

EXHIBIT E

COMTEL TELCOM ASSETS LP

ASSET PURCHASE AGREEMNT

ASSET PURCHASE AGREEMENT

Dated as of July 25, 2005

By and Among

VARTEC TELECOM, INC.,
EXCEL COMMUNICATIONS MARKETING, INC.,
EXCEL MANAGEMENT SERVICE, INC.,
EXCEL PRODUCTS, INC.,
EXCEL TELECOMMUNICATIONS, INC.,
EXCEL TELECOMMUNICATIONS OF VIRGINIA, INC.,
EXCEL TELESERVICES, INC.,
EXCEL.COM, INC.,
TELCO COMMUNICATIONS GROUP, INC.,
TELCO NETWORK SERVICES, INC.,
VARTEC BUSINESS TRUST,
VARTEC PROPERTIES, INC.,
VARTEC RESOURCE SERVICES, INC.,
VARTEC SOLUTIONS, INC.,
VARTEC TELECOM HOLDING COMPANY,
VARTEC TELECOM INTERNATIONAL HOLDING COMPANY,
VARTEC TELECOM OF VIRGINIA, INC.,
and
COMTEL INVESTMENTS LLC

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of July 25, 2005, by and among VarTec Telecom, Inc., a Texas corporation ("Parent"); Excel Communications Marketing, Inc., a Delaware corporation; Excel Management Service, Inc., a Delaware corporation; Excel Products, Inc., a Delaware corporation; Excel Telecommunications, Inc., a Texas corporation; Excel Telecommunications of Virginia, Inc., a Virginia corporation; Excel Teleservices, Inc., a Delaware corporation; Excelcom, Inc., a Delaware corporation; Telco Communications Group, Inc., a Virginia corporation; Telco Network Services, Inc., a Nevada corporation; VarTec Business Trust, a Delaware corporation; VarTec Properties, Inc., a Texas corporation; VarTec Resource Services, Inc., a Delaware corporation; VarTec Solutions, Inc., a Delaware corporation; VarTec Telecom Holding Company, a Delaware corporation; VarTec Telecom International Holding Company, a Delaware corporation; VarTec Telecom of Virginia, Inc., a Virginia corporation (each a "Subsidiary Seller" and together with Parent, the "Sellers"), and Comtel Investments LLC, a Delaware limited liability company ("Buyer").

RECITALS:

Sellers, as a corporate group are, collectively, telecommunications carriers that provide long distance, local, wireless and Internet access services to residential, midsize business and wholesale customers in the United States (the "Business").

Parent and each Subsidiary Seller have filed voluntary petitions (the "Petitions") for reorganization relief pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1330 (as amended, the "Bankruptcy Code"), in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court"), all of which are being jointly administered pursuant to order of the Bankruptcy Court under Case No. 04-81694-SAF-11 (the "Bankruptcy Case").

Buyer desires to purchase certain assets, contracts and properties of Sellers related to the Business and to assume certain obligations and liabilities from Sellers, and Sellers desire to sell, convey, assign, and transfer to Buyer, such assets, contracts and properties together with such obligations and liabilities, all in the manner and subject to the terms and conditions set forth herein and in accordance with Sections 363 and 365 of the Bankruptcy Code.

The transactions contemplated herein will be consummated pursuant to the terms and conditions of this Agreement and a Sale Order to be entered by the Bankruptcy Court.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, in reliance upon the mutual covenants and agreements hereinafter set forth and subject to the terms and conditions herein contained, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. Certain capitalized and other terms used in this Agreement are defined hereto and are used herein with the meanings ascribed to them herein.

“Acceptance Notice” shall have the meaning ascribed to such term in Section 2.16(c).

“Accounts Payable” shall have the meaning ascribed to such term in Section 2.3(a)(i).

“Accounts Receivable” shall have the meaning ascribed to such term in Section 2.1(b).

“Acquired Assets” shall have the meaning ascribed to such term in Section 2.1.

“Acquired PARs” shall have the meaning ascribed to such term in Section 5.16(a).

“Advisors” shall have the meaning ascribed to such term in Section 2.3(b)(ii).

“Affiliate” shall mean, with respect to any Person other than the Sellers, any other Person that controls, is controlled by or is under common control with the former, including all affiliates as that term is defined in 11 U.S.C. §101 and, with respect to any of the Sellers, shall mean Parent and any of the Subsidiary Sellers.

“Agreement” shall mean this Asset Purchase Agreement including any amendments thereto and each Annex, Exhibit and Schedule thereto, and including the Bid Procedures as approved by the Bid Procedures Order.

“Alternative Transaction” shall mean a Successful Bid by any Person other than Buyer.

“Assumed Contracts” shall have the meaning ascribed to such term in Section 2.1(d).

“Assumed Leased Property” shall mean Leased Property the underlying lease Contract of which is an Assumed Contract.

“Assumed Liabilities” shall have the meaning ascribed to such term in Section 2.3(a).

“Avoidance Action” shall mean all rights, claims, causes of action, choses in action, rights of recovery, defenses and rights of recoupment or set-off of any kind under Chapter 5 of the Bankruptcy Code or Section 724(a) of the Bankruptcy Code, or under similar state avoidance laws, or otherwise.

“Bankruptcy Case” shall have the meaning ascribed to such term in the recitals hereof.

“Bankruptcy Code” shall have the meaning ascribed to such term in the recitals hereof.

“Bankruptcy Court” shall have the meaning ascribed to such term in the recitals hereof.

“Bankruptcy Rules” shall mean the Federal Rules of Bankruptcy Procedure.

“Bid Procedures” shall have the meaning ascribed to such term in Section 5.11(b).

“Bid Procedures Order” shall have the meaning ascribed to such term in Section 5.11(b).

“Bill of Sale and Assumption Agreement” shall have the meaning ascribed to such term in Section 2.5(a).

“Business” shall have the meaning ascribed to such term in the recitals hereof.

“Business Day” shall mean any day of the year other than (i) any Saturday or Sunday or (ii) any other day on which banks located in the State of New York generally are closed for business other than the retail depository business.

“Buyer” shall have the meaning ascribed to such term in the first paragraph of this Agreement.

“Buyer Defined Contribution Plan” shall have the meaning ascribed to such term in Section 5.10(c).

“Buyer Disclosure Schedule” shall have the meaning ascribed to such term in Article IV.

“Closing” shall have the meaning ascribed to such term in Section 2.14(a).

“Closing Date” shall have the meaning ascribed to such term in Section 2.14(a).

“Closing Documents” shall have the meaning ascribed to such term in Section 2.5 and Section 2.6.

“COBRA” shall have the meaning ascribed to such term in Section 5.10(d).

“Code” means the United States Internal Revenue Code of 1986, as amended. All references to the Code, U.S. Treasury regulations or other governmental pronouncements shall be deemed to include references to any applicable successor regulations or amending pronouncement.

“Contracts” shall have the meaning ascribed to such term in Section 2.1(d).

“Copyrights” shall have the meaning ascribed to such term in Section 2.1(i).

“Court” shall mean any court, federal, state or local, or arbitration tribunal.

“Cure Costs” shall have the meaning ascribed to such term in Section 2.3(a)(v).

“DOJ” shall mean the Department of Justice.

“Deal Protection Provisions” shall have the meaning ascribed to such term in Section 5.12.

“Deposit Escrow Amount” shall have the meaning ascribed to such term in Section 2.9(a).

“Designation” shall have the meaning ascribed to such term in Section 5.11(c).

“DIP Facility” shall have the meaning ascribed to such term in Section 2.15.

“Dispute Notice” shall have the meaning ascribed to such term in Section 2.16(b).

“Early Funding Date” shall have the meaning ascribed to such term in Section 2.15.

“Employee Benefit Plans” shall mean any “employee benefit plan” within the meaning of Section 3(3) of ERISA and any bonus, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, vacation, sick leave, retirement, severance, disability, death benefit, hospitalization, cafeteria, tuition reimbursement, scholarship or insurance plan.

“Employee Termination Obligations” shall mean all liabilities, obligations and commitments of each Seller to: (a) pay any compensation, retention, benefit or severance to any officer, director or employee of any Seller, including any retention plan or severance plan approved by the Bankruptcy Court in the Bankruptcy Case and notwithstanding any conversion of the Bankruptcy Case to a Chapter 7 bankruptcy case or (b) accelerate or increase any such compensation, retention, benefit, or severance, upon: (i) a change in control of any Seller or the sale or other disposition of all or substantially all of the assets or business of any Seller; (ii) the confirmation or consummation of the Bankruptcy Cases; or (iii) any termination of employment or other relationship between such Person and any Sellers, in each such case only to the extent that such obligations (i) relate to employees that are employed by any of the Sellers as of the Early Funding Date; and (ii) do not exceed the amount or number set forth with respect thereto in the memo referred to in Section 5.10(d); provided, however, that all retention and severance payments payable to the Tier 1 Employee under Parent’s Key Employee Retention Plan shall not be Employee Termination Obligations.

