, on behalf of each Seller and his, her or its successors and assigns, to:

(i) interpret the terms and provisions of this Agreement, the Ancillary Documents and each other document to be executed and delivered by any of Sellers in connection herewith or therewith;

(ii) execute and deliver and receive deliveries of all agreements and amendments, certificates, statements, notices, approvals, extensions, waivers, undertakings and other documents required or permitted to be given in connection with the consummation of the transactions contemplated by this Agreement and each Ancillary Document;

(iii) receive any amounts due or to be paid to Sellers hereunder or pursuant to the Escrow Agreement, other than any such amounts due or to be paid to any Seller hereunder or pursuant to the Escrow Agreement, which shall be paid directly to such Seller by check or by wire transfer of

immediately available funds pursuant to instructions delivered in writing by such Seller;

(iv) pay and distribute to Sellers any amount to be paid to Sellers and delivery of wire instructions to Buyer in connection therewith; provided, however, that amounts due or to be paid to any Seller hereunder or pursuant to the Escrow Agreement (including without limitation a return or refund of payments with respect to any indemnification claims by or on behalf of Sellers or under the Escrow Agreement or otherwise) shall be paid directly to such Seller by check or by wire transfer of immediately available funds pursuant to instructions delivered in writing by such Seller;

(v) allocate among Sellers amounts to be paid to the Sellers' Representative on behalf of Sellers hereunder (subject to the requirements and limitations contained herein);

(vi) act on behalf of Sellers in all matters relating to Section 2.04, ARTICLE VI or ARTICLE VIII of this Agreement or Escrow Agreement, including agreeing to, negotiating, entering into settlements and compromises of, and assuming the defense of, indemnification claims and initiating claims and complying with any order, writ, judgment, award, injunction, finding or decree of any Governmental Authority or arbitrator with respect to such indemnification claims, and to take all actions necessary or appropriate in the judgment of the Sellers' Representative for the accomplishment of the foregoing;

(vii) deliver or cause to be delivered to Buyer at the Closing certificates or assignments in lieu thereof representing the Shares duly executed for transfer on the books and records of the respective Transferred Company and any other documents required pursuant to ARTICLE VII;

(viii) determine on behalf of Sellers whether the conditions to Closing in Section 7.01 and 7.03 have been satisfied and supervising the Closing, including waiving any such condition if the Sellers' Representative, in his sole discretion, determines that such waiver is appropriate;

(ix) agree to any amendment of this Agreement or any other Ancillary Document on behalf of Sellers and take any and all actions that may be necessary or desirable, as determined by the Sellers' Representative in his sole discretion, in connection therewith;

(x) give and receive notices and communications;

(xi) receive service of process in connection with any indemnification claims under this Agreement (not in contravention of limitations contained herein); and



(xii) take all actions under this Agreement and any Ancillary Documents that are to be taken by the Sellers' Representative; and

(xiii) take any and all other actions and do any and all other things necessary or appropriate, as determined by the Sellers' Representative in his sole discretion in connection with this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby.

- (b) Buyer shall be entitled to deal exclusively with the Sellers' Representative on behalf of any Seller with respect to all matters relating to this Agreement, the Ancillary Documents and the transactions contemplated hereunder and thereunder (subject to the limitations contained in this Agreement). Buyer and any other Person, may conclusively and absolutely rely, without inquiry and without further evidence of any kind whatsoever, upon any consent, approval or action of the Sellers' Representative as the consent, approval or action, as the case may be, of each Seller individually and all Sellers as a group in all matters referred to herein and in the Ancillary Documents, and each Seller confirms all that the Sellers' Representative shall do or cause to be done by virtue of his appointment as the Sellers' Representative (subject to the limitations contained in this Agreement). Any amount paid by Buyer or its designee to the Sellers' Representative on behalf of Sellers shall be deemed to be paid to Sellers themselves, and no such Seller shall have any recourse against Buyer or its designee arising out of or relating to such payment.
- (c) Each Seller hereby consents and agrees (i) to all actions or inactions taken or omitted to be taken by the Sellers' Representative under this Agreement (that are not in contravention of any applicable limitations contained in this Agreement), (ii) that the Sellers' Representative shall not be liable to any Seller for any damages, Loss, liabilities, charges, penalties, costs and expenses (including court costs and reasonable legal fees and expenses) incurred or suffered as a result of any actions or inaction of the Sellers' Representative (except for actions or inactions resulting from or constituting the willful malfeasance, gross negligence, fraud or intentional misrepresentation of the Sellers' Representative or breaching of the covenants in this Agreement by the Sellers' Representative), and (iii) to indemnify and hold harmless the Sellers' Representative from and against all damages, Loss, liabilities, charges, penalties, costs and expenses (including court costs and reasonable legal fees and expenses) incurred in any legal proceeding, arbitration, dispute, hearing, investigation, inquiry suit, charge, complaint, grievance, or any other legal or administrative proceeding between the Sellers' Representative and Sellers (or any of them, provided that if any such Seller brings any of the foregoing against the Sellers' Representative and does not prevail with respect thereto, only such Sellers that brought or participated in such matter against the Sellers' Representative shall be so liable and obligated pursuant to this clause (iii)) or between the Sellers' Representative and any third party or otherwise incurred or suffered as a result of or arising out of such actions or inactions of the Sellers' Representative (except for actions or inactions resulting from or constituting the willful malfeasance, gross negligence, fraud or intentional misrepresentation of the Sellers' Representative or

breaching of the covenants hereunder by the Sellers' Representative). The Sellers' Representative shall have the right to retain legal counsel and other advisors and to incur such fees as the Sellers' Representative deems reasonable and necessary in the exercise of its responsibilities hereunder and to seek payment or reimbursement from Sellers for such reasonable fees and expenses, including solely with respect to the internal relationship among the Sellers' Representative and Sellers setting off such reasonable fees and expenses against amounts otherwise payable to Sellers under this Agreement; for the avoidance of doubt, nothing in this Section 5.14 shall put Buyer in a less favorable position than if this Agreement did not contain this Section 5.14.

