
ASSET CONTRIBUTION AGREEMENT

by and among

Thermo Telecom Partners LLC

and

Xspedius Management Co., LLC

and

e.spire Communications, Inc.

Dated as of May 23, 2002

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ASSET CONTRIBUTION AGREEMENT

ASSET CONTRIBUTION AGREEMENT, dated as of May 23, 2002 (this "Agreement"), by and among Thermo Telecom Partners LLC, a Colorado limited liability company ("Thermo"), Xspedius Management Co., LLC, a Delaware limited liability company ("XMC"), e.spire Communications, Inc. ("e.spire") and its affiliates set forth on the signature page hereto (collectively, the "e.spire Entities" and, individually, each an "e.spire Entity"). Capitalized terms used herein and not otherwise defined shall have the meanings set forth in Article XII.

W I T N E S S E T H :

WHEREAS, the e.spire Entities are engaged in the business of constructing and operating a telecommunications network and providing related telecommunications services;

WHEREAS, each of the e.spire Entities has filed a voluntary petition (collectively, the "Petitions") for relief commencing a case (collectively, the "Chapter 11 Case") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Thermo through XMC desires to obtain ownership of substantially all of the assets of the e.spire Entities;

WHEREAS, XMC desires to accept the assignment from the e.spire Entities, and the e.spire Entities desire to convey, assign, and transfer to XMC, substantially all of the assets and properties of the e.spire Entities, together with certain specified obligations and liabilities relating thereto, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 105, 363, and 365 of the Bankruptcy Code, in exchange for a fifty percent (50%) membership interest in XMC; and

WHEREAS, Thermo desires to purchase from the e.spire Entities, and the e.spire Entities desire to have the right to convey, assign and transfer to Thermo, a forty-eight percent (48%) ownership interest in XMC, all in the manner and subject to the terms and conditions set forth herein and in accordance with Section 105, 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants, and agreements set forth herein, the Parties hereto agree as follows:

ARTICLE I CONTRIBUTION AND SALE OF ASSETS

Section 1.1 Contribution by Thermo. On the terms and subject to the conditions set forth in this Agreement, on the Contribution Date, Thermo shall commit to contribute to XMC \$18,750,000 (the "Thermo Contribution") which shall be used as working capital to fund the ongoing expenses of XMC as provided in the Operating Agreement. Prior to the date of this Agreement, Thermo has paid \$1,500,000 (the "Deposit") to the escrow account of the e.spire Entities' counsel by wire transfer of immediately available funds. The Deposit shall be held in escrow by the e.spire Entities' legal counsel and shall be refunded to Thermo if this Agreement is terminated pursuant to Section 9.1 or at a time when Thermo or the e.spire Entities would be entitled to terminate this Agreement pursuant to Section 9.2 or Section 9.4. Otherwise, the Deposit shall be nonrefundable. At the Closing, if the Put Right has been exercised, the Deposit shall be applied toward payment by Thermo of the Purchase Price and, if the Put Right has not been exercised, the Deposit shall be returned to Thermo. The Cash Purchase Price shall be increased by the dollar amount of any prepaid expenses (including prepaid services) paid by the e.spire Entities to BellSouth, SBC, Qwest/U.S. West, Verizon or Sprint or any of their affiliates; provided, however, that none of the e.spire Entities shall enter into any such prepaid arrangements without the consent of the Purchaser, it being understood that prepaid expenses of up to \$2,000,000 received over time will increase the Purchase Price as such services are rendered provided that the e.spire Entities may reasonably request that such amounts of up to \$2,000,000 be accelerated and immediately payable.

Section 1.2 Contribution of Assets by the e.spire Entities. On the terms and subject to the conditions set forth in this Agreement, on the Contribution Date, the e.spire Entities shall contribute, assign, transfer, convey, and deliver to XMC, and XMC shall acquire and accept from the e.spire Entities, all of the e.spire Entities' rights, title, and interests in and to the Assets, free and clear of all Encumbrances, in each case other than Permitted Encumbrances. The term "Assets" means all assets and properties of the e.spire Entities, wherever located (including in the possession of vendors or other third parties or elsewhere), whether tangible, intangible, absolute or contingent, of whatever nature, whether real, personal or mixed, whether now existing or hereafter acquired, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any e.spire Entity, as the same shall exist at the date on which this Agreement is executed and delivered by XMC and Thermo, and all contractual rights and claims of the e.spire Entities relating to the foregoing, including, without limitation, those assets that are described below (but shall specifically exclude the Excluded Assets set forth in Section 1.3):

- (a) all Network Facilities;
- (b) all Collocation-Related Assets and all Intellectual Property Assets;

(c) all copies of network or systems design specification materials and other printed or written materials in any form or medium relating to the e.spire Entities' ownership or operation of the Assets that the e.spire Entities are not required by law to retain and duplicates of any such materials that the e.spire Entities are required by law to retain;

(d) subject to Section 1.6 and 6.4, all contracts, leases (including unexpired real property leases), subleases, licenses, permits, registrations, authorizations and agreements related to the Assets, or used in connection with the Operations, the Regulatory Approvals and the Communications Licenses, including, without limitation, those listed on Exhibit 1.2(d) (which Exhibit also lists all Cure Amounts required to assume such Contracts), and any and all claims, rights of setoff or recoupment, causes of action, accounts receivable, contra accounts and/or rights to reciprocal compensation arising under or in connection therewith (collectively, the "Contracts") or the exclusive right to the benefits of the Contracts which are not Assumed Contracts as of the Contribution Date pending Closing;

(e) all rights under all warranties, representations, and guarantees made by suppliers, manufacturers, and contractors in connection with the Assets, including, without limitation, those described in this Section 1.2;

(f) all rights under noncompetition, confidentiality, nondisclosure and similar agreements related to the Assets or the Business Employees;

(g) all books and records of the e.spire Entities that relate to the Assets or the Transferred Employees, including, without limitation, data processing records, employment and personnel records, records relating to suppliers, supplier lists, cost information, vendor data, specifications and drawings, correspondence and lists, product literature, artwork, design, development and manufacturing files, quality records and other data; provided, however, the e.spire Entities may retain copies of (x) all books and records included in the Assets to the extent necessary or useful for the administration of the Chapter 11 Case or any other Action to which they are parties, the filing of any Tax Return or compliance with any applicable laws and (y) all personnel files;

(h) to the extent not part of the Intellectual Property Assets, all work telephone numbers and electronic mail addresses relating to the Transferred Employees and domain names related to the operating system software;

(i) to the extent not part of the Intellectual Property Assets, all technical information, data, specifications, research and development information, engineering drawings, operating and maintenance manuals related primarily to, or used or useful in connection with, the Assets, the network or any operations support systems;

(j) all franchises, rights of way, easements, licenses, other agreements and authorizations relating to the grant of rights and interests or access to the real property underlying the e.spire Entities' network (the "Rights of Way");

(k) all Fiber, Conduit and Manholes;

(l) all equipment; and

(m) all customer contracts.

Section 1.3 Excluded Assets. The following assets and rights are not included in the Assets and shall be retained by the e.spire Entities (collectively, the "Excluded Assets");

(a) all claims or rights and causes of actions related to accounts receivables and reciprocal compensation arising prior to the entry of the Sale Order for services provided prior to that date (the "Accounts Receivable");

(b) assets used solely in Operations in New York, New York and Philadelphia, Pennsylvania;

(c) all causes of action arising prior to the Closing Date including under Chapter 5 of the Bankruptcy Code;

(d) all contracts, leases (including unexpired real property leases), subleases, licenses, permits, registrations, authorizations and agreements set forth on Section 1.3 of the e.spire Disclosure Schedule; and

(e) all other assets set forth on Section 1.3 of the e.spire Disclosure Schedule, as well as any directors' and officers' liability insurance.

Section 1.4 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, XMC shall assume and/or accept assignment from the e.spire Entities and thereafter pay, perform, or discharge in accordance with their terms only the following obligations of the e.spire Entities (collectively, the "Assumed Liabilities");

(a) (i) the obligations of the e.spire Entities under Assumed Contracts that, by the terms of such Assumed Contracts, arise after the Contribution Date and relate to periods following the Contribution Date and are to be observed, paid, discharged, or performed, as the case may be, in each case, at any time after the Contribution Date; and (ii) the lesser of (y) all cure amounts payable in order to effectuate, pursuant to the Bankruptcy Code, the assumption by and assignment to XMC of any Assumed Contract, in the amounts and to the extent as reflected in Exhibit 1.2(d) ("Cure Amounts"), and (z) the Allowed Cure Claim. Consistent with

Section 6.6, Thermo may deduct from the Cash Purchase Price at Closing any Excess Cure Claims; and

(b) the obligations of the e.spire Entities arising under any Delayed Rejection Contract listed on Exhibit 1.6 to the extent provided in Section 1.6.

Section 1.5 Excluded Liabilities. Notwithstanding anything to the contrary contained herein, except for the Assumed Liabilities, neither XMC nor Thermo shall assume, or in any way be liable or responsible for, any liabilities, commitments, or obligations, whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed or otherwise, of the e.spire Entities, including, without limitation, all liabilities, commitments or obligations relating to or arising from the Assets or the use thereof (the "Excluded Liabilities"). Without limiting the generality of the foregoing, neither XMC nor Thermo shall assume, and the e.spire Entities shall remain fully responsible for, the following liabilities, commitments, or obligations, whether known or unknown, disclosed or undisclosed, absolute, contingent, fixed or otherwise (all of which shall be Excluded Liabilities):

(a) any liabilities, commitments or obligations that arise with respect to the Assets or the use thereof on or prior to the Closing Date or relate to periods on or prior to the Closing Date or are to be observed, paid, discharged or performed on or prior to the Closing Date (in each case, including any liabilities that result from, relate to or arise out of tort or other product liability claims) other than, in each case, with respect to Assumed Contracts and Delayed Rejection Contracts to the extent provided in Section 1.6;

(b) any liability, commitment or obligation of, or required to be paid by, any of the e.spire Entities for any Taxes of any kind for any period;

(c) any liability, commitment or obligation for any Taxes relating to the Operations or the Assets for or applicable to any Pre-Closing Tax Period (any liability, commitment or obligation set forth in this clause (c) or in clause (b) above, "Excluded Taxes");

(d) any liability or obligation of any kind under any contract or agreement, written or oral, that is not an Assumed Contract or a Delayed Rejection Contract (but only to the extent provided in Section 1.6); and

(e) any Excess Cure Claim alleged to be owing to a non-debtor party of an Assumed Contract.

Except for the Assumed Liabilities, neither XMC nor Thermo shall assume, and the e.spire Entities shall retain and discharge when due, all other obligations and liabilities of the e.spire Entities.

For the purposes of this Agreement, in the case of any Straddle Period, (i) Property Taxes for the Pre-Closing Tax Period shall be equal to the amount of such Property Taxes for the entire

Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the entire Straddle Period, and (ii) Taxes (other than Property Taxes and Transfer Taxes) for the Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date.