“Employees” shall have the meaning ascribed to such term in Section 5.10(a).

“Equipment” shall have the meaning ascribed to such term in Section 2.1(a).

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, et seq., and the rules and regulations promulgated thereunder.

“Escrow Agent” shall have the meaning ascribed to such term in Section 2.9(a).

“Escrow Agreement” shall have the meaning ascribed to such term in Section 2.9(a).

“Estimated Purchase Price” shall mean the Purchase Price without taking into account the Working Capital Adjustment.

“Excluded Assets” shall have the meaning ascribed to such term in Section 2.2.

“Excluded Liabilities” shall have the meaning ascribed to such term in Section 2.3(b).

“FCC” shall mean the Federal Communications Commission.

“FCC Consent” shall mean the consent by the FCC to the assignment of the FCC Permits in connection with the consummation of the transactions contemplated hereby.

“FCC Permits” shall mean all Permits issued by the FCC held by Sellers.

“Final Closing” shall have the meaning ascribed to such term in Section 2.14(b).

“Final Closing Date” shall have the meaning ascribed to such term in Section 2.14(b).

“Final Order” shall mean an order of the Bankruptcy Court or other Court of competent jurisdiction as to which (a) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or (b) in the event that an appeal, writ of certiorari, reargument, or rehearing thereof has been sought, such order of the Bankruptcy Court or any other court or adjudicative body shall have been affirmed by the highest court to which such order was appealed, or certiorari has been denied, or from which reargument or rehearing was sought, and the time to take any further appeal, petition for certiorari or move for reargument or rehearing shall have expired; provided, that no order shall fail to be a Final Order solely because of the possibility that a motion pursuant to Rule 60 of the Federal Rules of Civil Procedure or Rule 7024 of the Federal Rules of Bankruptcy Procedure may be filed with respect to such order.

“Final Working Capital Adjustment” shall have the meaning ascribed to such term in Section 2.16(d).

“FMLA” shall have the meaning ascribed to such term in Section 5.10(a).

“FTC” shall mean the Federal Trade Commission.

“GAAP” shall mean generally accepted accounting principles consistently applied.

“Governmental Agency” shall have the meaning ascribed to such term in Section 2.3(b)(v).

“Governmental Authority” shall mean any federal, state or local Governmental Agency or governmental authority, including Courts.

“Guaranteed Amount” shall have the meaning ascribed to such term in Section 2.15.

“HSR Act” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“ILEC” shall mean an incumbent local exchange carrier.

"Independent Auditor" shall have the meaning ascribed to such term in Section 2.16(d).

"Intellectual Property" shall have the meaning ascribed to such term in Section 2.1(i).

"Knowledge" shall mean, with respect to Sellers, the actual knowledge of Joseph D'Angelo, Michael G. Hoffman or Timothy A. Biggio, with a reasonable duty of investigation, and with respect to Buyer, the actual knowledge of Patrick Marburger, Jerry Ou or James Cashiola with a reasonable duty of investigation.

"Law" shall mean (a) all laws, statutes and ordinances of the United States, any foreign country, or any domestic or foreign state, and any political subdivision thereof, including all decisions of Courts having the effect of law in each such jurisdiction and (b) all Regulations.

"Leased Property" shall have the meaning ascribed to such term in Section 3.3(b).

"Liens" shall mean any mortgage, pledge, deed of trust, easement, charge, security interest, encumbrance, lien, right of first refusal, right of first offer, right of use or occupancy, right of consent or approval, right of termination or charge of any kind (including any agreement to give any of the foregoing), any conditional sale or other title retention agreement, any transfer restriction, any lease in the nature thereof or the filing of or agreement to give any financing statement under the Uniform Commercial Code of any jurisdiction.

"Management Services Agreement" shall have the meaning ascribed to such term in Section 5.1(b)(ii).

"Material Adverse Effect" shall mean any result, occurrence, fact, change, event or effect occurring after the date hereof and prior to the Early Funding Date that, individually or in the aggregate with any such other results, occurrences, facts, changes, events or effects, is materially adverse to the Business, Acquired Assets, or liabilities of the Business, in each case, with the Business taken as a whole; provided, however, that no change, event, effect, fact or circumstance shall be deemed (individually or in the aggregate) to constitute, nor shall be taken into account in determining whether there has been or may be, a Material Adverse Effect to the extent that it arises out of, or relates to, (a) a general deterioration in the economy or in the economic conditions prevalent in the industry in which Parent or the Subsidiary Sellers operate; (b) the outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war or the occurrence of any other calamity or crisis, including an act of violence or terrorism; (c) the disclosure of the fact that Buyer is the prospective acquirer of the Acquired Assets or assumer of the Assumed Liabilities; (d) the Bankruptcy Case or the announcement or pendency of the transactions contemplated hereby; (e) actions taken by Buyer or any of its Affiliates; or (f) compliance with the terms of, or the taking of any action required by, this Agreement or the other Transaction Documents.

"Material Contracts" shall have the meaning ascribed to such term in Section 3.11(a).

"Non-Transferred Assets" shall mean any Acquired Assets the transfer of which to Buyer prior to the satisfaction of the conditions set forth in Section 6.6(a) would violate the FCC Permits, the State PUC Permits or any applicable Laws including, but not limited to, all

Accounts Receivable, all cash and cash equivalents of any of the Sellers, all network Equipment (including switches, circuits, IRUs, and related supporting Equipment) of any of the Sellers, all inventory (including sales aids, handsets, marketing materials and letterhead) of any of the Sellers, all office Equipment, computer Equipment and furniture of any of the Sellers, all buildings and improvements (whether leased or owned) utilized in the Business, all customer account information and all related data used in the Business, all software licenses and proprietary Seller-designed applications used in support of the operations of the Business, all active Contracts to purchase products and services used in the Business, all Contracts with all customers of the Business, including tariffs, all Permits, all Intellectual Property and all Internet domain names used in the Business, all capital stock of any of the Sellers, all bank accounts, all lock box accounts and banking relationships of any of the Sellers, all insurance policies and related bonds, all letters of credit, surety bonds, and deposits by on behalf of any of the Sellers to provide operating assurance and all Contracts with employees of any of the Sellers.

"Other Excluded Assets" shall have the meaning ascribed to such term in Section 2.2(g).

"Owned Real Property" shall have the meaning ascribed to such term in Section 2.2(p).

"Parent" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"Patents" shall have the meaning ascribed to such term in Section 2.1(g).

"Permits" shall have the meaning ascribed to such term in Section 2.1(f).

"Permitted Assignment" shall have the meaning ascribed to such term in Section 8.11.

"Permitted Liens" shall mean the following: (a) Liens for Taxes, assessments or other governmental charges not yet due and payable or being contested in good faith by appropriate proceedings; (b) mechanics', carriers', workers', repairers' and other similar liens imposed by law arising or incurred in the ordinary course of business and consistent with past practices of the Sellers for obligations that are not overdue or that are being contested in good faith by appropriate proceedings; (c) in the case of leases of vehicles, rolling stock and other personal property, encumbrances that do not materially impair the operation of the Business at the facility at which such leased equipment or other personal property is located; (d) Liens on leases of real property arising from the provisions of such leases, including, in relation to the Assumed Leased Property, any agreements and/or conditions imposed on the issuance of land use permits, zoning, business licenses, use permits or other entitlements of various types issued by any Governmental Authority, necessary or beneficial to the continued use and occupancy of such Assumed Leased Property or the continuation of the business conducted by Parent or any of the Seller Subsidiary Sellers; (e) pledges or deposits made in the ordinary course of business and consistent with past practices in connection with workers' compensation, unemployment insurance and other social security legislation; (f) deposits to secure the performance of bids, contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business and consistent with past practices; (g) zoning regulations and restrictive covenants and easements of record that do

not detract in any material respect from the value of the Real Property and do not materially and adversely affect, impair or interfere with the use of any property affected thereby; (h) public utility easements of record, in customary form, to serve the Real Property; (i) landlords' Liens in favor of landlords under the leases with respect to the Assumed Leased Property that secure Assumed Liabilities; (j) mortgages, deeds of trust and other security instruments, and ground leases or underlying leases covering the title, interest or estate of such landlords with respect to the Assumed Leased Property and to which the leases with respect to the Assumed Leased Property are subordinate; and (k) Liens described on Exhibit A to the extent that the Acquired Assets shall be transferred free and clear of such Liens pursuant to the Sale Order.

"Person" shall mean an individual, partnership, limited liability company, corporation, joint stock company, trust, estate, joint venture, association or unincorporated organization, or any other form of business or professional entity.

"Petitions" shall have the meaning ascribed to such term in the recitals hereof.

"Petition Date" shall mean the date that each of the Sellers commenced their respective Bankruptcy Case before the Bankruptcy Court.