- (d) The Sellers' Representative may resign upon thirty (30) days prior written notice thereof (the "**Resignation Notice**") to Buyer and each Seller, provided as a condition of such resignation, within said thirty (30) day period following delivery of the Resignation Notice, Sellers who, as of the Closing, held a majority of the issued and outstanding shares of voting capital stock of Atellis shall have appointed a successor Sellers' Representative (who need not be a Seller or a party to this Agreement) who shall have been approved by Buyer in writing and shall have accepted such appointment in writing as the successor Sellers' Representative effective concurrent with the resignation of the outgoing Person then acting as the Sellers' Representative. After the retiring Sellers' Representative's resignation hereunder as the Sellers' Representative, the provisions of this Agreement shall inure to his/her or its benefit as to any actions taken or omitted to be taken as Sellers' Representative and while acting as the Sellers' Representative.
- (e) At the Closing, Buyer will wire the Expense Fund Amount (the "**Expense Fund**") to the Sellers' Representative, which will be used for the purposes of paying directly, or reimbursing the Sellers' Representative for, any third party expenses pursuant to this Agreement and the agreements ancillary hereto. The Sellers will not receive any interest or earnings on the Expense Fund and irrevocably transfer and assign to the Sellers' Representative any ownership right that they may otherwise have had in any such interest or earnings. The Sellers' Representative will not be liable for any loss of principal of the Expense Fund other than as a result of its gross negligence or willful misconduct. The Sellers' Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. As soon as practicable following the completion of the Sellers' Representative's responsibilities, the Sellers' Representative will distribute any remaining balance of the Expense Fund to the Sellers. For tax purposes, the Expense Fund will be treated as having been received and voluntarily set aside by the Sellers at the time of the Initial Closing.

#### **Section 5.15 Atellis Domain Name and email Accounts.**

Buyer shall permit Kazoun and Huang to continue using their existing Atellis email accounts after the Closing. In the event Buyer decides not to continue to provide those

email accounts, Buyer shall transfer the domain name "atellis.com" and associated email accounts as jointly directed by Kazoun and Huang; provided, however, Kazoun and Huang may use the domain name and email accounts only for their personal use, and may not sell, license, or otherwise transfer the domain name to any third parties. For the avoidance of doubt, the tradename and related trademark and Intellectual Property rights associated with the "Atellis" name belong solely to the Company and neither this Section 5.15 nor any transfer of the domain name hereunder shall convey any such Intellectual Property rights to Kazoun or Huang.

## **ARTICLE VI TAX MATTERS**

### **Section 6.01 Tax Covenants.**

- (a) Without the prior written consent of Buyer, Sellers (and, prior to the Closing, the Company, their respective Affiliates and their respective Representatives) shall not, to the extent it may affect, or relate to, the Company, make, change or rescind any Tax election, amend any Tax Return or take any position on any Tax Return, take any action, omit to take any action or enter into any other transaction that would have the effect of increasing the Tax liability or reducing any Tax asset of Buyer or the Company in respect of any Post-Closing Tax Period other than as required by Law with prior written notice to Buyer.
- (b) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by the Sellers when due. Sellers shall, at their own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).
- (c) Sellers shall prepare, or cause to be prepared, all income Tax Returns to be filed by the Company for Tax years ending on or before the Closing Date. Such income Tax Returns shall also include all Transaction Expenses. Sellers shall pay all Taxes related to such Tax returns. Buyer shall prepare, or cause to be prepared, all other Tax Returns required to be filed by the Company after the Closing Date with respect to any Pre-Closing Tax Period. Any such Tax Return identified in this Section 6.01(c) shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Sellers' Representative or by Sellers' Representative to Buyer, as applicable (together with schedules, statements and, to the extent requested by each Party, supporting documentation) at least 30 days prior to the due date (including extensions) of such Tax Return. If a reviewing Party objects to any item on any such Tax Return, it shall, within five days after delivery of such Tax Return, notify the other Party in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection shall be duly delivered, Buyer and Sellers' Representative shall negotiate in

good faith and use their commercially reasonable efforts to resolve such items. If Buyer and Sellers' Representative are unable to reach such agreement within ten days after receipt of such notice, the disputed items shall be resolved by the Independent Accountant and any determination by the Independent Accountant shall be final. The Independent Accountant shall resolve any disputed items within 30 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountant is unable to resolve any disputed items before the due date for such Tax Return, the Tax Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountant's resolution. The costs, fees and expenses of the Independent Accountant shall be borne equally by Buyer and Sellers. The preparation and filing of any Tax Return of the Company that does not relate to a Pre-Closing Tax Period shall be exclusively within the control of Buyer.

#### **Section 6.02 Termination of Existing Tax Sharing Agreements.**

Any and all existing Tax sharing agreements (whether written or not) binding upon the Company shall be terminated as of the Closing Date. After such date none of the Company, Sellers nor any of their respective Affiliates and their respective Representatives shall have any further rights or liabilities thereunder.