Section 1.6 Rejection of Contracts; Delayed Rejection Contracts. Between the date of this Agreement and the Closing Date, XMC may delete Contracts from the list of Contracts in Exhibit 1.2(d) (each, a "Rejected Contract"); provided that (a) there shall be no adjustment to the Purchase Price as a result of such removal of any Contract from such list of Contracts, and (b) XMC shall reimburse the e.spire Entities and their bankruptcy estates for any and all costs or expenses associated with any Rejected Contract arising from the date hereof until the date occurring twenty (20) days after the e.spire Entities have received notice from XMC of such rejection. Upon deletion of any Contract from the list of Contracts pursuant to the terms of this Section 1.6, XMC shall not assume any liability with respect to such Contract. Any such rejection shall cause the Contract so rejected to cease to constitute an Assumed Contract or Delayed Rejection Contract for all purposes of this Agreement. The Contracts listed on Exhibit 1.6 (the "Delayed Rejection Contracts") shall not be rejected by the e.spire Entities, without the consent of XMC, prior to June 30, 2002 (the "Delayed Rejection Date"); provided, that, if prior to June 30, 2002, XMC directs the e.spire Entities to reject any of the Delayed Rejection Contracts, the e.spire Entities shall do so. Any such rejection shall cause the Contract so rejected to cease to constitute an Assumed Contract or Delayed Rejection Contract for all purposes of this Agreement and there shall be no adjustment to the Purchase Price as a result thereof. From the Contribution Date through the earlier of the Delayed Rejection Date and the date occurring twenty (20) days after the e.spire Entities have received notice from XMC of the rejection of such Delayed Rejection Contract, XMC shall make all payments for goods or services provided during said period under the Delayed Rejection Contract, and with respect to those Delayed Rejection Contracts subject to Section 366 of the Bankruptcy Code, XMC shall provide adequate assurance of future payment on and after the Contribution Date. Upon request of XMC, the e.spire Entities shall cooperate with and provide reasonable assistance to XMC in XMC's efforts to negotiate acceptable terms and conditions of adequate assurance of future payment, assumption and/or modification of any of the Delayed Rejection Contracts with the parties to any such contracts. Contracts that are not Assumed Contracts shall be rejected by the e.spire Entities no later than the Delayed Rejection Date, unless XMC otherwise consents in the case of one or more individual Contracts, which consent shall not be withheld unreasonably.

Section 1.7 Structure. The e.spire Entities acknowledge and agree that on or before the Closing Date, XMC and Thermo reserve the right to alter the structure of the Contemplated Transactions to accommodate the issuance of and the granting of security to secure repayment of the Note (as defined below). Such alterations of the structure shall not adversely effect the e.spire Entities.

ARTICLE II THE CLOSING

Section 2.1 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Saul Ewing LLP, 222 Delaware Avenue, Suite 1200, Wilmington, DE 19801 at 10:00 a.m. on the Business Day after the conditions set forth in Sections 8.1, 8.2 and 8.3 shall have been satisfied or waived, or at such other time, date and place as shall be fixed by agreement among the Parties hereto (the date of the Closing being herein referred to as the "Closing Date"); provided, that, the Parties shall use their best efforts to effectuate the Closing on or before June 30, 2002.

Section 2.2 Contribution Date Transactions. Subject to the terms and conditions hereof, on the Contribution Date:

(a) the e.spire Entities shall transfer the Assets to XMC in exchange for a 50% membership interest in XMC; and

(b) the e.spire Entities and Thermo shall enter into an Amended and Restated Limited Liability Company Agreement (the "Operating Agreement") for XMC, which Operating Agreement shall provide, inter alia, for the Thermo Contribution and:

(i) the right (the "Put Right") of the e.spire Entities to sell a 48% membership interest in XMC to Thermo at the Closing for a purchase price (the "Purchase Price") of \$68,000,000 (less the amount of any Excess Cure Claims), consisting of (y) the Deposit plus \$16,500,000 in immediately available funds (the "Cash Purchase Price"), and (z) a promissory note in the original principal amount of \$50,000,000 (the "Note"), which shall (i) reduce the amount outstanding and owing by the e.spire Entities under the debtor-in-possession financing by \$45,000,000 and (ii) contain terms and conditions consistent with those set forth on Exhibit 2.2(b);

(ii) if this Agreement is terminated, Thermo's entitlement to redeem its interest in XMC in exchange for all cash and cash equivalents then held by XMC;

(iii) if all of the conditions to Closing set forth in Section 8.3 have been satisfied or waived and the Put Right is not exercised prior to the Closing, then at the Closing the members of XMC shall be required to contribute to XMC \$20,000,000 each to fund the needs of XMC until the time at which it is anticipated that XMC will achieve positive cash flow; failure of any member to make such contribution shall entitle the other member to purchase a 48% membership interest in XMC from the non-contributing member for \$17,000,000; and

(iv) in the event of a business combination, merger, liquidation or similar transaction of XMC or its successors, the e.spire Entities shall receive the same treatment as Thermo in respect of their 2% minority interest in XMC as Thermo receives in respect of its interest in XMC or its successor, along with tag-along rights in the event of a sale.

(c) the e.spire Entities and XMC shall enter into a management agreement pertaining to the period on and after the Contribution Date (the "Management Agreement") in the form of Exhibit 2.2(c).

Section 2.3 Closing Transactions. Subject to the terms and conditions hereof, at the Closing:

(a) If the Put Right is exercised, the e.spire Entities shall convey, transfer and assign to Thermo all of the e.spire Entities' right, title and interest in and to a 48% membership interest in XMC, pursuant to and in accordance with the terms and conditions of the Operating Agreement; and

(b) XMC shall assume the Assumed Liabilities pursuant to one or more duly executed Assignment and Assumption Agreements.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE E.SPIRE ENTITIES

XMC and Thermo specifically acknowledge and agree to the following with respect to the representations and warranties of the e.spire Entities:

A. XMC and Thermo will not have any recourse to any of the e.spire Entities or to any of the directors, officers, employees, legal counsel, financial advisors, representatives, accountants, professionals, auditors and other agents of any of the e.spire Entities in the event any of the representations and warranties made herein or deemed made are untrue as at any time of expression thereof except with respect to any representation or warranty which is knowingly false when made or made with the intent to defraud. The only remedy for a breach of such representations and warranties shall be Thermo's option, under certain circumstances, not to close in accordance with and subject to the limitations in Sections 9.1, 9.2 and 9.4 hereof and, without limiting the foregoing, XMC and Thermo shall have no remedy whatsoever for any such breach after the Closing.

B. Without limitation of their rights under Section 5.2, XMC and Thermo have conducted their own due diligence investigations of the Assets.

C. If information provided in any Section of the schedule delivered by the e.spire Entities to XMC and Thermo by separate letter dated as of the date hereof and made a part hereof (which schedule contains appropriate references to identify the representations and warranties

herein to which the information in such schedule relates) (the "e.spire Disclosure Schedule") is applicable to any other Sections herein, then such information shall be deemed to have been provided with respect to all such Sections herein provided that the relevance of such information to such other Sections is reasonably apparent.

D. Except when the context specifically requires, the e.spire Entities make no representations or warranties in this Article III with respect to any Excluded Assets.

Except as otherwise disclosed to XMC and Thermo in the e.spire Disclosure Schedule, each of the e.spire Entities, jointly and severally, represents and warrants to XMC and Thermo as follows:

Section 3.1 Authority Relative to this Agreement. Each of the e.spire Entities is duly organized and validly existing under the laws of its state of organization. Subject to the entry and effectiveness of the Sale Order, each of the e.spire Entities has the corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery, and performance of this Agreement by each of the e.spire Entities and the consummation by each of the e.spire Entities of the Contemplated Transactions have been duly authorized by all requisite corporate or limited liability company actions thereof. Subject to the entry and effectiveness of the Sale Order, this Agreement has been duly and validly executed and delivered by each of the e.spire Entities, and (assuming this Agreement constitutes a valid and binding obligation of XMC and Thermo) constitutes a valid and binding agreement of each of the e.spire Entities, enforceable against each of the e.spire Entities in accordance with its terms.

Section 3.2 Consents and Approvals. No material consent, approval, authorization of, declaration, filing, notice to or registration with, any Governmental Authority is required to be made or obtained by any of the e.spire Entities in connection with the execution, delivery, and performance of this Agreement and the consummation of the Contemplated Transactions, except (a) for consents, approvals, authorizations of, declarations, or filings with the Bankruptcy Court including without limitation the Sale Order, (b) to the extent required by applicable law, for the filing of a notification and report form under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder (the "HSR Act"), and the expiration or earlier termination of the applicable waiting period thereunder, and (c) for the Regulatory Approvals. The items referred to in clauses (a) through (c) of this Section 3.2 are hereinafter referred to as the "Governmental Requirements."

Section 3.3 No Violations. Assuming that the Governmental Requirements will be satisfied, made, or obtained and will remain in full force and effect, and assuming receipt of the consents, approvals and authorization of parties to certain of the Assumed Contracts, including any set forth on Section 3.10(a) of the e.spire Disclosure Schedule, neither the execution, delivery, or performance of this Agreement by any of the e.spire Entities, nor the consummation by any of the e.spire Entities of the Contemplated Transactions, nor compliance by any of the e.spire Entities with any of the provisions hereof will (a) conflict with or result in

any breach of any provisions of the articles of incorporation or bylaws or similar organizational instrument of such e.spire Entity, (b) violate any order, writ, injunction, decree, decision, statute, rule, regulation, or ordinance applicable to such e.spire Entity, the Operations or the Assets, or (c) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on any Asset, except, in the case of clauses (b) and (c), for any of the foregoing that (x) would not reasonably be expected to have a Material Adverse Effect, or (y) are excused by or unenforceable as a result of the filing of the Petitions or any provision of the Bankruptcy Code or any applicable law.

Section 3.4 Tangible Property. The equipment included in the Assets is in good operating condition and repair (normal wear and tear excepted) and suitable for its use as used by the e.spire Entities in the Operations as of the date hereof.

Section 3.5 Litigation. There is no judgment, decree, decision, injunction, rule, or order of any Governmental Authority or arbitrator pending against any of the e.spire Entities that is seeking to enjoin or prevent the Contemplated Transactions. Except as listed in Section 3.5 of the e.spire Disclosure Schedule, there is no Legal Proceeding instituted or pending or, to the knowledge of the e.spire Entities, threatened against any of the e.spire Entities, except for those that are not, in the aggregate, reasonably likely to have a Material Adverse Effect or to delay or prevent the consummation of the Contemplated Transactions.

Section 3.6 No Violation of Law. Except to the extent excused by or unenforceable as a result of the commencement or pendency of the Chapter 11 Case or the application of any provision of the Bankruptcy Code, none of the e.spire Entities is in violation of, or has been given notice of or been charged with any violation of, any law, statute, order, rule, regulation, ordinance, decision, or judgment of any Governmental Authority, any insurance company or fire rating agency, or any other similar board, organization or authority, which violation could reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect and except for the Chapter 11 Case, to the e.spire Entities' knowledge, no investigation or review by any Governmental Authority of the e.spire Entities' Operations is pending or threatened in writing.

Section 3.7 Permits and Licenses.

(a) Each of the e.spire Entities has obtained all licenses, permits, certificates, franchises, consents, waivers, registrations or other regulatory authorizations from the appropriate Governmental Authority in each applicable jurisdiction including, without limitation, State PUCs (together with any renewals, extensions, or modifications thereof and any additions thereto made as of the Closing Date, the "State Licenses") and holds all licenses, permits, certificates, franchises, registrations, and other authorizations issued by the FCC (together with any renewals, extensions or modifications thereof and any additions thereto made as of the Closing Date, the "FCC Licenses") that are required for the conduct of the Operations, and for the operation and holding of the Assets, except where failure to hold such State Licenses

or FCC Licenses could not reasonably be expected to result in a Material Adverse Effect. All FCC Licenses and the State Licenses (collectively, the "Communications Licenses") are in full force and effect and are set forth in Section 3.7 of the e.spire Disclosure Schedule.

(b) Other than Communications Licenses, the loss of which would not reasonably be expected to result in a Material Adverse Effect, and except as set forth in Section 3.7 of the e.spire Disclosure Schedule, each of the Communications Licenses included in the Assets was duly issued, is valid and in full force and effect and has not been suspended, surrendered, revoked or otherwise declared invalid.