"Professional Fees" shall mean compensation for fees or reimbursement of expenses of any Person in the Bankruptcy Case under Sections 327, 328, 329, 330, 331, 364, 503 or 506 of the Bankruptcy Code or otherwise (a) excluding such reasonable fees and expenses of the Sellers' Advisors that are incurred subsequent to the entry of the Sale Order in connection with the implementation of this Agreement, the Management Services Agreement or the transactions contemplated hereby or thereby, and which have been approved by the Bankruptcy Court, including with respect to (i) motions to assume or assign Assumed Contracts, (ii) motions to reject Contracts that are not designated to be assumed, (iii) defense of motions for relief from stay, if the subject matter of such motion relates to this Agreement, the Management Services Agreement or the transactions contemplated hereby or thereby, (iv) the fees and expenses of Alvarez & Marsal in the operation of the Business in a monthly amount not to exceed the monthly amount charged to Sellers as of the date hereof, or (v) any actions requested to be taken by any of the Sellers by Buyer and (b) specifically including the costs and expenses of FTI, Fulbright & Jaworski, Xroads Solutions, Carrington Coleman or other Advisors to parties other than the Sellers, unless such fees and expenses are incurred at Buyer's direction. Nothing herein shall in any way limit any obligations of the Sellers' bankruptcy estate on the account of administrative expenses of professionals to the extent approved by the Bankruptcy Court.

"Property Taxes" shall have the meaning ascribed to such term in Section 2.12.

"Purchase Price" shall mean the sum of (a) eighty two million one hundred thousand dollars (\$82,100,000.00); and (b) the Working Capital Adjustment; provided, however, that if the Bankruptcy Court does not enter the Sale Order by July 31, 2005, then the Purchase Price shall be further reduced by three million five hundred thousand dollars (\$3,500,000).

"Purchase Price Escrow Amount" shall have the meaning ascribed to such term in Section 2.15.

"Real Property" shall mean all parcels of land and all buildings, structures, improvements and fixtures thereon, together with all rights of way, easements, privileges, and other appurtenances pertaining or belonging thereto, whether owned in fee by the Sellers or leased to any of the Sellers.

"Regulation" shall mean any rule or regulation of any Governmental Authority having the effect of law.

"Retained PARs" shall have the meaning ascribed to such term in Section 5.16(a).

"RTFC" means the Rural Telephone Finance Cooperative, or its assigns.

"Sale Motion" shall have the meaning ascribed to such term in Section 5.11(b).

"Sale Order" shall have the meaning ascribed to such term in Section 5.11(b).

"SEA" shall have the meaning ascribed to such term in Section 5.2(b).

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Seller Defined Contribution Plan" shall have the meaning ascribed to such term in Section 5.10(c).

"Seller Disclosure Schedule" shall have the meaning ascribed to such term in Article III.

"Sellers" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"State PUC" shall mean any state or local telecommunications regulatory authority having regulatory authority over the Business or the Acquired Assets, in any given jurisdiction.

"State PUC Consent" means the grant by any State PUC of its consent to the assignment of the State PUC Permits or any Non-Transferred Assets associated with such State PUC Permits, in connection with the consummation of the transactions contemplated hereby.

"State PUC Permits" shall mean all Permits issued or granted by the State PUC held by Sellers in each applicable jurisdiction, including those set forth in the Seller Disclosure Schedule.

"Subsidiary Seller" shall have the meaning ascribed to such term in the first paragraph of this Agreement.

"Successful Bid" shall mean the highest and best binding offer to acquire the Acquired Assets and assume the Assumed Liabilities, which is ultimately approved by the Bankruptcy Court.

"Taxes" shall mean all income taxes and all other taxes, charges, imposts, tariffs, fees, levies or other similar assessments or liabilities, including income taxes, ad valorem taxes, excise taxes, withholding taxes or other taxes of or with respect to gross receipts, premiums, real

property, personal property, windfall profits, sales, use, transfers, licensing, employment, payroll and franchises imposed by or under any Law; and such terms shall include any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any such tax or any contest or dispute thereof.

“Taxing Authority” shall mean any Governmental Authority exercising any Taxing authority or Tax regulatory authority.

“Tax Return” shall mean all returns, declarations, reports, estimates, information returns and statements required to be filed by or with respect to any Seller in respect of Taxes, including Federal, state, local or foreign Income Tax returns filed on a consolidated, combined or unitary basis.

“Telecommunications Laws” shall mean: (i) the Communications Act of 1934, as amended (47 U.S.C. Section 151 et seq.), the Federal Communications Commission rules and regulations applicable to Parent, any of the Subsidiary Sellers or the Business; and (ii) the telecommunications laws, rules and regulations of the various states in which the Sellers do business and which are applicable to Business.

“Termination Fee” shall have the meaning ascribed to such term in Section 5.12(b).

“Trademarks” shall have the meaning ascribed to such term in Section 2.1(h).

“Transaction Documents” shall mean this Agreement and any other agreements or documents the execution of which are contemplated by this Agreement.

“Transferred Assets” shall have the meaning ascribed to such term in Section 2.4.

“Transferred Employees” shall have the meaning ascribed to such term in Section 5.10(a).

“USERRA” shall have the meaning ascribed to such term in Section 5.10(a).

“USF Credits” shall mean the credits held by Sellers with respect to overpayments of Universal Service Fees.

“WARN” shall have the meaning ascribed to such term in Section 5.10(f)(i).

“Working Capital Adjustment” shall mean the difference between (a) Sellers’ net working capital as of April 30, 2005, as reflected in Exhibit G hereto (the “4/30 Working Capital Statement”), and (b) Seller’s net working capital as 12:01 a.m. on the Early Funding Date; provided, however, that for purposes of this definition, net working capital shall mean all consolidated current assets of the Sellers, less all consolidated current liabilities of Sellers and shall be calculated (i) by excluding (x) the items listed in Section 2.2(a) hereof and (y) all gross Accounts Receivable that are more than 60 days old; (ii) without reference to (a) Professional Fees or other non-ordinary course expenses; and (b) liabilities or obligations arising prior to the Petition Date, and (iii) other than as modified by this definition, in accordance with consolidated

balance sheets for the Sellers, including Exhibit G, prepared in accordance with GAAP, applied consistently in the manner in which GAAP was applied in the preparation of the 4/30 Working Capital Statement.

"Working Capital Statement" shall have the meaning ascribed to such term in Section 2.16(a).

Section 1.2 Rules of Construction.

(a) Unless the context otherwise requires, as used in this Agreement (i) a term has the meaning assigned to it in this Agreement and (ii) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP.

(b) The inclusion of any information in the Seller Disclosure Schedule shall not be deemed an admission or acknowledgment, in and of itself and solely by virtue of the inclusion of such information in the Seller Disclosure Schedule, that such information is required to be listed in the Seller Disclosure Schedule or that such items are material to the Parent, any of the Subsidiary Sellers or the Business. The Seller Disclosure Schedule is arranged in sections merely for convenience, and the disclosure of an item in one section of the Seller Disclosure Schedule as an exception to a particular representation or warranty shall be deemed adequately disclosed as an exception with respect to all other representations or warranties to the extent that the relevance of such item to such representations or warranties is reasonably apparent on the face of such item, notwithstanding the presence or absence of an appropriate section of the Seller Disclosure Schedule with respect to such other representations or warranties or an appropriate cross reference thereto.

(c) Each of the parties hereto acknowledges that it has been represented by independent counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with consent and upon the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived.

(d) All references in this Agreement to Exhibits, Schedules, Annexes, Articles, Sections, subsections and other subdivisions refer to the corresponding Exhibits, Schedules, Annexes, Articles, Sections, subsections and other subdivisions of this Agreement unless expressly provided otherwise. Titles appearing at the beginning of any Articles, Sections, subsections or other subdivisions of this Agreement are for convenience only, do not constitute any part of such Articles, Sections, subsections or other subdivisions, and shall be disregarded in construing the language contained therein. The words "*this Agreement*," "*herein*," "*hereby*," "*hereunder*" and "*hereof*" and words of similar import, refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited. The words "*this Section*," "*this subsection*" and words of similar import, refer only to the Sections or subsections hereof in

which such words occur. The word "including" (in its various forms) means "including, without limitation." Pronouns in masculine, feminine or neuter genders shall be construed to state and include any other gender and words, terms and titles (including terms defined herein) in the singular form shall be construed to include the plural and vice versa, unless the context otherwise expressly requires. Unless the context otherwise requires, all defined terms contained herein shall include the singular and plural and the conjunctive and disjunctive forms of such defined terms.