#### **Section 6.03 Tax Indemnification.**

Except to the extent treated as a liability in the calculation of Closing Working Capital, Sellers shall, jointly and severally, indemnify, save and hold the Company, Buyer, and each Buyer Indemnitee and hold them harmless from and against (a) any Loss attributable to any breach of or inaccuracy in any representation or warranty made in Section 3.22; (b) any Loss attributable to any breach or violation of, or failure to fully perform, any covenant, agreement, undertaking or obligation in ARTICLE VI; (c) all Taxes (including any reduction of any Tax asset arising as a result of an affirmative action or omission of Sellers not consistent with applicable Tax Law) of the Company or relating to the business of the Company for all Pre-Closing Tax Periods; (d) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) is or was a member on or prior to the Closing Date by reason of a liability under Treasury Regulation Section 1.1502-6 or any comparable provisions of foreign, state or local Law; (e) any and all Taxes of any person imposed on the Company arising under the principles of transferee or successor liability or by contract, relating to an event or transaction occurring before the Closing Date; (f) any Taxes arising out of or resulting from the negotiation or forgiveness of any Indebtedness on or before the Closing Date; (g) one half of the actual income Taxes of the Company that would arise out of or result from recognition for Tax purposes of any Deferred Revenue of the Company accrued before the Closing Date, including any amounts deferred for income Tax purposes under Section 451(c) of the Code, IRS Revenue Procedure 2004-34 or similar authorities as if such Taxes under this clause (g) were computed with respect to the income of the Company as if the Company had continued to conduct its business on a stand-alone basis and had prepared its first Post-Closing Tax Period income Tax Returns on a stand-alone basis; provided that this clause (g) shall not apply if the Section 338(h)(10) Election is made; and (h) in each of

the above cases (a)-(g), together, with any out-of-pocket fees and expenses (including attorneys' and accountants' fees) incurred in connection therewith. Payment in full of any amount due from Sellers under this Section 6.03 shall be made to Buyer or Company in immediately available funds at least two Business Days before the date payment of the Taxes to which such payment relates is due, or, if no Tax is payable, within ten days after written demand is made for such payment. For the avoidance of doubt, if a Section 338(h)(10) Election is made and Buyer pays to the Sellers the Gross-Up Payment pursuant to Section 6.05, all Taxes due or payable as a result of the Section 338(h)(10) Election shall be allocated to a Pre-Closing Tax Period and shall be payable solely by the Sellers to the applicable Governmental Authority.

#### **Section 6.04 Straddle Period.**

In the case of Taxes that are payable with respect to a taxable period that begins before and ends after the Closing Date (each such period, a "**Straddle Period**"), the portion of any such Taxes that are treated as Pre-Closing Taxes for purposes of this Agreement shall be:

- (a) in the case of Taxes (i) based upon, or related to, income, receipts, profits, wages, capital or net worth, (ii) imposed in connection with the sale, transfer or assignment of property, or (iii) required to be withheld, deemed equal to the amount which would be payable if the taxable year ended with the Closing Date; and
- (b) in the case of other Taxes, deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire period.

#### **Section 6.05 Section 338(h)(10) Election.**

- (a) **Election.** At Buyer's option, the Company and Sellers shall join with Buyer in making a timely election under Section 338(h)(10) of the Code (and any corresponding election under state, local, and foreign Law) with respect to the purchase and sale of the Shares of the Company hereunder (collectively, a "**Section 338(h)(10) Election**"). Each Seller does hereby consent to the Section 338(h)(10) Election. Buyer shall notify Sellers' Representative no later than October 31, 2019 as to whether the Section 338(h)(10) Election will be made.
- (b) **Allocation of Purchase Price.** If a Section 338(h)(10) Election is made, Sellers and Buyer agree that the Purchase Price and the Liabilities of the Company includable for purposes of the Section 338(h)(10) Election (plus other relevant items) shall be allocated among the assets of the Company for all purposes (including Tax and financial accounting) as shown on the allocation schedule (the "**Allocation Schedule**"). A draft of the Allocation Schedule shall be prepared by Buyer and delivered to Sellers' Representative for its approval, which shall not be unreasonably withheld, delayed or conditioned. Buyer, the Company and Sellers shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule, they shall not take any contrary

position, and they shall use commercially reasonable efforts to support and defend any such position in connection with any Action relating thereto. Any adjustments to the Purchase Price pursuant to Section 2.04 shall be allocated in a manner consistent with the Allocation Schedule.