Section 3.8 Environmental Matters. With respect solely to the Assets, (a) each of the e.spire Entities is in compliance, in all material respects, with all United States federal, state, and local laws, rules, regulations, orders or ordinances governing the protection of the environment, health or safety (collectively, "Environmental Laws"); (b) no e.spire Entity has received any notice with respect to any Collocation Site from any Governmental Authority or third party alleging that any e.spire Entity or any aspect of the Operations is not in compliance with any Environmental Law; (c) there has been no release by the e.spire Entities of a Hazardous Substance on any Collocation Site; (d) the e.spire Entities have not received any request for information, notice of claim, demand or notification that they may be a "potentially responsible party" with respect to any investigation or remediation of any threatened or actual release of any Hazardous Substance at any Collocation Site; (e) none of the e.spire Entities or any Included Collocation Site is subject to any order from or agreement with any Governmental Authority or private party respecting the intentional or unintentional spilling, leaking, disposing, discharging, emitting, depositing, injecting, leaching, escaping, or any other release or threatened release of any Hazardous Substance at any Collocation Site (collectively, a "Release"); (f) there are no judicial, administrative or other Actions, suits or proceedings, pending or, to the e.spire Entities' knowledge, threatened, alleging a material violation of any Environmental Law with respect to any of the Assets; (g) to the e.spire Entities' knowledge, no Collocation Site is subject to any lien or security interest in favor of any Governmental Authority or other party for (x) liability under any Environmental Laws, or (y) damages arising from or costs incurred by such Governmental Authority in respect of a Release or threatened Release or the presence of any Hazardous Substance on, in, at, under or within any Collocation Site, or the Release of any Hazardous Substance on, in, at, under, within, from or to any Collocation Site; and (h) if applicable, each e.spire Entity has heretofore made available to XMC and Thermo true and complete copies of all reports, surveys or evaluations of, or with respect to, the environmental condition of any Collocation Site that were prepared during the e.spire Entities' possession of any Collocation Site.

Section 3.9 Labor Matters. No e.spire Entity is a party to a collective bargaining agreement, and, to the e.spire Entities' knowledge, no labor unions or other organizations represent, purport to represent, or have attempted to represent, any employee of an e.spire Entity with respect to the employee's employment with such e.spire Entity.

Section 3.10 Title to and Use of Property.

(a) Except as set forth in Section 3.10(a) of the e.spire Disclosure Schedule, upon entry of the Sale Order and completion of the Contribution Date transactions set forth in Section 2.2, XMC will acquire all right, title and interest in and to all of the Assets (other than Assets to which XMC is unable to hold title prior to obtaining Regulatory Approvals and Contracts that are not Assumed Contracts as of the Contribution Date) and at the Closing XMC will acquire all right, title and interest to all of the Assets and, if the Put Right is exercised, Thermo will acquire ownership of the 48% membership interest in XMC, in each case, free and clear of any and all Encumbrances (including any and all claims that may arise by reason of the execution, delivery or performance by the e.spire Entities of this Agreement) other than Permitted Encumbrances and, with respect to Assumed Contracts, subject to the obligations of XMC under Section 1.4(a).

(b) The Assets do not include any shares of corporate stock, partnership or limited liability company interests or any other equity interest in any entity nor is any Asset required to be treated as such for federal income Tax purposes.

(c) The Assets (including the e.spire Entities' interest in all leased assets) constitute all of the assets held for use or used in connection with the Operations.

Section 3.11 Restrictive Agreements. Except as set forth in Section 3.11 of the e.spire Disclosure Schedule, none of the e.spire Entities, nor any officer, director, or key employee of any e.spire Entity who is a Transferred Employee, is a party to any agreement that purports to restrict or prohibit such Person, directly or indirectly, from engaging in the business of the e.spire Entities or any business involving telecommunications or any other business currently engaged in by the e.spire Entities, or to the knowledge of the e.spire Entities, by XMC or any Affiliate of XMC or Thermo.

Section 3.12 Intellectual Property Assets.

(a) "Intellectual Property Assets" means all of the following as they exist in all jurisdictions throughout the world, in each case, to the extent used in the Operations and owned by, licensed to, authorized for use by, or otherwise used by the e.spire Entities:

(i) patents, patent applications, and other patent rights (including any divisions, continuations, continuations-in-part, substitutions, or reissues thereof, whether or not patents are issued on any such applications and whether or not any such applications are modified, withdrawn, or resubmitted);

(ii) trademarks, service marks, trade dress, trade names, brand names, domain names, designs, logos, or corporate names, whether registered or unregistered, and all registrations and applications for registration thereof;

(iii) copyright registrations and applications for registration thereof and non-registered copyrights;

(iv) trade secrets, designs, research, processes, procedures, techniques, methods, know-how, data, mask works, inventions, and other proprietary rights (whether or not patentable or subject to copyright, mask work, or trade secret protection); and

(v) computer software programs including all source codes, object codes, and material documentation related thereto.

(b) Section 3.12(b) of the e.spire Disclosure Schedule sets forth all United States and foreign patents and patent applications, trademark and service mark registrations and applications, and copyright registrations and applications owned or licensed by any e.spire Entity, specifying as to each such item, as applicable:

(i) the nature of the item, including the title, (ii) the owner of the item, (iii) the jurisdictions in which the item is issued or registered or in which an application for issuance or registration has been filed, and (iv) the issuance, registration, or application numbers and dates.

(c) Except as would not reasonably be expected to result in a Material Adverse Effect, the e.spire Entities have taken all action necessary to maintain and protect each material Intellectual Property Asset owned by the e.spire Entities.

Section 3.13 Board Approval and Recommendation. The Boards of Directors of the e.spire Entities have determined that an immediate sale and assignment of the Assets pursuant to this Agreement under Sections 363, 365 and 105 of the Bankruptcy Code is in the best interests of the e.spire Entities and their creditors.

Section 3.14 Cure Amounts. The Cure Amounts listed in Exhibit 1.2(d) are, to the best of the e.spire Entities' knowledge following a reasonable investigation, all amounts payable in order to effectuate, pursuant to the Bankruptcy Code, the assumption by the e.spire Entities and assignment, to XMC of each Contract listed on Exhibit 1.2(d), net of any and all claims, rights of setoff or recoupment, causes of action, accounts receivable, contra accounts and/or rights of reciprocal compensation other than Excluded Assets arising under or in connection with such Contracts.

Section 3.15 Real Property. The e.spire Entities do not own any Real Property.

Section 3.16 Tax Matters. Except as set forth in Section 3.16 of the e.spire Disclosure Schedule, all sales, use, employment, payroll, income tax withholding and other

Taxes, the nonpayment of which may give rise to successor liability under applicable non-bankruptcy law, have been paid in full.

Section 3.17 No Implied Representation. Notwithstanding anything to the contrary contained in this Agreement, it is the explicit intent of each of the Parties hereto that the e.spire Entities are making no representation or warranty whatsoever, express or implied, except those representations and warranties contained in Article III above. It is understood that, except to the extent otherwise expressly provided herein, XMC takes the Assets "as is" and "where is." It is hereby acknowledged that the e.spire Entities make no other representations and warranties, including without limitation any implied representation and warranty as to condition, merchantability, suitability or fitness for a particular purpose as to any of the Assets. The disclosure of any matter or document in the e.spire Disclosure Schedule or Exhibits shall not imply any warranty or representation not expressly given in this Agreement, nor shall such disclosure of itself be taken as extending the scope of the warranties or any other obligation under this Agreement. It is understood that any cost estimates, projections or other predictions contained or referred to in the Schedules hereto and any cost estimates, projections or predictions or any other information contained or referred to in other materials that have been or shall hereafter be provided XMC or Thermo or any of their agents or representatives are not and shall not be deemed to be representations or warranties of the e.spire Entities. The inclusion of an item in the e.spire Disclosure Schedule shall not constitute an admission that such item is material.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF XMC AND THERMO

Except as otherwise disclosed to the e.spire Entities in a schedule annexed hereto (which schedule contains appropriate references to identify the representations and warranties herein to which the information in such schedule relates) (the "XMC/Thermo Disclosure Schedule"), XMC and Thermo jointly and severally represent and warrant to each of the e.spire Entities as follows:

Section 4.1 Organization. XMC is a limited liability company validly existing and in good standing under the laws of Delaware. Thermo is a limited liability company validly existing and in good standing under the laws of Colorado. XMC has conducted no business other than as contemplated by this Agreement prior to the date hereof. A copy of XMC's organizational documents is included in the XMC/Thermo Disclosure Schedule.

Section 4.2 Authority Relative to this Agreement. Each of XMC and Thermo has the limited liability company power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution, delivery, and performance of this Agreement by each of XMC and Thermo and the consummation by each of XMC and Thermo of the Contemplated Transactions have been duly authorized by all requisite limited liability company actions. This Agreement has been duly and validly executed and delivered by each of XMC and

Thermo, and (assuming this Agreement constitutes a valid and binding obligation of the e.spire Entities) constitutes a valid and binding agreement of each of XMC and Thermo, enforceable against each of XMC and Thermo in accordance with its terms.

Section 4.3 No Violations. Assuming approval of the Bankruptcy Court and receipt of the other Governmental Requirements, the execution, delivery and performance of this Agreement will not (a) violate any provision of the organizational instruments of XMC or Thermo, or (b) violate or conflict with any statute, rule, regulation, ordinance, judgment, decree or decision applicable to XMC or Thermo, or any of their properties or assets or any other material restriction of any kind or character to which XMC or Thermo or any of their Affiliates is subject that would prohibit or make unlawful the Contemplated Transactions.

Section 4.4 Consents and Approvals. No consent, approval, or authorization of, or declaration, filing, notice to, or registration with, any Governmental Authority is required to be made or obtained by XMC or Thermo in connection with the execution, delivery, and performance of this Agreement and the consummation of the Contemplated Transactions, except for (a) the Governmental Requirements, (b) those that become applicable solely as a result of the specific regulatory status of any e.spire Entity or any of its Affiliates, or (c) where the failure to make, file, give or obtain any of them would not prohibit or make unlawful the consummation of the Contemplated Transactions.

Section 4.5 Brokers. No broker, investment banker, financial advisor or other person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission from any e.spire Entity in connection with the Contemplated Transactions based upon arrangements made by or on behalf of XMC or Thermo.

Section 4.6 Financing. Thermo represents that as of the date hereof it has, and on the Closing Date it will have, access to sufficient funds to deliver the Thermo Contribution to XMC on or after the Contribution Date, to purchase the 48% membership interest in XMC from the e.spire Entities at the Closing if the Put Right is exercised, and to consummate the Contemplated Transactions. EACH OF XMC AND THERMO REPRESENTS AND WARRANTS TO EACH E.SPIRE ENTITY THAT THERE IS NO FINANCING CONTINGENCY OR CONDITION WITH RESPECT TO THEIR OBLIGATIONS TO PROCEED WITH CLOSING THE CONTEMPLATED TRANSACTIONS.

Section 4.7 Investment Experience. Each of Thermo and XMC acknowledges that it is able to fend for itself, can bear the risks associated with the Assets and Assumed Liabilities hereunder and is a sophisticated investor capable of evaluating the merits and risks of the Contemplated Transactions.

Section 4.8 No Outside Reliance. Neither Thermo nor XMC has relied or is relying upon any statement or representation which is not made in this Agreement, the e.spire

Disclosure Schedule, or any Schedules, Exhibit or attachment hereto, or in any certificates or opinions to be delivered to XMC or Thermo at the Closing.