ARTICLE II SALE AND PURCHASE OF ASSETS

Section 2.1 Sale and Purchase of Assets. Except for the Excluded Assets and subject to the terms and conditions and in reliance upon the representations, warranties, covenants and agreements contained herein, and pursuant to the Sale Order, Sellers shall sell, transfer, assign, and deliver to Buyer, and Buyer shall purchase, acquire, and accept from Sellers, at 12:01 a.m. on the Closing Date (except with respect to Non-Transferred Assets, which shall be transferred as of 12:01 a.m. on the Final Closing Date), all of each Seller's right, title and interest in and to the assets, contracts and properties as the same shall exist as of the Closing (or with respect to Non-Transferred Assets, the Final Closing) (collectively, the "Acquired Assets") of each Seller of every kind, type or designation that are used in, or held for use in, the operation of the Business, whether tangible or intangible, real, personal or mixed, wherever located, free and clear of all Liens, Excluded Liabilities and other interests, except Permitted Liens and Assumed Liabilities, in accordance with Sections 363 and 365 of the Bankruptcy Code, including, without limitation:

(a) all commercial and non-commercial vehicles, all machinery and equipment and spare parts, furniture, fittings, fixtures, office supplies, office equipment and other personal property of any kind or type used in the Business, whether physically located on the Real Property or elsewhere (the "Equipment");

(b) without limiting the provisions of Section 2.16, all billed and unbilled accounts receivable, notes receivable and other rights to payment in connection with the Business existing as of the Closing (or with respect to Non-Transferred Assets, the Final Closing), including Acquired PARs, and including, without limitation, any payments received with respect thereto after the Closing Date (or with respect to Non-Transferred Assets, the Final Closing Date), unpaid interest accrued on any such accounts receivable and any security or collateral relating thereto, and any unbilled receivable for work in progress (the "Accounts Receivable") and all inventory;

(c) all marketing and promotional brochures and materials and other printed or written materials in any form or medium relating to Sellers' ownership or operation of the Business;

(d) subject to Section 5.11(c) or otherwise with Buyer's express written consent in accordance with this Agreement, all rights under (i) those agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders

described on Schedule 2.1(d), including without limitation the IRU acquired from MCI, fka WorldCom (collectively, the "Contracts") and (ii) all agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders relating to the Business that are entered into by Seller between the date of this Agreement and 12:01 a.m. on the Final Closing Date, to the extent such Contracts may be assumed and assigned under Section 365 of the Bankruptcy Code ((i) and (ii) collectively, the "Assumed Contracts");

(e) all of the books and records of the Business, wherever located, relating to the Business or the Acquired Assets, including the following: sales records, books of account, files, invoices, inventory records, accounting records, product specifications, drawings, surveys, engineering, maintenance, operating and production records, advertising materials, environmental reports, customer complaint logs, customer and supplier lists, cost and pricing information, supplier lists, computer records and databases, business plans, catalogs, quality control records and manuals, blueprints, research and development files, laboratory books, patent and trademark files and litigation files, employee records, other than records kept solely for Tax purposes and excluding any of the foregoing relating primarily to the Excluded Assets or the Excluded Liabilities;

(f) to the extent transfer is permitted under the Bankruptcy Code or other applicable Law, all permits, approvals, franchises, licenses or other rights granted by any Governmental Authority and necessary for the lawful ownership of the Acquired Assets or other lawful conduct of the Business as currently conducted (the "Permits");

(g) all patents and patent applications, together with the goodwill associated therewith and all rights deriving therefrom or related thereto (the "Patents");

(h) all trademarks, trademark applications, trademark registrations, trade names, brand names and service marks, together with the goodwill associated therewith and all rights deriving therefrom or related thereto (the "Trademarks");

(i) all registered copyrights or unregistered copyrights, together with the goodwill associated therewith and all rights deriving therefrom or related thereto (the "Copyrights");

(j) all unpatented formulas, know-how, concepts, manufacturing methods and processes, inventions, discoveries, trade secrets, improvements and other technology in which any Seller has any rights (whether owned or not), together with the goodwill associated therewith and all rights deriving therefrom or related thereto (together with the Patents, the Trademarks and the Copyrights, the "Intellectual Property");

(k) all goodwill and other intangible assets relating to the Acquired Assets and the Business;

(l) all rights under manufacturers' and vendors' guaranties, indemnities and warranties relating to items included in the Acquired Assets and all similar rights against third parties relating to items included in the Acquired Assets;

(m) all rights, claims, causes of action, choses in action, rights of recovery, defenses and rights of recoupment or set-off against any Person arising under the Acquired Assets, but specifically excluding all Avoidance Actions and the litigation described on Seller Disclosure Schedule 3.5 (other than those set forth under "ILEC Litigation" or otherwise related to Acquired PARs); provided, however, that pursuant to Section 2.3(a)(v) the Sellers have covenanted and agreed not to bring any Avoidance Action against any party to any Assumed Contract arising out of an Assumed Contract;

(n) all credits, prepaid expenses, escrowed funds, deferred charges, advance payments, retainers on construction contracts, security deposits (including without limitation, security deposits relating to the Real Property leases that are Assumed Contracts and including deposits relating to utilities) and prepaid items (and, in each case, security interests or liens from third parties relating thereto), including all such items that relate to or arise under the Assumed Contracts or other Acquired Assets;

(o) all deposits or surety, performance or other bonds existing with respect to the Assumed Contracts and the bonds described on Seller Disclosure Schedule 3.12;

(p) all rights to all corporate names, d/b/a's or other identifiers, including the names set forth on Schedule 2.1(p), as well as all logos, URI.s, IP addresses, domain names and registrations and other network, internet and email identifiers;

(q) all vendor allowances, including volume and promotional incentive allowances and any other credits of Sellers received by or accruing to Sellers under or related to the Assumed Contracts, to the extent transferable;

(r) all cash and cash equivalents deposited into or to be deposited into the Funding Account (as defined in the Management Services Agreement);

(s) subject to Section 2.2(a), all bank accounts, sweep accounts, lock-box accounts and similar accounts at financial institutions, other than those set forth on Schedule 2.1(s); and

(t) all casualty, property and business insurance policies, programs, reserves and related bonds of any nature (and any claims payable in respect thereof), but specifically excluding directors and officers and errors and omissions insurance, covering the Business or the Acquired Assets after the Closing (or with respect to the Non-Transferred Assets, the Final Closing Date).

Section 2.2 Excluded Assets. Notwithstanding anything to the contrary contained in this Agreement, each Seller shall retain all of its right, title and interest in and to, and there shall be excluded from the sale, transfer, assignment and delivery to Buyer hereunder, the following assets and properties (collectively, the "Excluded Assets"):

(a) All cash, cash equivalents and other types of investments, including certificates of deposit and marketable securities, other than cash and cash equivalents deposited or to be deposited in the Funding Account (referred to in the Management Services Agreement,

such Funding Account to be established on or before the Early Funding Date) from and after the Early Funding Date, taking into account all items in float in the banking system as of the close of business on the Business Day immediately prior to the Early Funding Date.

- (b) all bank accounts and similar accounts set forth on Schedule 2.1(s).
- (c) any refunds, claims for refunds or rights to receive refunds from any Government Authority (including USF Credits) with respect to income, franchise or other Taxes relating to the Business or the Acquired Assets paid or to be paid by a Seller or any of its Affiliates relating to a period, or portions thereof, ending on or prior to the Closing Date (or with respect to Non-Transferred Assets, the Final Closing Date);
- (d) all insurance policies, programs, reserves and related bonds of any nature related to the Business other than as set forth in Section 2.1(t) and other than insurance proceeds and condemnation awards to which Buyer is entitled pursuant to Section 2.11(b) or which are set forth as a current asset on the Working Capital Statement;
- (e) any records or copies thereof (including accounting records) related to Income Taxes paid or payable by a Seller or any of its Affiliates;
- (f) the organizational documents and corporate minute books of each Seller and all debt and equity securities issued by each Seller and all debt securities held by each Seller;
- (g) such records as relate primarily to (i) the items set forth in the foregoing subsections (a), (c), (d), and (e), (ii) the Excluded Liabilities or (iii) the negotiation and consummation of the transactions contemplated by this Agreement;
- (h) all property, rights, demands and causes of action of Sellers under this Agreement and under or related to any agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders that is not an Assumed Contract, the Teleglobe Set Aside (as defined in the First Amended and Restated Credit Agreement, dated as of October 7, 2004, between Parent and the RTFC), the USF Credits (to the extent provided in Section 2.2(a)), the litigation between Parent and each of Southwestern Bell and its Affiliates, BellSouth and its Affiliates and Verizon and its Affiliates set forth on Seller Disclosure Schedule 3.5, the litigation between BCE, Inc. and its Affiliates and Parent and its Affiliates set forth on Seller Disclosure Schedule 3.5, and all litigation related to any claims against any present, future or former directors and officers of any of Sellers (in their capacity as such) or insurers providing (either presently, formerly or in the future) directors and officers insurance to any of the Sellers;
- (i) all Employee Benefit Plans and all assets or funds held in trust for or otherwise associated with any Employee Benefit Plans;
- (j) the consideration received by Sellers hereunder;
- (k) any and all claims, causes of action, avoidance actions, counterclaims, demands, controversies, costs, debts, sums of money, accounts, reckonings, bonds, bills, damages, obligations, liabilities, objections, legal proceedings, equitable proceedings, executions

of any nature, type, or description, choses in action, rights of recovery, and rights of recoupment or set-off against any Person, including any Avoidance Actions, in each case, that do not arise under the Acquired Assets; provided, however, that pursuant to Section 2.3(a)(v) the Sellers have covenanted and agreed not to bring any Avoidance Action against any party to any Assumed Contract arising out of such Assumed Contract;

(l) all deferred Tax assets relating to Sellers, the Business or the Acquired Assets;

(m) all Permits to the extent that any are not transferable to Buyer under Applicable Law;

(n) all of each Seller's demands and causes of action that arise under or are related to the Transaction Documents; or

(o) any agreements, contracts, arrangements, unexpired leases of real and personal property, licenses and purchase orders that is not an Assumed Contract;

(p) the Real Property that is owned in fee by any Seller listed on Schedule 2.2(p) (the "Owned Real Property");

(q) all items listed on Schedule 2.2(q) (the "Other Excluded Assets"); and

(r) all Retained PARs.