- (c) **Gross-Up Payment.** In the event that the Section 338(h)(10) Election is made, Buyer will pay to Sellers' Representative (on behalf of Sellers) an amount of additional consideration (the "**Gross-Up Payment**") equal to the sum of (i) the excess (if any) of (A) the total amount of Taxes payable by each Seller upon the sale of Shares if the Section 338(h)(10) Election is made over (B) the total amount of Taxes that would have been payable by each Seller upon the sale of Shares if the Section 338(h)(10) Election was not made plus (ii) the amount of Taxes payable by each Seller as a result of the receipt by such Seller of the amounts described in clause (i) and this clause (ii). The Gross-Up Payment shall be based on the following assumptions: (v) the Liabilities of the Company shall be taken into account in accordance with Section 338 and the regulations thereunder and any Liability associated with Deferred Revenue shall be based on the actual liabilities relating to the cost of performance as reasonably determined by the Buyer, (w) each Seller will be deemed to be subject to the highest marginal federal income Tax rate and the actual state income Tax rates applicable to each Seller, (x) the character of income (e.g., ordinary, capital or exempt) shall be taken into account, (y) each Seller shall be deemed to fully utilize all losses or deductions at the applicable tax rates; and (z) the deemed asset sale and liquidation described in Treasury Regulations Section 1.338(h)(10)-1 shall be deemed to have occurred and all aspects thereof to each Seller shall be taken into account. For the avoidance of doubt, the Gross-Up Payment shall be computed without regard to any tax deemed assumed by the Company under Treasury Regulations Section 1.338(h)(10)-1(d)(2). For the avoidance of doubt, all computations and components of the Gross-Up Payment shall be consistent with the computations and components included in the final income Tax Return of Company for the Tax Period ending on the Closing Date which reflects the deemed sale of assets. Within 45 days after the date that the Allocation Schedule becomes final, Buyer shall deliver a calculation of the Gross-Up Payment to Sellers' Representative for its approval, which shall not be unreasonably withheld, delayed or conditioned. If Sellers' Representative notifies Buyer in writing within 15 days after its receipt of the calculation that Sellers' Representative objects to one or more items reflected in the calculation, Buyer and Sellers' Representative shall negotiate in good faith to resolve such dispute; *provided, however*, that if Buyer and Sellers' Representative are unable to resolve any such dispute within 15 days following the date of Buyer's receipt of Sellers' Representative's objection, such dispute shall be resolved by the Independent Accountant in the same manner as provided in Section 6.05(b). The Gross-Up Payment shall be payable in cash within 5 Business Days after the amount is finally determined but in no event later than the due date for payment of such Taxes. In the event that any Governmental Authority successfully challenges the Gross-Up Payment calculations such that the Gross-Up Payment calculated in accordance with this Section 6.05(c) would be more or less than finally determined by the Parties, the Parties agree that such payment shall be adjusted and the Buyer or the Sellers, as

appropriate, shall pay the other Party the difference within 5 Business Days after the adjustment becomes final. Buyer or Sellers, as applicable, shall give prompt written notice to the other Party of the receipt of any written notice from any Governmental Authority which may involve the assertion of any claim, or the commencement of any Action, in connection with the Section 338(h)(10) Election. At its option, Buyer may control the contest or resolution of any such Action; *provided, however*, that Buyer shall obtain the prior written consent of Sellers' Representative (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, *provided further*, that Sellers' Representative shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Sellers. Buyer, the Company and Sellers shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with this Section 6.05(c), they shall not take any contrary position, and they shall use commercially reasonable efforts to support and defend any such position in connection with any Action relating thereto. The Gross-Up Payment shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes, unless otherwise required by Law.

#### **Section 6.06 Contests.**

Buyer agrees to give written notice to Sellers' Representative of the receipt of any written notice by the Company, Buyer or any of Buyer's Affiliates which involves the assertion of any claim, or the commencement of any Action, in respect of which an indemnity may be sought by Buyer pursuant to this ARTICLE VI (a "**Tax Claim**"), *provided, however*, that failure to give prompt written notice to Sellers' Representative shall not relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Buyer shall control the contest or resolution of any Tax Claim; *provided, however*, that Buyer shall obtain the prior written consent of Sellers' Representative (which consent shall not be unreasonably withheld or delayed) before entering into any settlement of a claim or ceasing to defend such claim; and, *provided further*, that Sellers' Representative shall be entitled to participate in the defense of such claim and to employ counsel of its choice for such purpose, the fees and expenses of which separate counsel shall be borne solely by Sellers.

#### **Section 6.07 Cooperation and Exchange of Information.**

Sellers and Buyer shall provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return pursuant to this ARTICLE VI or in connection with any audit or other proceeding in respect of Taxes of the Company. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Each of Sellers and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of

the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other party in writing of such extensions for the respective Tax periods. Prior to transferring, destroying or discarding any Tax Returns, schedules and work papers, records and other documents in its possession relating to Tax matters of the Company for any taxable period beginning before the Closing Date, Sellers or Buyer (as the case may be) shall provide the other party with reasonable written notice and offer the other party the opportunity to take custody of such materials.

**Section 6.08 Tax Treatment of Indemnification Payments.**

Any indemnification payments pursuant to this ARTICLE VI shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes, unless otherwise required by Law.

**Section 6.09 Payments to Buyer.**

Without limiting Buyer's rights and remedies hereunder, it is understood that Buyer currently intends that any amounts payable to Buyer pursuant to this ARTICLE VI shall be satisfied: (i) from the Tax Escrow Fund; (ii) from the Indemnification Escrow Fund; and (iii) to the extent such amounts exceed the amount available to Buyer in the Tax Escrow Fund and the Indemnification Escrow Fund, from the Sellers.

**Section 6.10 Survival.**

Notwithstanding anything in this Agreement to the contrary, the provisions of Section 3.22 and this ARTICLE VI shall survive for the full period of each applicable statute of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days.

**Section 6.11 Overlap.**

To the extent that any obligation or responsibility pursuant to ARTICLE VIII may overlap with an obligation or responsibility pursuant to this ARTICLE VI, the provisions of this ARTICLE VI shall govern.

**ARTICLE VII  
CONDITIONS TO CLOSING**

**Section 7.01 Conditions to Obligations of All Parties.**

The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

- (a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or



prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

- (b) Sellers shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 3.05 and Buyer shall have received all consents, authorizations, orders and approvals from the Governmental Authorities referred to in Section 4.02, in each case, in form and substance reasonably satisfactory to Buyer and Sellers, and no such consent, authorization, order and approval shall have been revoked.