ARTICLE V COVENANTS

Section 5.1 Conduct by the e.spire Entities Pending the Closing. From the Contribution Date to the Closing Date, to the extent permitted by applicable non-bankruptcy law and consistent with the Management Agreement, XMC shall have full power and authority to manage the Operations and the Assets on behalf of the e.spire Entities as the authorized service providers. During such period, the e.spire Entities shall cooperate with all reasonable requests of XMC and shall execute and deliver all documents reasonably requested by XMC to facilitate such management. Furthermore, during the period following the entry of the Sale Order, the e.spire Entities shall not (i) reject any Contract which is an Assumed Contract or a Delayed Rejection Contract, or any other Contract without giving at least five (5) Business Day's notice to XMC; (ii) alter or terminate relationships with third parties that would have a Material Adverse Effect; or (iii) except as otherwise expressly contemplated under this Agreement, take any action affecting any of the Assets or the Operations other than as directed by XMC, including, without limitation:

(a) no e.spire Entity shall adopt or propose any change in its certificate of incorporation or bylaws or similar organizational instrument, except a change that would not have any adverse effect on the Contemplated Transactions or terminate its corporate or limited liability company existence;

(b) no e.spire Entity shall sell, lease, license, surrender, relinquish, encumber, or dispose of any Assets;

(c) the e.spire Entities shall not terminate, amend, modify, allow to lapse (if XMC provides any necessary funds to avoid such lapse), waive any rights with respect to, or supplement the terms of any Contract other than a Rejected Contract;

(d) the e.spire Entities shall not cease the Operations or turn off all or any part of their network related to the Assets or the Operations;

(e) except to the extent necessary to comply with the requirements of applicable laws, regulations or Bankruptcy Court orders, no e.spire Entity shall (i) take, agree, or commit to take, any action that would make any representation or warranty of the e.spire Entities hereunder materially inaccurate in any respect at, or as of any time prior to, the Closing Date, (ii) omit, or agree or commit to omit, to take any action necessary to prevent any such representation or warranty from being materially inaccurate in any respect on the Closing Date, or (iii) take, agree, or commit to take, any action that would result in, or is reasonably likely to result in, any of the conditions set forth in Article VII or Article VIII not being satisfied;

(f) other than in the ordinary course of business, no e.spire Entity shall communicate with any of its customers, vendors, suppliers or other Persons with whom it has business relationships except as required by law and, if such communication is required by law, after giving XMC an opportunity to review and comment on such communication;

(g) no e.spire Entity shall agree or commit to do any of the foregoing;
and

(h) the e.spire Entities shall take all necessary and appropriate actions (other than the payment of Cure Amounts) to maintain in full force and effect all Assumed Contracts and all Delayed Rejection Contracts.

XMC, Thermo and their respective employees, agents, and contractors shall have no liability for any action or inaction taken pursuant to this Section 5.1, except for willful misconduct, gross negligence, fraud or breach of this Agreement.

Section 5.2 Access and Information. Each e.spire Entity shall afford to XMC and Thermo and to their financial advisors, legal counsel, accountants, consultants, financing sources, and other authorized representatives reasonable access during normal business hours and without material disruption to the business or operations of the e.spire Entities throughout the period prior to the Closing Date, to all its books, documents, records, properties, plants, and personnel that relate to the Assets, Operations or Assumed Liabilities, and all other information as XMC or Thermo reasonably may request in furtherance of the Contemplated Transactions. Except to the extent caused by the negligence, willful misconduct, fraud or breach of this Agreement by the e.spire Entities or any of their respective employees, agents, or contractors, XMC and Thermo shall indemnify, defend, and hold harmless the e.spire Entities from and against any and all claims asserted against or incurred by the e.spire Entities arising out of any act or failure to act of XMC and Thermo or their employees, agents, or contractors in connection with any inspection by XMC and Thermo or access to the e.spire Entities' offices, assets (including the Assets) and properties.

Section 5.3 Filings; Other Action. Subject to the terms and conditions set forth herein, as promptly as practicable, the Parties hereto shall (a) to the extent required by applicable law, promptly make all filings and submissions under the HSR Act, (b) use commercially reasonable efforts to cooperate with each other in good faith in (i) determining which filings are required to be made prior to the Closing Date with, and which material Governmental Requirements, consents, approvals, permits, or authorizations are required to transfer the Assets from, Governmental Authorities of the United States and the several states (and any subdivisions or municipalities thereof) or the District of Columbia, and foreign jurisdictions in connection with the execution and delivery of this Agreement and the consummation of the Contemplated Transactions, and (ii) timely making all such filings and timely seeking all such consents, approvals, permits, or authorizations, and (c) use commercially reasonable efforts to take, or cause to be taken, all other actions and do, or cause to be done, all

other things reasonably necessary or appropriate to consummate the Contemplated Transactions. In connection with the foregoing, the e.spire Entities shall promptly provide XMC and Thermo, and XMC and Thermo shall promptly provide the e.spire Entities, with copies of all correspondence, filings, or communications (or memoranda setting forth the substance thereof) between such party or any of its representatives, on the one hand, and any Governmental Authority or members of their respective staffs, on the other hand, with respect to all filings and submissions required hereunder. The Parties hereto acknowledge that certain actions may be necessary with respect to the foregoing in making notifications and obtaining clearances, consents, approvals, waivers, or similar third-party actions that are material to the consummation of the Contemplated Transactions, and each party agrees to take commercially reasonable actions to complete such notifications and obtain such clearances, consents, approvals, waivers, or third-party actions; provided, however, that nothing in this Agreement (including, but not limited to, this Section 5.3 and Section 6.1) shall require any party to take any action or accept or comply with any condition that could reasonably be expected to result in a Material Adverse Effect or require XMC or Thermo or any of their Affiliates to dispose of any of their assets; and provided, further, that the e.spire Entities will take any such action if XMC or Thermo has (i) so requested in writing and (ii) waived any claim, right and condition XMC or Thermo would otherwise be entitled to under this Agreement in connection therewith. The Parties hereby agree that XMC and Thermo shall be responsible for seeking to obtain any and all of the Regulatory Approvals, including the costs associated therewith. Each of the Parties hereto agrees that, except as otherwise expressly contemplated by this Agreement, it will not take any action that would reasonably be expected to materially adversely affect or materially delay the Closing or the ability of any of the Parties hereto to satisfy any of the conditions to the Closing or to consummate the Contemplated Transactions.

Section 5.4 Bankruptcy Actions. The Parties hereto shall use their commercially reasonable efforts to obtain entry of the Sale Order, and the entry of any other orders or approvals by the Bankruptcy Court that any of Parties reasonably deems necessary and appropriate to effectuate the Contemplated Transactions and preserve the benefit of the bargain of those transactions for each Party.

Section 5.5 Tax Returns and Filings; Payment of Taxes. The Parties hereto shall cooperate with respect to Tax matters, including any matters relating to tax allocation issues. The e.spire Entities shall provide XMC and Thermo with such Tax information and copies of such Tax Returns (in each case, relating to the Assets or the Operations and including, without limitation, the consolidated federal income tax return for 2001) as either of them may reasonably request, reasonably promptly after such request. The Parties shall cooperate with each other in good faith regarding any tax allocation of the Purchase Price.

Section 5.6 Bulk Sales Laws. The Sale Order shall provide that the e.spire Entities need not comply with the provisions of any applicable bulk sales law in connection with the Contemplated Transactions.

Section 5.7 Employment Matters.

(a) At any time or from time to time after entry of the Sale Order, XMC may notify the e.spire Entities of the names of any employees engaged in the Operations (the "Business Employees") that XMC wishes to hire (a "Retainee Notice"). From and after the receipt of a Retainee Notice, each e.spire Entity shall use its commercially reasonable efforts to retain each employee that is listed on the Retainee Notice through the earlier of the Closing Date and the date such Person is hired by XMC. XMC acknowledges and agrees that the e.spire Entities retain the right to terminate or otherwise alter the terms of employment of all Business Employees other than those whose names are contained in a Retainee Notice. The e.spire Entities have heretofore delivered to XMC a written list (attached hereto to as Exhibit 5.7(a)) which sets forth (x) the names of each Business Employee employed by the respective e.spire Entity and describes the relevant details of each Business Employee's employment with such e.spire Entity, including the Business Employee's position, brief job description, work location, annual base salary or wage rate, any unused paid vacation, personal or sick leave, most recent annual bonus, and commencement date of employment, as well as each such Business Employee's current employment status (e.g., active, leave of absence, short term disability), and (y) the amount each Business Employee will receive under such e.spire Entity's "stay bonus" or similar program, if any.

Exhibit 5.7(a) shall be updated during regular intervals between the date hereof and the Closing Date, and the e.spire Entities shall provide a final Exhibit 5.7(a) to XMC and Thermo on the Closing Date.

(b) The e.spire Entities shall permit XMC to communicate orally or in writing with the Business Employees who are on a Retainee Notice regarding its plans, operations, business, customer relations, and general personnel matters. XMC may offer employment to, and hire, Business Employees whose names appear on a Retainee Notice. For purposes of this Agreement, a Business Employee who is hired by XMC shall be referred to as a "Transferred Employee."

(c) Except as specifically provided in this Agreement, the e.spire Entities shall retain the responsibility for all liabilities relating to compensation earned by a Business Employee for the provision of services to the e.spire Entities on or before the date such Employee becomes a Transferred Employee, including any liability for any "stay bonus" or similar program.

(d) XMC shall recognize all accrued, but unused, paid vacation leave earned by a Transferred Employee under a vacation policy of an e.spire Entity for purposes of XMC's vacation policy to the extent that such earned or paid vacation leave is described in Exhibit 5.7(a). XMC's group health plans shall not impose any pre-existing conditions or limitations with respect to the Transferred Employees or their spouses or dependents. XMC shall make commercially reasonable efforts to ensure that the deductibles, co-payments, and out-

of-pocket costs paid during the plan year in which the Closing occurs by a Transferred Employee under an e.spire Plan which provides accident or healthcare coverage will be credited against any deductibles, co-payments, and out-of-pocket costs required to be paid under an accident or healthcare plan made available to the Transferred Employee by XMC.

(e) No provision of this Section 5.7 shall create any rights in any individual who is not a party hereto, including any employee, former employee or Business Employee (including any beneficiary or dependent thereof) of any e.spire Entity or of any of its Affiliates. Further, this Section 5.7 shall not create any right to continued employment or service (or resumed employment or service) with the e.spire Entities or their Affiliates, XMC or Thermo, or their Affiliates with respect to any employee, independent contractor or consultant, and except as provided herein no provision of this Section 5.7 shall create any rights in any Person with respect to any benefits that may be provided, directly or indirectly, under any Compensation and Benefit Plan or any plan or arrangement that may be established by XMC or any of its Affiliates. No provision of this Agreement shall constitute a limitation on XMC's or any of its Affiliates' rights to amend, modify or terminate after the Closing Date any plans or arrangements sponsored or maintained by XMC or any of its Affiliates.

Section 5.8 Collection of Accounts Receivable. From and after the Contribution Date, XMC shall use best commercial efforts to collect the Accounts Receivable for the account of the e.spire Entities and remit the proceeds to the e.spire Entities. Nothing contained herein shall require XMC to bring any collection action to enforce any of the Accounts Receivable. The e.spire Entities shall co-operate as reasonably requested to facilitate such collections. To avoid any confusion, the e.spire Entities shall not undertake any action to collect any of such Accounts Receivable; provided that, on and after the Closing Date, the e.spire Entities may directly collect such Accounts Receivable if they reasonably believe that XMC has not effectuated sufficient collections. All collections from any customer shall be applied to accounts receivable in order of age, unless the customer otherwise directs in writing.