Section 2.3 Assumption of Liabilities.

(a) On the terms and subject to the conditions set forth in this Agreement and in the Management Services Agreement, at the Closing Date (except with respect to liabilities or obligations relating to Non-Transferred Assets, in which case it will be as of the Final Closing Date), Buyer shall assume and thereafter pay, honor, and discharge when due and payable the following obligations, debts, charges, fees, expenses, disbursements, liabilities, and commitments of each Seller (collectively, the "Assumed Liabilities");

(i) all liabilities and obligations of each Seller occurring, arising out of or related to the ownership and operation of the Business and the Acquired Assets (the "Accounts Payable"), but in each case only to the extent that the event or state of facts giving rise to such liability or obligation occurred subsequent to the Petition Date and in the ordinary course of the Business or at the direction of Buyer as the Manager under the Management Services Agreement;

(ii) all liabilities and obligations under the terms of the Assumed Contracts, including, without limitation, any obligations under such Assumed Contracts to provide satisfactory surety bonds, performance bonds, letters of credit, or any other form of financial assurance or assurances of future performance;

(iii) all liabilities and obligations relating to accrued payroll of employees of Sellers for the most recent payroll period as of the Final Closing Date and all sales and marketing expenses, including commissions, for all existing marketing programs relating to the Business, but in each case only to the extent that the event or state of facts giving rise to such liability or obligation occurred subsequent to the Petition Date;

(iv) all liabilities and obligations related to any Permitted Liens to the extent that such obligations or liabilities have not previously been satisfied and are secured by Acquired Assets;

(v) all liabilities, obligations and commitments of each Seller for all cure, compensation and reinstatement costs or expenses of or relating to the assumption and assignment of the Assumed Contracts, as and to the extent required under Section 365 of the Bankruptcy Code ("Cure Costs"), all of which Cure Costs shall be payable by Buyer; provided, however, that Sellers agree to waive all Avoidance Actions they may have against all non-Seller parties to the Assumed Contracts arising out of an Assumed Contract;

(vi) any liability or obligation in respect of any Employee Benefit Plans or severance costs incurred at the direction of Buyer for employees who are employed by any of the Sellers on the date hereof and are terminated after the Early Funding Date; and

(vii) any liability or obligation that is an Employee Termination Obligation.

Notwithstanding anything in this Agreement to the contrary, the Assumed Liabilities shall not include any liabilities or obligations not otherwise specifically assumed in this Agreement. The assumption by Buyer of the Assumed Liabilities shall in no way expand the rights or remedies of any third Person against Buyer or Sellers as compared to the rights and remedies that such third Person would have had against Seller (absent the filing of the petitions for Bankruptcy by Sellers) had Buyer not assumed such liabilities. Without limiting the generality of the foregoing, the assumption by Buyer of the Assumed Liabilities shall not create any third-party beneficiary rights (except as otherwise set forth in the Assumed Contracts) other than with respect to the specific Person whose liability is expressly assumed hereunder and then only to the extent so assumed as provided herein.

(b) Sellers and Buyer expressly covenant and agree that Buyer shall not be or become liable for any of the liabilities or obligations of Sellers or their Affiliates, except to the extent any liabilities may be expressly included, in whole or part, within the definition of Assumed Liabilities or specifically assumed by Buyer elsewhere in this Agreement (collectively, the "Excluded Liabilities"), including without limitation the following:

(i) any liability or obligation in respect of the Excluded Assets;

(ii) any liability or obligation related to litigation (whether pending or not currently pending, threatened or not currently threatened, asserted or not currently asserted) asserting liability of any kind of Sellers or any of their Affiliates, officers, directors, employees, agents and brokers, attorneys, accountants, auditors, investment or financial advisors, investment

bankers, consultants, managers and other Persons (the "Advisors"); provided that Buyer shall be liable for any Cure Costs relating to or arising out of an Assumed Contract;

(iii) any liability or obligation to indemnify any director, officer, employee, agent, Advisor, or any Affiliate of Sellers or any other Person, except as otherwise set forth in the Assumed Contracts;

(iv) any liability or obligation for (i) Taxes of Sellers or any of their Affiliates or (ii) Taxes attributable to the Acquired Assets or the Business, in each case, relating to any period or any portion of any period ending on or prior to the Petition Date;

(v) without limiting Section 2.3(b)(vi), any liability or obligation in respect of Laws (including, without limitation, all Telecommunications Laws) (i) to any third Person (including, without limitation, any foreign, U.S. federal, state, county, municipal or other governmental department, regulatory or administrative agency, body, authority, entity, commission, unit or subdivision ("Governmental Agency")) with respect to conduct taking place or conditions existing prior to the Closing Date or (ii) to pay any fine, penalty or monetary amount to any Person (including, without limitation, any Governmental Agency) with respect to conduct taking place or conditions existing prior to the Closing Date;

(vi) any liability or obligation of Seller or any of their Affiliates relating to or arising under any Regulation, order, settlement agreement or authority requirement, which relates to or otherwise imposes liability or standards of conduct concerning the environment, health, safety or hazardous substances, including without limitation, discharges, emissions, releases or threatened releases of noises, odors or any hazardous substances, whether as matter or energy, into ambient air, water, or land, or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of hazardous substances, including without limitation the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Hazardous Material Transportation Act, the Resource Conservation and Recovery Act of 1976, the Toxic Substances Control Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act, any so-called "Superlien" law, all as now or hereafter amended or supplemented, and the Regulations promulgated thereunder, and any other similar Federal, state or local Regulations;

(vii) any liability or obligation in respect of agreements, and any amendments thereto, not included in the Acquired Assets;

(viii) any liability or obligation for deferred rent with respect to any period ending on or prior to the Closing Date (or with respect to Non-Transferred Assets, the Final Closing Date);

(ix) any liability or obligation for payables or other amounts due from one Seller to another Seller or from a Seller to an Affiliate of any Seller, other than liabilities or obligations arising under Assumed Contracts;

(x) any liability or obligation for any Professional Fees or any other non-ordinary course liability or obligation incurred in connection with Sellers' Bankruptcy Case;

(xi) all liabilities, obligations and commitments of each Seller, whether direct or indirect, for contribution, indemnity, restitution, or any other form of reimbursement, related to, resulting from, or revived by virtue of any Avoidance Action;

(xii) any liability or obligation in respect of any Employee Benefit Plan or severance cost that is not (i) an Employee Termination Obligation or (ii) described in Section 2.3(a)(vi); and

(xiii) any liability of any Seller on account of intercompany claims.

The listing of any specific item or matter as an Excluded Liability shall in no respect (x) limit the generality of the terms of Section 2.3(a) hereof or (y) create any implication that any items or matters not so listed is an Assumed Liability, it being the intention of the parties that Buyer assume only those liabilities expressly set forth in Section 2.3 hereof.

Section 2.4 Non-Transferred Assets Distinguished From Transferred Assets. Notwithstanding the foregoing provisions of Article II, and subject to Section 5.1(b) and the Management Services Agreement, the parties hereto agree that Sellers shall retain the Non-Transferred Assets pending receipt of the FCC Consents and the State PUC Consents. Notwithstanding anything to the contrary contained herein, the Assumed Contracts shall be Non-Transferred Assets and the Assumed Liabilities under Section 2.3(a)(ii) or Section 2.3(a)(v) (other than Cure Costs for Assumed Contracts assumed by any Seller pursuant to Section 5.11) shall be assumed by Buyer at the Final Closing. During the period following the Closing that Sellers own the Non-Transferred Assets, Buyer shall provide management services to Sellers pursuant to the Management Services Agreement. All Acquired Assets that are transferred to the Buyer at the Closing Date shall be referred to herein as the "Transferred Assets."