#### **Section 7.02 Conditions to Obligations of Buyer.**

The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

- (a) Other than the representations and warranties of Sellers contained in Section 3.01, Section 3.02, Section 3.03, Section 3.06 and Section 3.24, the representations and warranties of Sellers contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Sellers contained in Section 3.01, Section 3.02, Section 3.03, Section 3.06 and Section 3.24 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).
- (b) Sellers shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Sellers shall have performed such agreements, covenants and conditions, as so qualified, in all respects.
- (c) No Action shall have been commenced against Buyer, Sellers or the Company, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

- (d) All approvals, consents and waivers that are listed on Section 3.05 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.
- (e) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, would reasonably be expected to result in a Material Adverse Effect.
- (f) The Ancillary Documents to which it is a party shall have been executed and delivered by the Parties thereto and true and complete copies thereof shall have been delivered to Buyer.
- (g) Buyer shall have received resignations of the board of directors and officers of Atellis and the board of managers and Specified Officers of B-Line pursuant to Section 5.05.
- (h) Buyer shall have received the executed Employment Agreements from Kazoun and Huang, respectively.
- (i) B-Line shall have entered into the Cancellation Agreements with each of the holders of Class B Units, and shall have provided copies of the same to Buyer.
- (j) Kazoun, Johanna Fong, as Trustee of the Lucas K. Huang 2019 Gift Trust, Atellis, and any other party thereto, shall have entered into an instrument terminating the Majority Stockholder Agreement effective as of the Closing.
- (k) At least five Business Days before Closing, Sellers shall have delivered to Buyer the Closing Indebtedness Certificate and the Closing Transaction Expenses Certificate.
- (l) Sellers shall have delivered to Buyer the Estimated Closing Working Capital Statement contemplated in Section 2.04(a)(ii).
- (m) Sellers shall have delivered to Buyer a good standing certificate (or its equivalent) for the Company from the secretary of state or similar Governmental Authority of the jurisdiction under the Laws in which the Company is organized.
- (n) Sellers shall have delivered to Buyer a certificate pursuant to Treasury Regulations Section 1.1445-2(b) that each Seller is not a foreign person within the meaning of Section 1445 of the Code.
- (o) Sellers shall have delivered, or caused to be delivered, to Buyer stock certificates evidencing the Shares, free and clear of Encumbrances, duly endorsed in blank or accompanied by stock powers or other instruments of transfer duly executed in blank and with all required stock transfer tax stamps affixed.

- (p) Buyer shall have received a certificate, dated as of the Closing Date and signed by Sellers, and such other documentation reasonably requested by Buyer, that Atellis has fully complied with Section 5.13.
- (q) Buyer shall have received a certificate, dated the Closing Date and signed by the Sellers, that each of the conditions set forth in Section 7.02(a) and Section 7.02(b) have been satisfied.
- (r) Properly completed and executed originals of (i) IRS Form 8023 pertaining to the 338(h)(10) Elections and required schedules thereto and (ii) to the extent required, any similar forms with respect to state or local income Tax Law; provided that any portion of such forms that is required to reflect the final Purchase Price or Allocation Schedule will be delivered with such portions remaining blank.
- (s) Sellers shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.
- (t) Sellers shall have delivered to Buyer non-reviewed Financial Statements for the three month period ending June 30, 2019, which Financial Statements shall meet all of the representations, warranties and other conditions set forth in Section 3.06, except that they shall fully implement ASC 606.

**Section 7.03 Conditions to Obligations of Sellers.**

The obligations of Sellers to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Sellers' Representative's waiver, at or prior to the Closing, of each of the following conditions:

- (a) Other than the representations and warranties of Buyer contained in Section 4.01 and Section 4.04, the representations and warranties of Buyer contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 4.01 and Section 4.04 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.
- (b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are

qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

- (c) No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any material transaction contemplated hereby.
- (d) All approvals, consents and waivers that are listed on Section 4.02 of the Disclosure Schedules shall have been received, and executed counterparts thereof shall have been delivered to Sellers' Representative at or prior to the Closing.
- (e) The Ancillary Documents shall have been executed and delivered by the Parties thereto and true and complete copies thereof shall have been delivered to Sellers' Representative.
- (f) Buyer shall have delivered to Sellers cash in an amount equal to the Purchase Price by wire transfer of immediately available funds, to an account or accounts designated at least five Business Days prior to the Closing Date by Sellers' Representative in a written notice to Buyer.
- (g) Buyer shall have delivered to the Escrow Agent by wire transfer of immediately available funds the Indemnification Escrow Amount, the Tax Escrow Amount and the Purchase Price Adjustment Escrow Amount.
- (h) Buyer shall have delivered to third parties by wire transfer of immediately available fund that amount of money due and owing from Sellers to such third parties as Transaction Expenses as set forth on the Closing Transaction Expenses Certificate.
- (i) Buyer shall have delivered to holders of outstanding Indebtedness, if any, by wire transfer of immediately available funds that amount of money due and owing from the Company to such holder of outstanding Indebtedness as set forth on the Closing Indebtedness Certificate.
- (j) Sellers' Representative shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.03(a) and Section 7.03(b) have been satisfied.
- (k) Sellers' Representative shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents to which it is a party and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

- (l) Sellers' Representative shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Documents to which it is a party and the other documents to be delivered hereunder and thereunder.
- (m) Buyer shall have delivered to Sellers' Representative such other documents or instruments as Sellers' Representative reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