Section 5.9 Updating. If, at any time from the date of this Agreement to the Closing Date, any Party hereto determines that any schedule, exhibit or other information provided by it under this Agreement (including the Exhibits hereto and the Disclosure Schedules) contains any misstatement or omits any information required to be included therein, it promptly shall notify each other Party hereto and provide corrected or supplemental information as required.

Section 5.10 Additional Matters.

(a) Subject to the terms and conditions herein provided, each of the Parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper, or advisable under applicable laws and regulations to consummate and make effective the Contemplated Transactions, including using commercially reasonable efforts to cooperate with each other in good faith to obtain all

necessary waivers, consents, authorizations and approvals in connection with the Governmental Requirements and to effect all necessary registrations and filings.

(b) Prior to Closing, the Parties shall cooperate with each other and negotiate with those non-debtor parties to the Contracts identified by XMC and take such other Actions as may be necessary to ensure that the Allowed Cure Claim of any Assumed Contract set forth on the list of Contracts in Exhibit 1.2(d) does not exceed the Cure Amount listed in Exhibit 1.2(d).

(c) The Parties shall cooperate with each other in good faith to seek to obtain all Regulatory Approvals as soon as possible following entry of the Sale Order.

ARTICLE VI ADDITIONAL POST-CLOSING COVENANTS

Section 6.1 Further Assurances. In addition to the provisions of this Agreement, prior to the Closing Date and from time to time thereafter, the Parties hereto shall use all commercially reasonable efforts to execute and deliver such other instruments of conveyance, transfer, or assumption, as the case may be, and take such other action as may be reasonably requested to implement more effectively the conveyance and transfer of the Assets to XMC, the assumption of the Assumed Liabilities by XMC and the sale by the e.spire Entities to Thermo of the 48% membership interest in XMC.

Section 6.2 Books and Records; Personnel. For a period ending upon the earlier of (x) the seventh (7th) anniversary of the Closing Date (or such later date as may be required by any governmental or regulatory body or authority, law, statute, rule, regulation, or ongoing Legal Proceeding) and (y) the closure of the Chapter 11 Case:

(a) Unless XMC shall have first given sixty (60) days' prior written notice to the e.spire Entities, XMC shall not dispose of or destroy any of the business records and files contained in the Assets other than in connection with a sale or other disposition of the Assets or any portion thereof. If XMC wishes to dispose of or destroy such records and files prior to that time, it shall first give sixty (60) days' prior written notice to the e.spire Entities and the e.spire Entities shall have the right, at their option and expense, upon prior written notice to XMC within such sixty (60)-day period, to take possession of the records and files within ninety (90) days after the date of the notice from the e.spire Entities. After that time, XMC may dispose of or destroy any such records at its discretion.

(b) XMC shall allow the e.spire Entities and any of their directors, officers, employees, legal counsel, financial advisors, representatives, accountants, professionals, auditors and other agents and any successors thereto (collectively, the "e.spire Entities' Representatives") access to all business records and files of any of the e.spire Entities that are transferred by the e.spire Entities to XMC in connection herewith that are reasonably required by

such Person in the administration of the Chapter 11 Case or in anticipation of, or preparation for, any existing or future Legal Proceeding involving an e.spire Entity, Tax Return preparation, litigation, or Excluded Liability, during regular business hours and upon reasonable notice at XMC's principal place of business or at any location where such records are stored, and the e.spire Entities' Representatives shall have the right, at their expense, to make copies of any such records and files; provided, however, that any such access or copying shall be had or done in such a manner so as not to interfere with the normal conduct of XMC's business or operations.

Section 6.3 Employee Withholding. The e.spire Entities agree that, pursuant to the "Alternate Procedure" (provided in Section 5 of Revenue Procedure 96-60, 1996-2 C.B. 399), with respect to filing and furnishing IRS Forms W-2, W-3, W-4, W-5, and 941, (a) the e.spire Entities shall report on a "predecessor-successor" basis (as set forth therein), (b) the e.spire Entities shall be relieved from furnishing Forms W-2 to any of the Transferred Employees, and (c) XMC shall assume the obligations of the e.spire Entities to furnish such Forms W-2 to any such Transferred Employees for the year in which the Closing occurs; provided that, in each case, the e.spire Entities shall cooperate with XMC in such transition procedures by supplying XMC with all relevant wage and withholding information in respect of periods prior to the Closing on a timely basis.

Section 6.4 Deferred Assets; Regulatory Approvals. From the Contribution Date until all Regulatory Approvals have been obtained, (a) the e.spire Entities shall retain on XMC's behalf and for the exclusive benefit of XMC such of the Communications Licenses and other Assets (including the customer base) whose transfer requires Regulatory Approvals that have not been obtained (the "Deferred Assets") until transferred to XMC; (b) XMC shall pay to, or for the benefit of, the e.spire Entities all reasonable costs and expenses incurred by the e.spire Entities to maintain such Deferred Assets until the date such Regulatory Approvals are obtained and such Deferred Assets are transferred to XMC; (c) XMC shall indemnify and hold the e.spire Entities harmless from and against all liabilities, claims and damages incurred or asserted as a result of the e.spire Entities' direct or indirect ownership, management or operation of the Deferred Assets pursuant to this Section 6.4, including the amount of any Taxes or filing fees imposed upon or incurred by the e.spire Entities as a result thereof but excluding any liabilities, claims or damages caused by negligence or malfeasance of any of the e.spire Entities or any of the e.spire Entities' Representatives, and (d) the e.spire Entities shall provide XMC with copies of any notice from or correspondence with any Governmental Authority with respect to the Deferred Assets. The e.spire Entities shall use their commercially reasonable efforts to continue to cooperate with XMC in its efforts to obtain all Regulatory Approvals; provided, however, that nothing herein shall require the e.spire Entities to maintain such Deferred Assets upon any termination of corporate or limited liability existence of such e.spire Entity occurring after December 31, 2002. The e.spire Entities promptly shall transfer the Deferred Assets to XMC upon the receipt of all necessary Regulatory Approvals.

Section 6.5 Transitional Services. The Parties hereto (including the e.spire Entities' successors) shall negotiate in good faith transitional services agreements providing the

e.spire Entities (including the e.spire Entities' successors) with access to certain services and facilities of the e.spire Entities' businesses following Closing (for a period not exceeding 180 days except as provided below) in support of the Excluded Assets in return for which XMC shall receive fair compensation.

Section 6.6 Cure of Defaults. On or prior to the later of (i) the Closing, or (ii) entry of an order of the Bankruptcy Court authorizing the assumption of any Assumed Contract (the "Assumption Order Date") that allows a cure claim for such contract in an amount (the "Allowed Cure Claim") different than the Cure Amount set forth on Exhibit 1.2(d), XMC shall pay to, or for the benefit of, the e.spire Entities the lesser of the Cure Amount or the Allowed Cure Claim, in immediately available funds. With respect to any Assumed Contracts, to which BellSouth, SBC, Qwest/U.S. West, Verizon or Sprint or any of their affiliates are parties, Thermo, may deduct from the Cash Purchase Price at Closing that portion of any Allowed Cure Claim that exceeds the Cure Amount set forth on Exhibit 1.2(d) and paid, directly or indirectly, by XMC (the "Excess Cure Claim"). The e.spire Entities shall escrow funds from the Purchase Price equal to the difference between any asserted cure claim relating to any Assumed Contract for which the Assumption Order Date does not occur prior to the Closing and the Cure Amount listed in Exhibit 1.2(d) for such Assumed Contract and such Excess Cure Claim, if allowed, shall be paid by the e.spire Entities pursuant to agreement of the parties thereto or order of the Court.

Section 6.7 Transfer Tax Matters. To the extent that the Sale Order does not provide that all transfers and conveyances occurring in connection with the Contemplated Transactions shall be exempt from any and all transfer, documentary, sales, use, registration, value-added and other similar Taxes (including interest, penalties and additions to Tax, "Transfer Taxes"), pursuant to Section 1146 of the Bankruptcy Code, e.spire Entities shall be responsible for payment of all transfer taxes, if any. In no event shall any tax allocation for the Contemplated Transactions exceed in the aggregate the amount of the Purchase Price.

ARTICLE VII CONDITIONS PRECEDENT TO CONTRIBUTION DATE

Section 7.1 Conditions Precedent to Obligations of All Parties. The respective obligations of each Party hereto to effect the Contemplated Transactions to be effected on the Contribution Date shall be subject to the satisfaction at or prior to the Contribution Date of the following conditions:

(a) any waiting period applicable to the consummation of the Contemplated Transactions to be effected on the Contribution Date under the HSR Act shall have expired or been terminated, and no Action shall have been instituted by the United States Department of Justice or the United States Federal Trade Commission challenging or seeking to enjoin the consummation of such Contemplated Transactions, which Action shall not have been withdrawn or terminated, without requiring XMC or any of its Affiliates to dispose of or divest

any of its assets or businesses (including any material Asset following the Contribution Date) or discontinue or refrain from conducting any of its operations or those acquired hereunder;

(b) no statute, rule, regulation, executive order, decree, decision, ruling, or preliminary or permanent injunction shall have been enacted, entered, promulgated, or enforced by any United States federal or state court or Governmental Authority that prohibits, restrains, enjoins, or restricts the consummation of the Contemplated Transactions that has not been withdrawn or terminated;

(c) no Action shall have been commenced by or before any Governmental Authority or arbitral body against XMC or the e.spire Entities, seeking to prevent, prohibit or make illegal or materially and adversely alter the Contemplated Transactions or which would reasonably be expected to have a Material Adverse Effect; provided, however, that the provisions of this Section 7.1(c) shall not apply to any Party hereto that has, directly or indirectly, solicited or encouraged any such Action; provided, however, that as long as the Sale Order contains a finding pursuant to Section 363(m) of the Bankruptcy Code that XMC and Thermo have acted in good faith in connection with the Contemplated Transactions, the provisions of this Section 7.1(c) also shall not apply to any appeal of the Sale Order in which no stay has been granted by the Bankruptcy Court; and

(d) the Sale Order shall have been entered by the Bankruptcy Court.

Section 7.2 Conditions Precedent to Obligations of the e.spire Entities. The obligations of the e.spire Entities to effect the Contemplated Transactions to be effected on the Contribution Date shall be subject to the satisfaction at or prior to the Contribution Date of the following additional conditions (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by the e.spire Entities, unless such a waiver is prohibited by law): (i) XMC and Thermo shall have performed in all material respects their obligations under this Agreement required to be performed by them at or prior to the Contribution Date, (ii) the representations and warranties of XMC and Thermo contained in this Agreement that are qualified with respect to materiality shall be true and correct in all respects, and such representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Contribution Date as if made at and as of such dates, except with respect to representations and warranties that speak as to an earlier date, which shall be at and as of such dates, and (iii) the e.spire Entities shall have received a certificate signed by an officer of each of XMC and Thermo as to the satisfaction of the conditions set forth in clauses (i) and (ii).

Section 7.3 Conditions Precedent to Obligations of XMC and Thermo. The obligations of XMC and Thermo to effect the Contemplated Transactions to be effected on the Contribution Date shall be subject to the satisfaction at or prior to the Contribution Date of the following additional conditions (compliance with which or the occurrence of which may be

waived in whole or in part in a writing executed by XMC and Thermo, unless such a waiver is prohibited by law):

(a) (i) each e.spire Entity shall have performed in all material respects its obligations under this Agreement required to be performed by it at or prior to the Contribution Date, (ii) the representations and warranties of the e.spire Entities contained in this Agreement shall be true and complete in all respects as of the date of this Agreement and as of the Contribution Date as if made at and as of such dates except with respect to representations and warranties that speak as to an earlier date, which shall be at and as of such date, except for such failure to satisfy the conditions in clauses (i) and (ii) above as could not reasonably be expected to have a Material Adverse Effect, and (iii) XMC and Thermo shall have received a certificate signed by an officer of each of the e.spire Entities as to the satisfaction of the conditions set forth in clauses (i) and (ii); and

(b) there shall not have been any material adverse change in the Assets, the Operations or the Assumed Liabilities from the date of this Agreement to the Contribution Date.