Section 2.5 Deliveries by Sellers at the Closing. At the Closing, each Seller shall deliver to Buyer, as applicable, but subject to Section 2.4 hereof, the following duly executed documents:

(a) a bill of sale and assignment and assumption agreement providing for the assignment and conveyance by Sellers of all Transferred Assets and the assumption by Buyer of the Assumed Liabilities (the "Bill of Sale and Assumption Agreement") in substantially the form of Exhibit D hereto;

(b) the certificate of Parent referred to in Section 6.2(a) hereof; and

(c) as Buyer may reasonably request, any additional assignments or other instruments of transfer, assignment or conveyance reasonably necessary to convey, transfer and assign title, together with possession, to the Transferred Assets to Buyer as contemplated by this Agreement, all in form and substance reasonably satisfactory to Buyer.

The documents delivered by Sellers pursuant to this Section 2.5 shall constitute the "Closing Documents."

Section 2.6 Deliveries by Buyer at the Closing. At the Closing, Buyer shall deliver to Sellers (subject to Section 2.4 hereof) the following:

- (a) an executed Bill of Sale and Assumption Agreement;
- (b) the certificate of Buyer referred to in Section 6.3(a) hereof; and
- (c) as Sellers may reasonably request, any other agreements or instruments of assumption reasonably necessary to effect the assumption by Buyer of the Assumed Liabilities as contemplated by this Agreement.

The documents delivered by Buyer pursuant to this Section 2.6 shall also constitute the Closing Documents.

Section 2.7 Deliveries by Seller at the Final Closing. At the Final Closing, Sellers shall deliver to Buyer a Bill of Sale and Assumption Agreement covering all Non-Transferred Assets and related Assumed Liabilities, in substantially the form of Exhibit D hereto.

Section 2.8 Deliveries by Buyer at the Final Closing. At the Final Closing, Buyer shall deliver to Sellers a Bill of Sale and Assumption Agreement covering all Non-Transferred Assets and related Assumed Liabilities, in substantially the form of Exhibit D hereto.

Section 2.9 Escrow Agreement for Earnest Money.

(a) Buyer, Parent and The Bank of New York Trust Company, N.A., as escrow agent (the "Escrow Agent"), have executed an escrow agreement in substantially the form of Exhibit E attached hereto (the "Escrow Agreement") and within three (3) Business Days of the execution of this Agreement Buyer shall have deposited seven million five hundred thousand dollars (\$7,500,000.00) (the "Deposit Escrow Amount") as earnest money into an escrow account to be governed by the terms of the Deposit Escrow Agreement and this Agreement. At the Closing Date, the Deposit Escrow Amount shall be paid to Sellers as part of the Purchase Price in accordance with the Deposit Escrow Agreement and this Agreement. Buyer agrees that Sellers may direct the Escrow Agent to pay the Termination Fee from the Deposit Escrow Amount if Buyer is selected as the winning bidder; provided, however, only if any amount paid in such manner is either: (i) fully credited against the Purchase Price; or (ii) repaid by Seller to Buyer if Buyer is entitled to a refund of the Deposit Escrow Amount.

(b) If, prior to the entry of the Sale Order, Buyer should breach this Agreement in a manner that gives rise to a termination right pursuant to Section 7.1(a)(v) on the part of Parent, then Parent shall have the right to terminate this Agreement pursuant to Section 7.1(a)(v) and to retain the Deposit Escrow Amount as liquidated damages. If, after the entry of the Sale Order and prior to the Early Funding Date, Buyer should breach this Agreement in a manner that gives rise to a termination right pursuant to Section 7.1(a)(v) on the part of Parent, then Parent shall have the right to terminate this Agreement pursuant to Section 7.1(a)(v) and to

seek to recover damages for a breach of contract (it being understood, however, that such damages shall not exceed the Purchase Price). The Escrow Agent shall hold the Deposit Escrow Amount pending either a final judicial determination of whether Buyer breached the Agreement and the amount, if any, of such damages or liquidated damages payable to Parent, as applicable, or a settlement among the parties.

(c) In the event the parties fail to close this transaction for any reason other than a breach of this Agreement by Buyer, then the Escrow Agent shall return the Deposit Escrow Amount (unless previously distributed pursuant to Section 2.10(a)) and any accrued interest thereon to Buyer within 3 Business Days after the termination of this Agreement.

Section 2.10 Payment of Purchase Price; Delivery of Closing Documents; Allocation of Purchase Price.

(a) Upon the Closing Date, Buyer and Sellers shall deliver a joint written notice to the Escrow Agent directing the Escrow Agent to (i) pay to the Parent (on behalf of Sellers) by wire transfer of immediately available funds to an account or accounts designated by Parent (on behalf of Sellers) a sum equal to fifty percent (50%) of the Purchase Price (as adjusted pursuant to Section 2.16(e)), which shall include, without duplication, the Deposit Escrow Amount, and (ii) deliver to the Parent or Buyer, as the case may be, the applicable Closing Documents.

(b) Upon the Final Closing Date, Buyer shall pay to Parent (on behalf of Sellers) by wire transfer of immediately available funds to an account or accounts designated by Parent (on behalf of Sellers) the total Purchase Price (as adjusted pursuant to Section 2.16(e)), less the distribution made by the Escrow Agent under paragraph (a), above.

(c) Within 30 days after the Final Closing, Buyer and Seller shall agree upon an allocation of the Purchase Price among the Acquired Assets and the Assumed Liabilities pursuant to Section 1060 of the Code.

Section 2.11 Possession and Risk of Loss.

(a) The risk of any material loss, damage, impairment, confiscation, or condemnation of the Acquired Assets from any cause whatsoever shall be borne by Sellers at all times prior to the Early Funding Date. In the event of any such material loss, damage, impairment, confiscation, or condemnation, whether or not covered by insurance, Sellers shall promptly notify Buyer of such material loss, damage, impairment, confiscation, or condemnation.

(b) If Sellers, at their expense, substantially repair, replace, or restore such Acquired Assets to their prior condition before the Early Funding Date, Sellers shall be entitled to all insurance proceeds and condemnation awards, if any, by reason of such award or loss. To the extent that the Sellers do not substantially repair, replace or restore such Acquired Assets to their prior condition before the Early Funding Date, Buyer shall be entitled to all insurance proceeds and condemnation awards, if any remain, by reason of such award or loss.

(c) No provision of this Section 2.11 shall be construed to effect or permit an assignment or transfer of control related to the Non-Transferred Assets or the services associated with the Non-Transferred Assets prior to the Final Closing.

Section 2.12 Property Taxes. The Working Capital Adjustment shall reflect that all ad valorem Taxes, real property Taxes, personal property Taxes, and similar obligations (“Property Taxes”) attributable to the Acquired Assets with respect to the tax period which includes the Closing Date shall be apportioned as of the Closing Date between Sellers and Buyer determined by prorating such Property Taxes on a daily basis over the entire tax period. In the event the amount of Property Taxes attributable to any Acquired Asset for such tax period has not been determined as of the Closing Date, such apportionment shall be based upon (i) the valuation for such Acquired Asset set forth in the Property Tax rendition for such tax period (or if none, a mutually agreed upon valuation consistent with Exhibit F) and (ii) the applicable Property Tax rates effective for the most recent prior tax period. Except as specified herein as to the allocation of taxes between Buyer and Seller, nothing in the Agreement or any related document or proceeding shall obligate Sellers to pay any Taxes (other than transfer taxes, if any, in accordance with Section 2.13) including Property Taxes.

Section 2.13 Transfer Taxes. In connection with their filing of a motion seeking entry of the Sale Order, the Debtor also shall request that the Bankruptcy Court order that the transfer of the Acquired Assets be subject to the benefits of Section 1146(c) of the Bankruptcy Code. If authorized by the Bankruptcy Court in accordance with Section 1146(c) of the Bankruptcy Code, the making or delivery of any instrument of transfer under Section 1129 of the Bankruptcy Code shall not be taxed under any law imposing a stamp tax or similar tax, and the instruments transferring the Acquired Assets to Buyer shall contain an endorsement substantially similar to the following:

“This [instrument] has been authorized pursuant to Order of the United States Bankruptcy Court for the Northern District of Texas relating to a plan of reorganization for the Grantor and is exempt from transfer taxes, stamp taxes or similar taxes pursuant to 11 U.S.C. § 1146(c).”

In the event real estate transfer Taxes are required to be paid in order to record the deeds to be delivered to Buyer in accordance herewith, or in the event any such Taxes are assessed at any time thereafter, such real estate transfer Taxes incurred as a result of the transactions contemplated hereby shall be paid by Seller. In the event sales, use or other transfer Taxes are assessed at Closing or at any time thereafter on the transfer of any other Acquired Assets, such Taxes incurred as a result of the transactions contemplated hereby shall be paid by Buyer. Buyer and Sellers shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation.

Section 2.14 Closing and Final Closing.