## **ARTICLE VIII INDEMNIFICATION**

### **Section 8.01 Survival.**

Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is 18 months from the Closing Date; *provided, that* the representations and warranties in (a) Section 3.01, Section 3.02, Section 3.03, Section 3.22, and Section 3.24 (collectively, "**Sellers' Fundamental Representations**"), and Section 4.01 and Section 4.04 (collectively, "**Buyer's Fundamental Representations**") shall survive until the earlier to occur of: (i) the expiration of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus 60 days, or (ii) the date that is 6 years after the Closing, and (b) Section 3.12, other than subsections (h) and (j) thereof (the "**Specified IP Representations**"), shall survive for a period of 3 years after the Closing. All covenants and agreements of the Parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

### **Section 8.02 Indemnification By Sellers.**

Subject to the other terms and conditions of this ARTICLE VIII, Sellers shall (x) severally and individually only, as to the representations and warranties set forth in Section 3.01 and the covenants set forth in Sections 5.06 and 5.07 (except as otherwise set forth in Section 8.09 with respect to Huang and the 2019 Trust), and (y) otherwise, jointly and severally, indemnify and defend each of Buyer and its Affiliates (including the Company) and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Sellers contained in this Agreement or in any certificate or instrument delivered by or on

behalf of Sellers pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Sellers pursuant to this Agreement;
- (c) any Transaction Expenses or Indebtedness of the Company outstanding as of the Closing to the extent not deducted from the Purchase Price in the determination of the Closing Date Payment pursuant to Section 2.04(a)(i);
- (d) any matters relating to the Class B Units of B-Line, including the Cancellation Agreement; or
- (e) any item referenced in Section 8.02(e) of the Disclosure Schedules.

#### **Section 8.03 Indemnification By Buyer.**

Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify and defend each of Sellers and their respective Affiliates and their respective Representatives (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date); or
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement (other than ARTICLE VI, it being understood that the sole remedy for any such breach thereof shall be pursuant to ARTICLE VI).

#### **Section 8.04 Certain Limitations.**

The indemnification provided for in Section 8.02 and Section 8.03 shall be subject to the following limitations:

- (a) Subject to Section 8.04(e), Sellers shall not be liable for any claim where the Losses relating to such claim (or relating to a series of similar claims arising in connection

- with the related facts and circumstances) are less than Fifteen Thousand Dollars (\$15,000) (the "**Minor Claim Threshold**").
- (b) Subject to Section 8.04(e), Sellers shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(a) exceeds [REDACTED] (the "**Deductible**"), in which event Sellers shall only pay or be liable for Losses in excess of the Deductible ("**Excess Losses**"). For the avoidance of doubt, all Losses shall be counted towards the Deductible regardless of whether such Losses exceed the Minor Claim Threshold.
  - (c) Subject to Section 8.04(e), the aggregate amount of all Losses for which Sellers shall be liable pursuant to Section 8.02(a) (i) other than in connection with Section 3.12, shall not exceed the Indemnification Escrow Amount, and (ii) in connection with the Specified IP Representations, shall not exceed \$[REDACTED].
  - (d) Subject to Section 8.04(e), Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.03(a) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(a) exceeds the Deductible, in which event Buyer shall only pay or be liable for Excess Losses. Subject to Section 8.04(c), the aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(a) shall not exceed the Indemnification Escrow Amount.
  - (e) Notwithstanding the foregoing, none of the limitations set forth in Section 8.04(a), Section 8.04(b), Section 8.04(c) or Section 8.04(d) shall apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any of Sellers' Fundamental Representations or Buyer's Fundamental Representations. Any such Losses are excluded from any Deductible and Minor Claim Threshold calculations, and Sellers or Buyer, as applicable, are liable for all such Losses from the first dollar. The aggregate amount of all Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any of Sellers' Fundamental Representations or Buyer's Fundamental Representations for which Sellers or Buyer shall respectively be liable shall not exceed the Purchase Price.
  - (f) Solely for purposes of determining the amount of any Losses for which indemnification may be sought under this ARTICLE VIII, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.
  - (g) Notwithstanding the foregoing, none of the limitations set forth in Section 8.04(a), Section 8.04(b), Section 8.04(c), Section 8.04(d) or Section 8.04(e) shall apply to Losses based upon, arising out of, with respect to or by reason of any fraud, criminal activity or willful misconduct of any Indemnifying Party.
  - (h) In no event will any Seller (whether pursuant to this ARTICLE VIII or otherwise) be liable for any other Seller's (i) breach of such Seller's individual representations and

warranties set forth in ARTICLE III, (ii) breach of any covenant set forth in this Agreement that is expressly applicable to such other Seller, or breach of any representations, warranties, covenants or agreements expressly applicable to such other Seller contained in any other agreement, instrument or document to which such other Seller is a party and entered into between such other Seller and Buyer in connection with this Agreement, or (iii) fraud, criminal activity or willful misconduct perpetrated by such other Seller in his, her or its capacity as such (and not as an officer or director of the Company), except to the extent such amount is otherwise recoverable pursuant to the provisions of this ARTICLE VIII.