ARTICLE VIII CONDITIONS PRECEDENT TO CLOSING

Section 8.1 Conditions Precedent to Obligations of All Parties. The respective obligations of each Party hereto to effect the Contemplated Transactions to be effected at the Closing shall be subject to the satisfaction at or prior to the Closing Date of the following conditions:

(a) any waiting period applicable to the consummation of the Contemplated Transactions under the HSR Act shall have expired or been terminated, and no Action shall have been instituted by the United States Department of Justice or the United States Federal Trade Commission challenging or seeking to enjoin the consummation of Contemplated Transactions, which Action shall not have been withdrawn or terminated, without requiring XMC or any of its Affiliates to dispose of or divest any of its assets or businesses (including any material Asset following the Closing) or discontinue or refrain from conducting any of its operations or those acquired hereunder;

(b) no statute, rule, regulation, executive order, decree, decision, ruling, or preliminary or permanent injunction shall have been enacted, entered, promulgated, or enforced by any United States federal or state court or Governmental Authority that prohibits, restrains, enjoins, or restricts the consummation of the Contemplated Transactions that has not been withdrawn or terminated;

(c) no Action shall have been commenced by or before any Governmental Authority or arbitral body against XMC, Thermo or the e.spire Entities, seeking to

prevent, prohibit or make illegal or materially and adversely alter the Contemplated Transactions or which would reasonably be expected to have a Material Adverse Effect; provided, however, that the provisions of this Section 8.1(c) shall not apply to any Party hereto that has, directly or indirectly, solicited or encouraged any such Action; provided, however, that as long as the Sale Order contains a finding pursuant to Section 363(m) of the Bankruptcy Code that XMC and Thermo have acted in good faith in connection with the Contemplated Transactions, the provisions of this Section 8.1(c) also shall not apply to any appeal of the Sale Order in which no stay has been granted by the Bankruptcy Court; and

(d) the Sale Order shall have been entered by the Bankruptcy Court and shall be in full force and effect.

Section 8.2 Conditions Precedent to Obligations of the e.spire Entities. The obligations of the e.spire Entities to effect the Contemplated Transactions to be effected at the Closing shall be subject to the satisfaction at or prior to the Closing Date of the following additional conditions (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by the e.spire Entities, unless such a waiver is prohibited by law): (i) XMC and Thermo shall have performed in all material respects their obligations under this Agreement required to be performed by them at or prior to the Closing Date, (ii) the representations and warranties of XMC and Thermo contained in this Agreement that are qualified with respect to materiality shall be true and correct in all respects, and such representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the Closing Date as if made at and as of such dates, except with respect to representations and warranties that speak as to an earlier date, which shall be at and as of such dates, and (iii) the e.spire Entities shall have received a certificate signed by an officer of each of XMC and Thermo as to the satisfaction of the conditions set forth in clauses (i) and (ii).

Section 8.3 Conditions Precedent to Obligations of XMC and Thermo. The obligations of XMC and Thermo to effect the Contemplated Transactions to be effected at the Closing shall be subject to the satisfaction at or prior to the Closing Date of the following additional conditions (compliance with which or the occurrence of which may be waived in whole or in part in a writing executed by XMC and Thermo, unless such a waiver is prohibited by law):

(a) (i) each e.spire Entity shall have performed in all material respects its obligations under this Agreement required to be performed by it at or prior to the Closing Date, (ii) the representations and warranties of the e.spire Entities contained in this Agreement shall be true and complete in all respects as of the date of this Agreement and as of the Closing Date as if made at and as of such dates except with respect to representations and warranties that speak as to an earlier date, which shall be at and as of such date, except for such failure to satisfy the conditions in clauses (i) and (ii) above as could not reasonably be expected to have a Material Adverse Effect, and (iii) XMC and Thermo shall have received a certificate signed by an officer

of each of the e.spire Entities as to the satisfaction of the conditions set forth in clauses (i) and (ii); and

(b) XMC shall have received all Regulatory Approvals or other third party consents and approvals necessary to permit XMC to own and the Assets and conduct the Operations after the Closing, including any consents necessary for the assumption and assignment of the Assumed Contracts, except where the failure to receive such consent or approval is not reasonably likely to have a Material Adverse Effect; provided, however, that the foregoing condition shall be deemed to have been satisfied at such time as XMC and Thermo shall have received Regulatory Approvals necessary to own the Assets and conduct the Operations in those markets where the e.spire Entities own Assets and conduct Operations that in the aggregate constituted 85% of the total revenues of the e.spire Entities in April 2002.

ARTICLE IX TERMINATION, AMENDMENT AND WAIVER

Section 9.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Closing Date by mutual written agreement of the Parties hereto.

Section 9.2 Termination by Any Party. This Agreement may be terminated at any time prior to the Closing Date by any Party hereto if (a) a United States federal or state court of competent jurisdiction or United States federal or state Governmental Authority shall have issued an order, decree or ruling or taken any other action permanently restraining, enjoining, or otherwise prohibiting the consummation of the Contemplated Transactions and either (i) thirty (30) days shall have elapsed from the issuance of such order, decree or ruling or other action and such order, decree or ruling or other action has not been removed or (ii) such order, decree, ruling or other action shall have become final and non-appealable; provided that the Party seeking to terminate this Agreement pursuant to this clause (ii) shall have used commercially reasonable efforts to remove such injunction, order or decree; or (b) the Closing Date shall not have occurred on or before August 30, 2002; provided, however, that the right to terminate this Agreement pursuant to this Section 9.2(b) shall not be available to any Party hereto whose failure to fulfill any obligation under this Agreement shall have been the cause of the failure of the Closing Date to have occurred on or prior to such date.

Section 9.3 Termination by the e.spire Entities. This Agreement may be terminated at any time prior to the Closing Date by the e.spire Entities if (a) there has been a breach by XMC or Thermo of any representation or warranty contained in this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 8.2 and which breach is not curable, or if curable, is not cured within thirty (30) days after written notice of such breach is given by the e.spire Entities to XMC or Thermo; or (b) there has been a breach of any of the covenants or agreements set forth in this Agreement on the part of XMC or Thermo, which breach would result in the failure to satisfy one or more of the

conditions set forth in Section 8.2 and which breach is not curable or, if curable, is not cured within thirty (30) days after written notice of such breach is given by the e.spire Entities to XMC or Thermo.

Section 9.4 Termination by XMC or Thermo. This Agreement may be terminated at any time prior to the Closing Date (and in the case of subsection (c) below, if the Sale Order is entered within 60 days of the date hereof within five days after the date of the entry of the Sale Order for purposes of subsection (c) below) by XMC or Thermo if (a) there has been a breach by any e.spire Entity of any representation or warranty contained in this Agreement, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 8.3 and which breach is not curable, or if curable, is not cured within thirty (30) days after notice of such breach is given by XMC or Thermo to the e.spire Entities; (b) there has been a breach of any of the covenants or agreements set forth in this Agreement on the part of any e.spire Entity, which breach would result in the failure to satisfy one or more of the conditions set forth in Section 8.3 and which breach is not curable or, if curable, is not cured within thirty (30) days after written notice of such breach is given by XMC or Thermo to the e.spire Entities; (c) the Sale Order shall not have been entered by the Bankruptcy Court on or before the date that is sixty (60) days from the date hereof in substantially a form acceptable to XMC and Thermo in their reasonable discretion, it being understood that any Sale Order submitted to the Court by the Parties shall be deemed acceptable; or (d) XMC shall fail to have received (despite the exercise of commercially reasonable diligence) the Regulatory Approvals and consents contemplated by Section 8.3(b).

Section 9.5 Effect of Termination and Abandonment. In the event of termination of this Agreement pursuant to this Article IX, written notice thereof shall as promptly as practicable be given to the other Parties to this Agreement and this Agreement shall terminate and the Contemplated Transactions shall be abandoned, without further action by any of the Parties hereto. In addition to any other rights available to the e.spire Entities, upon their termination of this Agreement pursuant to Section 9.3, the e.spire Entities shall retain the Deposit in accordance with Section 1.1. Upon any other termination of this Agreement, the Deposit shall be returned to Thermo, and XMC and Thermo shall be entitled to repayment of any and all funds advanced to or on behalf of the e.spire Entities pursuant to and in accordance with this Agreement (the "Reimbursement Claim"), which Reimbursement Claim shall be entitled to repayment pari passu with the allowed claim existing as of the Contribution Date of the holders of the e.spire Entities' debtor-in-possession financing (subject to their consent and any carve-outs previously approved by the Bankruptcy Court). Simultaneously with any termination of this Agreement, the e.spire Entities shall be entitled to redeem their interest in XMC in exchange for all Assets other than cash and cash equivalents. Promptly following such termination, all filings, applications, and other submissions made pursuant to the Contemplated Transactions shall, to the extent practicable, be withdrawn from the Governmental Authority or other Person to which made.

ARTICLE X DELIVERIES

Section 10.1 The e.spire Entities' Contribution Date Deliveries. In addition to the other things required to be done hereby, on the Contribution Date, the e.spire Entities shall deliver, or cause to be delivered, to XMC and Thermo the following:

(a) all documents, certificates, authorizations, and agreements reasonably necessary to transfer to XMC all of each e.spire Entity's right, title and interest in, to and under all of the Assets (other than the Deferred Assets and Contracts that are not Assumed Contracts), free and clear of any and all Encumbrances thereon, other than Permitted Encumbrances, including:

(i) duly executed assignment agreements, in customary form mutually agreeable to the Parties hereto; and

(ii) assignments of lease (the "Lease Assignments"), dated as of the Contribution Date, with respect to each Assumed Contract that is a lease, in form reasonably acceptable to XMC and Thermo, together with any necessary transfer declarations or other filings (and in recordable form if required by XMC or Thermo);

(b) a duly executed Operating Agreement;

(c) certified copies of all orders of the Bankruptcy Court pertaining to the Contemplated Transactions, including the Sale Order;

(d) an affidavit, in form and substance reasonably acceptable to XMC and Thermo, of an officer of each of the e.spire Entities, sworn to under penalty of perjury, setting forth each e.spire Entity's name, address and federal tax identification number and stating that none of the e.spire Entities is a "foreign" person (within the meaning of Section 1445 of the Code and the Treasury Regulations thereunder); and

(e) a copy of the resolutions of the Board of Directors of each e.spire Entity, or similar enabling document, authorizing the execution, delivery, and performance hereof by the e.spire Entities, and a certificate of its secretary or assistant secretary, dated as of the Contribution Date, that such resolutions were duly adopted and are in full force and effect.

Section 10.2 The e.spire Entities Deliveries at Closing. In addition to the other things required to be done hereby at the Closing, the e.spire Entities shall deliver, or cause to be delivered, to XMC and Thermo the following: a certificate dated the Closing Date and validly executed on behalf of the e.spire Entities to the effect that the conditions set forth in Section 8.3(a) have been satisfied.

Section 10.3 Thermo's Contribution Date Deliveries. In addition to the other things required to be done hereby, on the Contribution Date, Thermo shall deliver, or cause to be delivered, the following:

(a) a copy of the resolutions of the Managers of Thermo, or similar enabling document, authorizing the execution, delivery, and performance hereof by Thermo, and a certificate of its secretary or assistant secretary, dated as of the Contribution Date, that such resolutions were duly adopted and are in full force and effect; and

(b) a duly executed Operating Agreement.