(a) The closing of the transfer of the Transferred Assets contemplated hereby (the “Closing”) shall be held at the offices of Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite

3700, Dallas, Texas 75201, at 10:00 a.m. on the second Business Day after the later of (i) the Early Funding Date and (ii) the expiration or termination of the statutory waiting period under the HSR Act or at such other place or on such other date and time upon which the Parent and Buyer may agree. The actual date on which the Closing takes place is referred to herein as the "Closing Date." The Closing shall be deemed to be effective as of 12:01 a.m. on the Closing Date.

(b) The closing of the transfer of the Non-Transferred Assets to Buyer from Sellers (the "Final Closing") shall be held at the offices of Vinson & Elkins L.L.P., 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201, at 10:00 a.m. on the second Business Day after satisfaction or waiver of the conditions set forth in Section 6.6 or at such other place or on such other date and time upon which the Parent and Buyer may agree. The actual date on which the Final Closing takes place is referred to herein as the "Final Closing Date." The Final Closing shall be deemed to be effective as of 12:01 a.m. on the Final Closing Date.

(c) Notwithstanding any of the provisions set forth in this Agreement, no provision in this Agreement shall be construed to effect or permit an assignment or transfer of control related to the Non-Transferred Assets or the services associated with the Non-Transferred Assets prior to the Final Closing, and all provisions of this Agreement shall be interpreted in a fashion consistent with all applicable Laws and Regulations.

Section 2.15 Early Funding Date. No later than the second Business Day after the conditions set forth in Section 6.1, Section 6.2 and Section 6.3 have been satisfied or waived, or at such other later date and time upon which Buyer and Parent may mutually agree in writing (the "Early Funding Date") (i) Buyer shall deliver in immediately payable funds an amount equal to 50% of the Purchase Price (or, in the event the Working Capital Adjustment has not been finally determined under Section 2.16, 50% of the Estimated Purchase Price) minus the Deposit Escrow Amount to an escrow account (the "Purchase Price Escrow Amount") pursuant to the Escrow Agreement, (ii) Sellers and Buyer shall execute and deliver the Closing Documents and the executed Closing Documents shall be delivered to the Escrow Agent, and (iii) all risk of loss, damage, impairment, confiscation or condemnation of the Acquired Assets shall transfer to Buyer. As of the Early Funding Date, Sowood Commodity Partners Fund III I.P shall guaranty the payment of the remaining 50% of the Purchase Price (the "Guaranteed Amount") which Guaranteed Amount shall be reduced dollar for dollar by all good and collected cash on deposit in the Funding Account (as defined in the Management Services Agreement) in excess of ten million dollars (\$10,000,000) on the date giving rise to a breach by Buyer of any of the conditions to Final Closing. Sellers and Buyer also agree that Sellers shall promptly seek Bankruptcy Court approval to enter into one or more Debtor-in-Possession financing agreements (each a "DIP Facility") with Buyer (or another lender reasonably acceptable to Sellers) pursuant to Bankruptcy Code Section 364 on terms mutually and reasonably acceptable to each of Buyer and Sellers in an amount of up to twenty five million dollars (\$25,000,000), the proceeds of which shall be advanced from time to time by Buyer or such lender in accordance with such financing agreements (as defined in the Management Services Agreement).

Section 2.16 Working Capital Adjustment.

(a) No later than thirty (30) days following the date of the entry of the Sale Order, Parent shall prepare and deliver to Buyer a statement of the net working capital as of 12:01 a.m. on the Early Funding Date, including a calculation of the Working Capital Adjustment, prepared in accordance with the definition of "Working Capital Adjustment" and consistent with the preparation of Exhibit G (the "Working Capital Statement"), signed by the chief financial officer of Parent, who shall certify that such statement was prepared in good faith from the books and records of the Business.

(b) Buyer shall have a period of up to thirty (30) days from the receipt of the Working Capital Statement to review the Working Capital Statement, during which period Parent shall make available to Buyer all relevant books and records in the Sellers' possession or control and all personnel with knowledge of information relevant to the determination of Working Capital Adjustment. If as a result of such review, Buyer disagrees with the Working Capital Statement, Buyer shall deliver to Parent a written notice of disagreement (a "Dispute Notice") prior to the expiration of such thirty (30) day review period setting forth in reasonable detail the basis for such dispute and setting forth Buyer's calculation of the Working Capital Adjustment or a detailed explanation of the additional information Buyer needs from Parent to prepare such a calculation.

(c) If Buyer does not disagree with the Working Capital Statement, Buyer shall deliver a written statement to Parent within such thirty (30) day period accepting the Working Capital Statement (an "Acceptance Notice"), in which case Parent's determination of the Working Capital Adjustment as shown on the Working Capital Statement shall be final and binding on the parties, effective as of the date on which Parent receives the Acceptance Notice. If Buyer does not deliver a Dispute Notice or an Acceptance Notice within such thirty (30) day period, then Parent's determination of the Working Capital Adjustment as shown on the Working Capital Statement shall be final and binding on the parties, effective as of the first Business Day after the expiration of such thirty (30) day period.

(d) If Buyer delivers a Dispute Notice to Parent in a timely manner, then Buyer and Parent shall attempt in good faith to resolve such dispute within thirty (30) days from the date of the Dispute Notice. If Buyer and Parent cannot reach agreement within such thirty (30) day period (or such longer period as they may mutually agree), then the dispute shall be promptly referred to an independent accounting firm of national reputation reasonably mutually acceptable to Buyer and Parent (the "Independent Auditor") for binding resolution and Parent and Buyer shall enter into a customary engagement letter with the Independent Auditor at the time the remaining issues in dispute are submitted to the Independent Auditor. The Independent Auditor shall determine the Working Capital Adjustment in accordance with the provisions of this Agreement as promptly as may be reasonably practicable and shall endeavor to complete such process within a period of no more than sixty (60) days. The Independent Auditor's determination of the Working Capital Adjustment shall not vary from the Working Capital Adjustment set forth in the Working Capital Statement by more than the amount in dispute. The Independent Auditor may conduct such proceedings as the Independent Auditor, in its sole discretion, determines will assist in determining the Working Capital Adjustment and shall

deliver to Buyer and Parent concurrently a written opinion setting forth a final determination of the Working Capital Adjustment calculated in accordance with the provisions of this Agreement. The determination of the Independent Auditor shall be final and binding on Buyer and the Sellers, effective as of the date the Independent Auditor's written opinion is received by Buyer and Parent. The Sellers, on the one hand, and Buyer, on the other hand, shall each be responsible for a portion of the costs and expenses of the Independent Auditor, based on the decision of the Independent Auditor equal to the Independent Auditor's total fees and costs multiplied by a fraction, the numerator of which is the amount of the disputed portion of the Working Capital Adjustment that the Independent Auditor concluded was correct and the denominator is the total amount of the Working Capital Adjustment that is in dispute. For example, if the Buyer contends that Working Capital should be reduced by \$1,000,000 more than Parent contends it should be reduced and the Independent Auditor determines that \$200,000 of the disputed portion of the reduction is appropriate, the Sellers will pay 20% of the Independent Auditor's fees and costs and the Buyer will pay 80% of the Independent Auditor's fees and costs. Each of the parties shall bear its own legal, accounting and other fees and expenses of participating in such dispute resolution procedure. The Working Capital Adjustment as finally determined pursuant to Section 2.16(c) or Section 2.16(d) is referred to as the "Final Working Capital Adjustment."

(e) If the Final Working Capital Adjustment has been determined on or prior to the Closing Date, the Purchase Price shall be increased or decreased, as applicable, by the amount of the Final Working Capital Adjustment. If the Final Working Capital Adjustment has not been determined in accordance with the provisions of this Section 2.16 on or prior to the Closing Date, then (i) for purposes of determining the amount payable to the Sellers at the Closing, the Purchase Price shall be increased or decreased, as applicable, by an agreed upon good faith estimate of the Working Capital Adjustment or, if the Parent and the Buyer cannot agree on the amount of such an estimate, the amount payable to the Sellers at the Closing pursuant to Section 2.10(a)(i) shall utilize an assumed Working Capital Adjustment of \$9,500,000 and (ii) for purposes of determining the amount payable to the Sellers at the Final Closing, the Purchase Price shall be increased or decreased, as applicable, by the amount of the Final Working Capital Adjustment.

(f) Any adjustments to the amounts payable to the Sellers pursuant to this Section 2.16 shall be treated by the parties as adjustments to the Purchase Price for all purposes.

Section 2.17 As is, Where is Nature of Sale. The sale of the Acquired Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by Sellers, their agents or their estates, except to the extent explicitly set forth in the Agreement or in any of the Transaction Documents.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as otherwise disclosed to Buyer in a schedule attached hereto and made a part hereof (as modified or supplemented from time to time by Sellers prior to the Closing (the "Seller Disclosure Schedule")), Sellers, jointly and severally, represent and warrant to Buyer as follows (it being understood that, except for the representations and warranties contained in this

Article III or in any of the Transaction Documents, no Seller makes any representation or warranty, express or implied, with respect to Sellers, the Business or otherwise pursuant to or in connection with this Agreement):

Section 3.1 Organization, Standing and Power. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation, has all requisite power and authority to own, lease and operate its properties and to carry on the Business as now being conducted, and is duly qualified to do business as a foreign corporation and in good standing to conduct business in each jurisdiction in which the business it is conducting, or the operation, ownership or leasing of its properties, makes such qualification necessary, other than in such jurisdictions where the failure so to qualify would not, individually or in the aggregate, result in a Material Adverse Effect. Except as set forth on Seller Disclosure Schedule 3.1, none of the Sellers has any other subsidiary or Affiliate other than the other Sellers, and each Person set forth on Seller Disclosure Schedule 3.1 has no material assets necessary to the operation of the Business.