- (i) Notwithstanding anything to the contrary herein, in no event will any Indemnified Party be entitled to recover or make a claim under this ARTICLE VIII for any amounts in respect of (i) special, consequential, punitive, incidental or indirect damages, or (ii) lost profits, diminutions in value, and, in particular, no "multiple of profits" or "multiple of cash flow" or other valuation methodology; provided, however, that the foregoing limitation shall not apply to any Losses (y) to the extent such Losses were reasonably foreseeable, or (z) if any Indemnified Party is held liable to any third party for such Losses. In addition, no indemnifying party will be liable hereunder in respect of any claim if such claim would not have arisen but for a retroactive change in Law or accounting policies occurring after the Closing Date. Attorney, consultant, and other professional fees and disbursements incurred by an indemnifying party in connection with this ARTICLE VIII will be arm's length.
- (j) The Sellers shall not be obligated to indemnify the Buyer Indemnitees with respect to any Losses with respect to any matter to the extent that such matter was expressly reflected in the Closing Working Capital, the Transaction Expenses or the Indebtedness as finally determined pursuant to Section 2.04.
- (k) The amount of any and all Losses under this ARTICLE VIII shall be determined net of any amounts recovered by the Indemnified Party under insurance policies, indemnities or other reimbursement arrangements with respect to such Losses (with such recoveries themselves to be net of any costs of obtaining such recovery, or any increased premiums or Taxes resulting therefrom), and the Indemnified Party shall use commercially reasonable efforts to recover under such insurance policies, indemnities and other reimbursement arrangements.

#### **Section 8.05 Indemnification Procedures.**

The party making a claim under this ARTICLE VIII is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the "**Indemnifying Party**". For the avoidance of doubt, it is agreed that if any Seller is the Indemnifying Party, the Sellers' Representative shall have sole authority to receive notices and otherwise take any action on behalf of the Indemnifying Party contemplated in this Agreement.



- (a) Third Party Claims. If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 45 calendar days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party are Sellers, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(b), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(b), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Sellers and Buyer shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section 5.06) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party,

management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

- (b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party, except as provided in this Section 8.05(b). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(a), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- (c) Direct Claims. Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than 45 days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have 45 days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such 45 day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

- (d) Tax Claims. Notwithstanding any other provision of this Agreement, the control of any claim, assertion, event or proceeding in respect of Taxes of the Company (including, but not limited to, any such claim in respect of a breach of the representations and warranties in Section 3.22 hereof or any breach or violation of or failure to fully perform any covenant, agreement, undertaking or obligation in ARTICLE VI) shall be governed exclusively by ARTICLE VI hereof.

**Section 8.06 Payments; Indemnification Escrow Fund.**

- (a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VIII, the Indemnifying Party shall satisfy its obligations within 15 Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds. The Parties hereto agree that should an Indemnifying Party not make full payment of any such obligations within such 15 Business Day period, any amount payable shall accrue interest from and including the date of agreement of the Indemnifying Party or final, non-appealable adjudication to and including the date such payment has been made at a rate per annum equal to 5%. Such interest shall be calculated daily on the basis of a 365 day year and the actual number of days elapsed, without compounding.
- (b) Any Losses payable to a Buyer Indemnitee pursuant to this ARTICLE VIII shall be satisfied (i) first, from the Indemnification Escrow Fund; (ii) second, to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnitees in the Indemnification Escrow Fund, from Sellers; and (iii) at the option of Buyer, to the extent the amount of Losses exceeds the amounts available to the Buyer Indemnitees in the Indemnification Escrow Fund, by set-off from any amounts due from Buyer to any Seller, including any earned but unpaid portion of the Additional Payment, if any.

**Section 8.07 Tax Treatment of Indemnification Payments.**

All indemnification payments made under this Agreement shall be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**Section 8.08 Effect of Investigation.**

The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party (including by any of its Representatives) or by reason of the fact that the Indemnified Party or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Section 7.02 or Section 7.03, as the case may be.

**Section 8.09 Exclusive Remedies.**

Subject to Section 2.04(b), Section 5.07 and Section 10.11, the Parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than

claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in ARTICLE VI and this ARTICLE VIII. For the avoidance of doubt, and notwithstanding any other provision hereof to the contrary, Huang and the 2019 Trust shall be jointly and severally liable for any and all obligations of either Huang or the 2019 Trust pursuant to this Agreement. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in ARTICLE VI and this ARTICLE VIII. Nothing in this Section 8.09 shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

## **ARTICLE IX TERMINATION**

### **Section 9.01 Termination.**

This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Sellers' Representative and Buyer;
- (b) by Buyer by written notice to Sellers' Representative if:
  - (i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by a Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure has not been cured by Sellers within ten days of Sellers' receipt of written notice of such breach from Buyer; or
  - (ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by September 30, 2019, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;
- (c) by Sellers' Representative by written notice to Buyer if:

- (i) No Seller is then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure has not been cured by Buyer within ten days of Buyer's receipt of written notice of such breach from Sellers; or
  - (ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by September 30, 2019, unless such failure shall be due to the failure of a Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or
- (d) by Buyer or Sellers' Representative in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

**Section 9.02 Effect of Termination.**

In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

- (a) as set forth in this ARTICLE IX and ARTICLE X hereof; and
- (b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.01 Expenses.**

Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 10.02 Notices.**

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Sellers:	Chafic Kazoun 2125 14th St. NW Unit 307W Washington, DC 20009 Facsimile: (202) 255-7638 E-mail: chafic@atellis.com
with a copy (which shall not itself constitute notice) to:	Pierce Atwood LLP One New Hampshire Avenue, Suite 350 Portsmouth, NH 03801 Facsimile: (603) 433-6372 E-mail: spueschel@pierceanwood.com Attention: Scott E. Pueschel
If to Buyer:	Laerdal Medical Corporation 167 Myers Corners Road Wappingers Falls, NY 12590, USA E-mail: Alf-Christian.Dybdahl@laerdal.com Attention: Alf-Christian Dybdahl
with a copy (which shall not itself constitute notice) to:	Advokatfirma Bull Årstad DA Kirkegata 9 4307 Sandnes, Norway Facsimile: +47 51 60 38 01 E-mail: etr@bullarstad.no Attention: Espen Trædal