Section 10.4 Thermo's Deliveries at Closing. In addition to the other things required to be done hereby, at the Closing, Thermo shall deliver, or cause to be delivered, a certificate dated the Closing Date and validly executed on behalf of Thermo to the effect that the conditions set forth in Section 8.2 have been satisfied.

Section 10.5 XMC's Contribution Date Deliveries. In addition to the other things required to be done hereby, on the Contribution Date, XMC shall deliver, or cause to be delivered, to the e.spire Entities the following:

(a) a copy of the resolutions of the Managers of XMC, or similar enabling document, authorizing the execution, delivery and performance hereof by XMC, and a certificate of its secretary or assistant secretary, dated as of the Contribution Date, that such resolutions were duly adopted and are in full force and effect;

(b) duly executed assignment agreements, in customary form mutually agreeable to the Parties hereto; and

(c) duly executed Lease Assignments.

Section 10.6 XMC's Deliveries at Closing. In addition to the other things required to be done hereby, at the Closing, XMC shall deliver, or cause to be delivered, to the e.spire Entities the following:

(a) a certificate dated the Closing Date and validly executed on behalf of XMC to the effect that the conditions set forth in Section 8.2 have been satisfied; and

(b) duly executed assumption agreements, in customary form mutually agreeable to the Parties hereto.

Section 10.7 Required Documents. All documents to be delivered by the e.spire Entities or to be entered into by the e.spire Entities and XMC or Thermo necessary to carry out the Contemplated Transactions or contemplated by the terms of this Agreement shall be reasonably satisfactory in form and substance to XMC and Thermo and counsel to XMC and Thermo, and all documents to be delivered by XMC or Thermo necessary to carry out the Contemplated Transactions or to be entered into by the e.spire Entities and XMC and Thermo necessary to carry out the Contemplated Transactions shall be reasonably satisfactory in form and substance to the e.spire Entities and their counsel.

ARTICLE XI GENERAL PROVISIONS

Section 11.1 Notices. All notices, claims, demands, and other communications hereunder shall be in writing and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, or (c) the expiration of three (3) Business Days after the day when mailed by registered or certified mail (postage prepaid, return receipt requested), addressed to the respective Parties at the following addresses (or such other address for a party hereto as shall be specified by like notice):

(a) If to XMC or Thermo, to:

644 Governor Nicholls Street
New Orleans, Louisiana 70116
Attention: James Monroe III
Facsimile: 504-585-1393

with copies, which shall not constitute notice, to:

Taft, Stettinius & Hollister LLP
425 Walnut Street
Cincinnati, Ohio 45202
Attention: Gerald S. Greenberg
Facsimile: 513-381-0205

and

Paul, Hastings, Janofsky & Walker LLP
399 Park Avenue
New York, New York 10022
Attention: Daniel Bergstein
Facsimile: 212-230-7729

(b) If to any e.spire Entity, to:

e.spire Communications, Inc.
12975 Worldgate Drive
Herndon, VA 20170
Attention: General Counsel
Facsimile: 703-639-6035

with a copy, which shall not constitute notice, to:

Saul Ewing LLP
222 Delaware Avenue, Suite 1200
Wilmington, DE 19801
Attention: Domenic Pacitti
Facsimile: 302-421-5881

Section 11.2 Descriptive Headings; Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The phrase "including" shall be deemed to mean "including, without limitation," whether or not expressly stated herein. References to any business "as presently conducted" shall refer to the conduct of such business over the twelve (12) months prior to the date hereof.

Section 11.3 Entire Agreement; Assignment. This Agreement (including the Schedules and Exhibits, the e.spire Disclosure Schedule, the XMC/Thermo Disclosure Schedule, the Confidentiality Agreement, and the other documents and instruments referred to herein) (a) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between or among the Parties hereto, with respect to the subject matter hereof, including any transaction between or among the Parties hereto, and (b) shall not be assigned by operation of law or otherwise; provided, however, that XMC and Thermo may assign its rights and obligations hereunder to any subsidiary of XMC or Thermo, but (x) neither XMC nor Thermo shall be relieved of its obligations hereunder as a result of such assignment, and (y) to the extent any such assignment by XMC or Thermo relates to the assignment by any e.spire Entity of an executory contract or unexpired lease hereunder and occurs prior to Closing such that, at Closing, this Agreement will provide for the e.spire Entity's assignment of such executory contract or unexpired lease to a party other than XMC, such assignment by the e.spire Entity shall be subject to all applicable provisions of the Bankruptcy Code.

Section 11.4 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Delaware applicable to contracts made and to be performed entirely within such State by residents of such State.

Section 11.5 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

Section 11.6 Venue and Retention of Jurisdiction. The Parties hereto agree that the Bankruptcy Court shall have exclusive jurisdiction over all disputes and other matters relating to (a) the interpretation and enforcement of this Agreement or any ancillary document executed pursuant hereto; and (b) the Assets and Assumed Liabilities, and XMC and Thermo expressly consent to and agree not to contest such exclusive jurisdiction. All Actions brought, arising out of, or related to the Contemplated Transactions shall be brought in the Bankruptcy Court, and the Bankruptcy Court shall retain jurisdiction to determine any and all such Actions.

Section 11.7 Expenses. Except as otherwise provided herein, whether or not the actions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated thereby shall be paid by the Party incurring such expenses.

Section 11.8 Amendment. This Agreement may not be amended, except by an instrument in writing signed on behalf of all Parties hereto.

Section 11.9 Waiver. At any time prior to the Closing Date, the Parties hereto may (a) extend the time for the performance of any of the obligations or other acts of the other Parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a Party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party hereto.

Section 11.10 Counterparts; Effectiveness. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page of this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.11 Severability; Validity; Parties in Interest. If any provision of this Agreement or the application thereof to any Person or circumstance is held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to other Persons or circumstances, shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable. Nothing in this Agreement, express or implied, is

intended to confer upon any Person not a party to this Agreement any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 11.12 Enforcement of Agreement. The Parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or were otherwise breached. It is accordingly agreed that the Parties hereto shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to all other remedies available at law or in equity.

Section 11.13 No Third-Party Beneficiaries. (a) The provisions of this Agreement are solely for the benefit of the Parties hereto and are not intended to confer upon any Person except the Parties hereto any rights or remedies hereunder, and (b) there are no third-party beneficiaries of this Agreement and this Agreement shall not provide any third party with any remedy, claim, liability, reimbursement, claim of action or other right. Without limiting the foregoing, no provision of this Agreement shall create any third-party beneficiary rights in any employee or former employee of an e.spire Entity or any other Persons (including any beneficiary or dependent thereof), in respect of continued employment (or resumed employment) for any specified period of any nature or kind whatsoever, and no provision of this Agreement shall create such third-party beneficiary rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any e.spire Plan.

Section 11.14 Non-survival of Representations, Warranties and Agreements. All representations, warranties and (except as set forth in the following sentence) covenants set forth in this Agreement or in any certificate, document or other instrument delivered in connection herewith except for the obligations of XMC under Section 5.8, shall terminate at the earlier of (a) the Closing and (b) termination of this Agreement in accordance with Article IX hereof. Only those covenants that contemplate actions to be taken or obligations in effect after the Closing or termination of this Agreement, as the case may be, shall survive in accordance with their terms and to the extent so contemplated.

Section 11.15 Construction of Certain Provisions. Except with respect to the Cure Amounts listed in Exhibit 1.2(d), it is understood and agreed that neither the specification of any dollar amount in the representations and warranties contained in this Agreement nor the inclusion of any specific item in the Schedules or Exhibits is intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and no Party hereto shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Schedules or Exhibits in any dispute or controversy between the parties as to whether any obligation, item or matter is or is not material for purposes hereof.

ARTICLE XII DEFINITIONS

Section 12.1 Defined Terms. As used herein, the terms below shall have the following meanings.

"Accounts Receivable" has the meaning set forth in Section 1.3(a).

"Action" means any claim, suit, action, arbitration, inquiry, proceeding, investigation, charge or complaint.

"Affiliate" (and, with a correlative meaning, "affiliated") means, with respect to any Person, any direct or indirect Subsidiary of such Person, and any other Person that, directly, or through one or more intermediaries, controls or is controlled by or is under common control with such first Person, and, if such a Person is an individual, any member of the immediate Family (including parents, spouse and children) of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person who is controlled by any such member or trust. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

"Agreement" has the meaning set forth in the Preamble.

"Allowed Cure Claim" has the meaning set forth in Section 6.6.

"Assets" has the meaning set forth in Section 1.2.

"Assumed Contracts" means all Contracts which XMC and Thermo designate as such by notice to the e.spire Entities given at any time on or before the Closing Date.

"Assumed Liabilities" has the meaning set forth in Section 1.4.

"Assumption Order Date" has the meaning set forth in Section 6.6.

"Bankruptcy Code" has the meaning set forth in the Preamble.

"Bankruptcy Court" has the meaning set forth in the Preamble and, with respect to an appeal from any order or determination of the Bankruptcy Court, any court having jurisdiction over such appeal.

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banking institutions in Herndon, Virginia are authorized or required by law or executive order to close.

"Business Employees" has the meaning set forth in Section 5.7(a).

"Cash Purchase Price" has the meaning set forth in Section 2.2(b)(i).

"Chapter 11 Case" has the meaning set forth in the Preamble.

"Closing" has the meaning set forth in Section 2.1.

"Closing Date" has the meaning set forth in Section 2.1.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Collocation Contracts" means agreements consisting of rights and obligations of any e.spire Entity (whether written or oral, absolute or contingent, presently existing or hereafter arising) which relate to collocation provisioning, installation, build out, activation, occupancy, testing, maintenance, safety, security or use, as well as access or entry to, connections to or from, equipment used in, pricing or billing of, heating, air conditioning, ventilation or powerage of, or enclosure of collocation space, pursuant to which, in each case, the e.spire Entities purport to have the right to use Included Collocation Sites, other than those set out in the sections of, or attachments to, Interconnection Agreements to the extent they relate to collocation provisioning.

"Collocation-Related Assets" means all of the following:

(a) all right, title and interest of the e.spire Entities in and to all collocation deposits and prepaid collocation fees and all collocation "build-out" (including racks, wiring, cages, power distribution equipment, cabling, fuse panels and the like), and all other assets relating primarily to the Collocation Contracts or located at the Collocation Sites that do not constitute Network Equipment Assets;

(b) all Collocation Contracts; and

(c) all Collocation Sites.

"Collocation Sites" means the locations at which the e.spire Entities, pursuant to the Collocation Contracts, have or purport to have the right to locate their Network Equipment Assets and connect them to incumbent local exchange carriers' or other carriers' networks.

"Communications Licenses" has the meaning set forth in Section 3.7(a).

"Conduit" has the meaning common to the telecom industry.

"Confidentiality Agreement" means the Mutual Non-Disclosure Agreement, dated as of January 25, 2001, by and between e.spire and Brown Brothers Harriman & Co., as agent for Thermo Capital Partners.

"Contemplated Transactions" means the transfer of the Assets and the assumption of the Assumed Liabilities contemplated hereby, the purchase of the 48% membership interest in XMC (if the Put Right is exercised) and the related transactions contemplated by this Agreement.

"Contracts" has the meaning set forth in Section 1.2(d).

"Contribution Conditions" means the conditions set forth in Article VII.

"Contribution Date" means the later of (i) June 1, 2002 and (ii) the first Business Day on which all of the Contribution Conditions have been fulfilled or waived.

"Cure Amounts" has the meaning set forth in Section 1.4(a).

"Deferred Assets" has the meaning set forth in Section 6.4.

"Deposit" has the meaning set forth in Section 1.1.

"Delayed Rejection Contracts" has the meaning set forth in Section 1.6.

"Delayed Rejection Date" has the meaning set forth in Section 1.6.

"Encumbrance" means any claim, adverse interest, mortgage, security interest, rights of first refusal, or lien (as defined in the Bankruptcy Code or otherwise) whether legal or equitable in nature, whether contractual, statutory or common law in origin.

"Environmental Laws" has the meaning set forth in Section 3.8.

"e.spire" has the meaning set forth in the Preamble.

"e.spire Disclosure Schedule" has the meaning set forth in Article III.

"e.spire Entities" has the meaning set forth in the Preamble.

"e.spire Entities' Representatives" has the meaning set forth in Section 6.2(b).

"Excess Cure Claim" has the meaning set forth in Section 6.6.

"Excluded Assets" has the meaning set forth in Section 1.3.

"Excluded Liabilities" has the meaning set forth in Section 1.5.

"Excluded Taxes" has the meaning set forth in Section 1.5(c).

"FCC" means the Federal Communications Commission or any successor agency thereof.

"FCC Licenses" has the meaning set forth in Section 3.7(a).

"Fiber" means has the meaning common to the telecom industry.

"Governmental Authority" means any federal, state, local, municipal, foreign or international court, tribunal, judicial body, government, department, commission, board, bureau, agency, official, instrumentality or other regulatory, administrative or governmental authority.

"Governmental Requirements" has the meaning set forth in Section 3.2.

"Hazardous Substance" means any toxic or hazardous wastes, materials or substances, including without limitation, asbestos, asbestos-containing materials, radon gas, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum products and by-product substances, defined as "hazardous substances" or "toxic substances" in any Environmental Law. "Hazardous Substance" also means any oil or petroleum or chemical liquids or solid, liquid or gaseous products or hazardous waste, the discharge, spillage, uncontrolled loss, seepage or filtration of which constitutes a violation of any Environmental Law.

"HSR Act" has the meaning set forth in Section 3.2.

"Intellectual Property Assets" has the meaning set forth in Section 3.12(a).

"Interconnection Agreement" means the contracts and agreements identified as Interconnection Agreements on Exhibit 1.2(d).

"IRS" means the Internal Revenue Service.

"Lease Assignments" has the meaning set forth in Section 10.1(a)(ii).

"Legal Proceeding" means any Action pending at law or in equity before any Governmental Authority or arbitral body.

"Management Agreement" has the meaning set forth in Section 2.2(c).

"Manholes" has the meaning common to the telecom industry.

"Material Adverse Effect" means any effect, event, occurrence or state of facts that, individually or aggregated with other effects, events, occurrences or states of facts, (a) would after the Closing be materially adverse to or materially impair (i) the value or condition of the

Assets or Assumed Liabilities, or (ii) the ability of any Party hereto to perform its obligations under this Agreement, or (b) gives rise to any material liability that would be an Assumed Liability from or after the Closing or materially increases any Assumed Liability.

"Network Equipment Assets" means the e.spire Entities' network equipment assets, including work-in-process and assets held by vendors.

"Network Facilities" includes each of the following:

- (a) the e.spire Entities' long haul fiber network and each long haul segment; fibers on each route provided by the e.spire Entities to third parties through indefeasible rights to use ("IRU") or lease agreements; and fibers on each route provided by third parties to the e.spire Entities through IRU or lease agreements;
- (b) the e.spire Entities' metropolitan area fiber networks, including lit and dark fibers owned by the e.spire Entities or used by the e.spire Entities pursuant to lease or IRU agreements;
- (c) conduit (both completed and under construction) that is either available to the e.spire Entities (meaning that it is available for the e.spire Entities' own use or provision by the e.spire Entities to third parties) or is being provided by the e.spire Entities to third parties (or will be provided upon completion) pursuant to IRU agreements; and
- (d) all Network Equipment Assets.

"Note" has the meaning set forth in Section 2.2(b)(i).

"Operations" means the business, operations and activities conducted by e.spire and all of its Affiliates on the date of this Agreement, other than those that relate solely to Excluded Assets.

"Operating Agreement" has the meaning set forth in Section 2.2(b).

"Parties" means XMC, Thermo and the e.spire Entities.

"Permitted Encumbrances" means with respect to or upon any of the Assets, whether owned, leased, subleased, occupied or licensed as of the date hereof or thereafter, (a) any easement, encroachment or similar reservation incurred or suffered in the ordinary course of business and that, would not individually or in the aggregate be reasonably expected to impair the use, occupancy, or value, or the marketability of title, of such Assets; (b) Assumed Liabilities under Assumed Contracts; (c) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds and other obligations of a like nature, in each case in the ordinary course of business; (d) the interests of lessors under operating leases; (e) the capitalized leases listed included in the Assumed Contracts; and (f) extensions, renewals and replacements of the foregoing.

"Person" means any natural person, firm, partnership, limited liability company, association, corporation, trust, business trust or other entity.

"Petitions" has the meaning set forth in the Recitals.

"Pre-Closing Tax Period" means any taxable period (or portion thereof) ending on or prior to the Closing Date.

"Property Taxes" means real, personal and intangible ad valorem property taxes.

"Purchase Price" has the meaning set forth in Section 2.2(b)(i).

"Put Right" has the meaning set forth in Section 2.2(b)(i).

"Real Property" means real property, together with all structures (surface and subsurface), facilities, improvements, fixtures, systems, attached or appurtenant thereto and all easements, licenses, rights and appurtenances relating to any of the foregoing.

"Regulatory Approvals" means all consents, waivers, approvals, certificates and other authorizations required to be obtained from any Governmental Authority asserting jurisdiction over XMC, Thermo, the e.spire Entities or one of their Subsidiaries or the Assets, that are required in order to consummate the Contemplated Transactions, and/or for XMC and Thermo to operate the businesses of the e.spire Entities post-closing with a customer base that is not materially different in number and amount of customers from such customer base as it exists on the date of this Agreement.

"Reimbursement Claim" has the meaning set forth in Section 9.5.

"Rejected Contract" has the meaning set forth in Section 1.6.

"Release" has the meaning set forth in Section 3.8.

"Retainee Notice" has the meaning set forth in Section 5.7(a).

"Rights of Way" has the meaning set forth in Section 1.2(j).

"Sale Order" means an order of the Bankruptcy Court approving the Contemplated Transactions in a form acceptable to XMC and Thermo or multiple orders of the Bankruptcy Court that taken together are acceptable to XMC and Thermo.

"State Licenses" has the meaning set forth in Section 3.7(a).

"State PUCs" means state and local public service and public utilities commissions or franchise authorities or similar regulatory agencies in each applicable jurisdiction.

"Straddle Period" means any period beginning on or prior to and ending after the Closing Date.

"Subsidiary" means any subsidiary of any Party hereto, as the case may be.

"Taxes" means all United States federal, state and local, and foreign taxes, and other assessments of a similar nature (whether imposed directly or through withholding), excluding Transfer Taxes, and including any interest, additions to tax, or penalties applicable thereto.

"Tax Returns" or "Returns" means all United States federal, state and local, and foreign Tax returns, declarations, statements, reports, schedules, forms, and information returns and any amended Tax Returns relating to Taxes.

"Transfer Taxes" has the meaning set forth in Section 6.7.

"Thermo" has the meaning set forth in the Preamble.

"Thermo Contribution" has the meaning set forth in Section 1.1.

"Transferred Employee" has the meaning set forth in Section 5.7(b).

"XMC" has the meaning set forth in the Preamble.

"XMC/Thermo Disclosure Schedule" has the meaning set forth in Article IV.

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

e.spire Communications, Inc.

By: Donald W. Bush
Name: Donald W. Bush
Title: SVP & Treasurer

e.spire Entities:

e.spire Finance Corporation,
a Delaware corporation
ACSI Network Technologies, Inc.,
a Maryland corporation
e.spireDATA, Inc.,
a Maryland corporation
ACSI Local Switched Services, Inc.,
a Maryland corporation
ACSI Long Distance, Inc.,
a Maryland corporation
e.spire Leasing Corporation,
a Maryland corporation
American Communication Services of
Albuquerque, Inc.,
a Delaware corporation
American Communication Services of
Amarillo, Inc.,
a Maryland corporation
American Communication Services of Atlanta, Inc.,
a Maryland corporation
American Communication Services of Austin, Inc.,
a Delaware corporation
American Communication Services of
Baton Rouge, Inc.,
a Maryland corporation
American Communication Services of
Birmingham, Inc.,
a Delaware corporation
American Communication Services of
Charleston, Inc.,
a Delaware corporation

American Communication Services of
Chattanooga, Inc.,
a Delaware corporation
American Communication Services of Colorado
Springs, Inc.,
a Maryland corporation
American Communication Services of
Columbia, Inc.,
a Delaware corporation
American Communication Services of
Columbus, Inc.,
a Maryland corporation
American Communication Services of
Corpus Christi, Inc.,
a Maryland corporation
American Communication Services of Dallas, Inc.,
a Maryland corporation
American Communication Services of D.C., Inc.,
a Maryland corporation
American Communication Services of El Paso, Inc.,
a Delaware corporation
American Communication Services of
Fort Worth, Inc.,
a Delaware corporation
American Communication Services of
Greenville, Inc.,
a Delaware corporation
American Communication Services of Irving, Inc.,
a Maryland corporation
American Communication Services of
Jackson, Inc.,
a Maryland corporation
American Communication Services of
Jacksonville, Inc.,
a Maryland corporation
American Communication Services of
Kansas City, Inc.,
a Maryland corporation
American Communication Services of
Las Vegas, Inc.,
a Maryland corporation
American Communication Services of
Lexington, Inc.,

a Delaware corporation
American Communication Services of
Little Rock, Inc.,
a Delaware corporation
American Communication Services of
Louisiana, Inc.,
a Delaware corporation
American Communication Services of
Louisville, Inc.,
a Delaware corporation
American Communication Services of
Maryland, Inc.,
a Maryland corporation
American Communication Services of Miami, Inc.,
a Maryland corporation
American Communication Services of Mobile, Inc.,
a Delaware corporation
American Communication Services of
Montgomery, Inc.,
a Maryland corporation
American Communication Services of
Pima County, Inc.,
a Delaware corporation
American Communication Services of
Rio Rancho, Inc.,
a Maryland corporation
American Communication Services of
Roanoke, Inc.,
a Maryland corporation
American Communication Services of
San Antonio, Inc.,
a Delaware corporation
American Communication Services of
Savannah, Inc.,
a Maryland corporation
American Communication Services of
Shreveport, Inc.,
a Maryland corporation
American Communication Services of
Spartanburg, Inc.,
a Maryland corporation
American Communication Services of Tampa, Inc.,
a Maryland corporation

American Communication Services of Tulsa, Inc.,
a Maryland corporation
American Communication Services of
Virginia, Inc.,
a Virginia corporation
American Communication Services International,
Inc.,
a Delaware corporation
ACSI Local Switched Services of Virginia, Inc.,
a Virginia corporation
Cybergate, Inc.,
a Florida corporation
FloridaNet, Inc.,
a Florida corporation

Each by: Donald W. Busk

Name: Donald W. Busk

Title: SVP & Treasurer

THERMO TELECOM PARTNERS LLC

By: James T. Lynch

Name: James T. Lynch

Title: Managing Director

XSPEDIUS MANAGEMENT CO., LLC

By: Mark W. Senda

Name: MARK W. SENDA

Title: PRESIDENT & CEO