**Section 10.03 Interpretation.**

For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole and the words "provided to Buyer", "made available to Buyer" or similar language mean that the document or information in question was posted to the "Project Synergy"

virtual data room hosted on Dropbox. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 10.04 Headings.**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 10.05 Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 5.07(e), upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 10.06 Entire Agreement.**

This Agreement and the Ancillary Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 10.07 Successors and Assigns.**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that prior to the

Closing Date, Buyer may, without the prior written consent of Sellers, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 10.08 No Third-party Beneficiaries.**

Except as provided in Section 6.03 and ARTICLE VIII, this Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 10.09 Amendment and Modification; Waiver.**

This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing specifically designated as an amendment hereto, signed by the Sellers' Representative (on behalf of Sellers and the Sellers' Representative) and Buyer. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

- (a) This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction).
- (b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF NEW YORK IN EACH CASE LOCATED IN THE CITY OF NEW YORK AND COUNTY OF NEW YORK, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH



COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

- (c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

**Section 10.11 Specific Performance.**

The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 10.12 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 10.13 Conflict of Interest; Attorney-Client Privilege.**

- (a) If Sellers' Representative so desires, and without the need for any consent or waiver by the Buyer or the Company, Pierce Atwood LLP is permitted to represent the Sellers' Representative after the Closing in connection with any matter related to the transactions contemplated by this Agreement or any disagreement or dispute relating thereto. Without limiting the generality of the foregoing, after the Closing, Pierce Atwood LLP is permitted to represent the Sellers' Representative in connection with any negotiation, transaction or dispute with Buyer or the Company or any of their respective agents or Affiliates under or relating to this Agreement, any transaction contemplated by this Agreement, and any related matter, such as claims for indemnification and disputes involving employment or other agreements entered into

in connection with this Agreement. The Buyer and the Company consent to the disclosure by Pierce Atwood LLP in the course of its representation of the Sellers' Representative or the Company of any and all information related to Sellers' Representative and the Company, regardless of whether such information is subject to attorney-client privilege or Pierce Atwood LLP's duty of confidentiality and whether or not such disclosure is made before or after the Closing. Upon and after the Closing, the Company shall cease to have any attorney-client privilege with Pierce Atwood LLP unless and to the extent Pierce Atwood LLP is specifically engaged in writing by the Company to represent the Company after the Closing and either such engagement involves no conflict of interest with respect to Sellers' Representative, or Sellers' Representative consents in writing at the time of such engagement. Any such representation of the Company by Pierce Atwood LLP after the Closing will not affect the foregoing provisions hereof. Furthermore, Pierce Atwood LLP is permitted to withdraw from any representation of the Company in order to be able to represent or continue so representing Sellers' Representative, even if such withdrawal causes the Company or the Buyer additional legal expense, delay or prejudice.

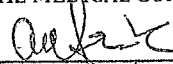
- (b) The Buyer, on behalf of itself and the Company, and the Sellers' Representative agree that all communications among Pierce Atwood LLP, the Sellers' Representative, the Company and their respective representatives that relate in any way to the transaction contemplated by this Agreement are subject to the attorney-client privilege and that the expectation of client confidence belongs to the Sellers' Representative and will be controlled by the Sellers' Representative following the Closing Date and will not pass to or be claimed by the Buyer or the Company following the Closing Date. If Buyer obtains any access to those privileged communications, such privileged communications shall still be deemed privileged and such access shall not affect the ability of the Sellers' Representative to assert the privileged nature of the communications in any Action between the Sellers' Representative and Buyer. Notwithstanding the foregoing, in the event that a dispute arises between the Buyer, the Company and a third party other than a party to this Agreement or an Affiliate thereof after the Closing, such party may assert the attorney-client privilege to prevent disclosure of confidential communications by Pierce Atwood LLP to such third party; provided, however, that such party may not waive such privilege without the prior written consent of the Sellers' Representative, if such waiver would reasonably be expected to result in liability of the Sellers.

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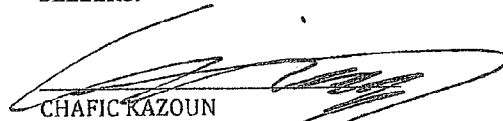
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

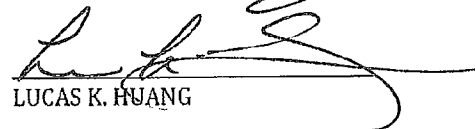
**BUYER:**

LAERDAL MEDICAL CORPORATION

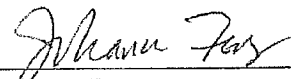
By:   
Name: ALF-CHRISTIAN DIRDAHL  
Title: Chairman of the Board

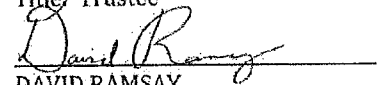
**SELLERS:**

  
CHAFIC KAZOUN

  
LUCAS K. HUANG

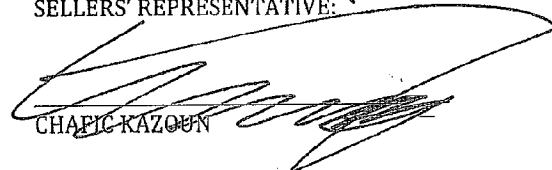
LUCAS K. HUANG 2019 GIFT TRUST

By:   
Name: Johanna Fong  
Title: Trustee

  
DAVID RAMSAY

  
MINH-CHAU KERCHNER

SELLERS' REPRESENTATIVE:

  
CHAFIC KAZOUN

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[SIGNATURE PAGE TO SHARE PURCHASE AGREEMENT]