Section 3.2 Authority; No Violations; Consents and Approvals.

(a) Subject to approval of the Sale Order by the Bankruptcy Court, each Seller has the requisite corporate power and authority to enter into the Transaction Documents and to consummate the transactions contemplated by the Transaction Documents. Subject to approval of the Sale Order by the Bankruptcy Court, the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action on the part of each Seller. This Agreement has been, and each of the Transaction Documents shall be, duly executed and delivered by each Seller, and, subject to the entry and effectiveness of the Sale Order, each shall constitute valid and binding obligations of each Seller, enforceable in accordance with its terms and conditions.

(b) Except as otherwise set forth on the Seller Disclosure Schedule 3.2(b), the execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby by each Seller will not conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any material obligation or the loss of a material benefit under, or the creation of any Lien, upon any of the Acquired Assets except for Permitted Liens, pursuant to (i) any provision of the certificate of incorporation or by-laws of any Seller or (ii) applicable Law, except for such conflicts, violations, defaults or losses under clause (i) and (ii) that would not, individually or in the aggregate, result in a Material Adverse Effect, or that arise, are excused by or are unenforceable, as a result of Sellers' filing of the Petitions or pursuant to the Bankruptcy Code.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, notice to, or permit from any Governmental Authority or Person is required by or with respect to any Seller in connection with the execution and delivery of any of the Transaction Documents by each Seller or the consummation by each Seller of the transactions contemplated hereby or thereby, except for (i) the filing of a notification and report form under the HSR Act, and the expiration or termination of the applicable waiting period thereunder; (ii) notifications or

filings required pursuant to the WARN Act, if any; (iii) the approval of the Bankruptcy Court and the entry by the Bankruptcy Court of the Sale Order; (iv) the required consents under the Permits, which consents are listed on Seller Disclosure Schedule 3.2(c) including, but not limited to, the FCC Consents and State PUC Consents; and (v) required consents or approvals of third parties to the Assumed Contracts, which consents are listed on Seller Disclosure Schedule 3.2(c).

Section 3.3 Title to Transferred Assets.

(a) Each Seller has, and at the Closing, Buyer will receive, good and marketable title to the Acquired Assets, free and clear of any Liens and other interests other than Permitted Liens.

(b) Seller Disclosure Schedule 3.3(b) sets forth a list of all Real Property leased by each Seller (the "Leased Property") and includes an accurate description thereof. As of the Closing Date, each Seller shall have the exclusive right to occupy and use all of its Assumed Leased Property and shall be the sole person in possession of the premises of all Assumed Leased Property, and each lease related to the Assumed Leased Property shall be valid, unencumbered (except for Permitted Liens) and, as of the Closing Date, except as set forth on Seller Disclosure Schedule 3.3(b), without any default thereunder by such Seller or, to the Knowledge of Sellers, by the lessor. After the Closing or Final Closing, as applicable, Buyer shall have the exclusive right to occupy and use all Assumed Leased Property in accordance with the terms of the applicable lease relating thereto.

(c) Except as set forth on Seller Disclosure Schedule 3.3(c), (i) no Seller has entered into any presently effective Contracts regarding the sale, conveyance, transfer or disposition of the Assumed Leased Property (except for this Agreement) and (ii) no Seller has granted to anyone, and no one possesses, any option to purchase or right of first refusal to purchase the Assumed Leased Property.

(d) The Acquired Assets constitute substantially all of the assets necessary for the conduct of the Business as presently conducted by the Sellers.

(e) The Owned Real Property is not used in the Business.

Section 3.4 Compliance with Applicable Laws. The Business, including its operations, practices, processes, products and services and all other aspects of the Business is in compliance, in all material respects, with all applicable Laws. Except for the matters set forth on Seller Disclosure Schedule 3.5, there are no claims pending, or to the Knowledge of the Sellers, threatened, nor has any of the Sellers received any written notice, or to the Knowledge of the Sellers any oral notice, regarding any violations of any regulations or orders enforced by any authority which, if decided adversely to the Sellers, would be reasonably likely to have a Material Adverse Effect. Each Seller holds all Permits necessary for the lawful conduct of its business and is in compliance with the terms thereof, except for the Bankruptcy Cases or where the failure to hold or comply with any such Permits would not, individually or in the aggregate, result in a Material Adverse Effect.

Section 3.5 Litigation. Except as set forth on Seller Disclosure Schedule 3.5, there is no investigation, suit, action, demand or proceeding pending or, to the Knowledge of Sellers, threatened against any Seller by any Governmental Agency, court, tribunal, board, arbitrator or mediator, nor is there any judgment, decree, unfunded settlement, conciliation agreement, letter of deficiency, award, temporary restraining order, injunction, rule or order of any Governmental Agency, court, tribunal, board, arbitrator or mediator outstanding against any Seller, except for such investigations, suits, actions, demands or proceedings that would not be reasonably likely to result in liability of any Seller in excess of \$50,000 in any case or \$1,000,000 in the aggregate.

Section 3.6 Taxes. Except (i) as set forth in Seller Disclosure Schedule 3.6; (ii) with respect to tax liabilities that arose in the ordinary course of business prior to the Petition Date and have not been paid as a result of the filing of Sellers' Bankruptcy Case; and (iii) for matters that would not reasonably be expected to have a Material Adverse Effect, to the Sellers' Knowledge, (a) all Tax Returns have been timely filed (taking into account any extension of time to file granted or obtained), (b) all Taxes due and payable on or prior to the date hereof have been paid or will be timely paid, (c) no Seller has received from any Taxing Authority any written notice of proposed adjustment, deficiency or underpayment of any Taxes relating to the Business or the Acquired Assets, other than a proposed adjustment, deficiency or adjustment that has been satisfied by payment or settlement or withdrawn; (d) no Taxing Authority has raised any material issues relating to Taxes that relate to the Acquired Assets or the Business for which a material Lien could be imposed upon any Acquired Asset after the Closing; and (e) no Seller is in material violation (and with notice or lapse of time, or both, would not be in violation) of any applicable Law relating to the payment or withholding of Taxes.

Section 3.7 Employment Agreements. Except as set forth on Seller Disclosure Schedule 3.7, there are no management, employment, consulting or other agreements, whether oral or in writing, to which a Seller is a party or is otherwise bound that is an Assumed Contract and provides for (a) the employment of any Person or providing for retention of management, executive or consulting services, or (b) the payment or accrual of any Employee Termination Obligations.

Section 3.8 Collective Bargaining Agreements and Labor Matters. None of the Sellers is a party to any collective bargaining agreement. Except as set forth on Seller Disclosure Schedule 3.8, as of the date hereof, none of the Sellers (a) is engaged in or has previously engaged in any unfair labor practices, has any unfair labor practice charges or complaints before the National Labor Relations Board pending or, to the Knowledge of Sellers, threatened against it or (b) has any written notice of any charges, complaints or proceedings pending or, to the Knowledge of Sellers, threatened against it before the Equal Employment Opportunity Commission, Department of Labor or any other Governmental Authority responsible for regulating employment practices.

Section 3.9 Intellectual Property. Sellers own or are licensed or otherwise have the right to use all of the Intellectual Property necessary to carry on the Business as currently conducted, except where the failure to so own, license or otherwise have the right to use such Intellectual Property would not, individually or in the aggregate, result in a Material Adverse Effect, and the consummation of the transactions contemplated hereby will not result in the

material loss of any such rights. All Trademark registrations and Patents are, to the Knowledge of Sellers, valid and subsisting and all necessary fees and filings required to be paid prior to the date of this Agreement have been paid or will be paid by the Closing Date, except where the failure to be valid or subsisting or the failure to pay or make such fees and filings would not, individually or in the aggregate, result in a Material Adverse Effect. Except as set forth on Seller Disclosure Schedule 3.9, Sellers have not received any written notice of infringement of or conflict with any third party's intellectual property. Except as set forth on Seller Disclosure Schedule 3.9, to the Knowledge of Sellers, there are no material infringements of or conflicts with the rights of others with respect to the use of, or the rights by others with respect to, any Intellectual Property. To the Knowledge of Sellers, no third party is materially infringing or otherwise materially violating any Intellectual Property owned by any of Sellers.

Section 3.10 Equipment. Parent or one of the Subsidiary Sellers has good title to, or holds pursuant to valid and enforceable leases, all of the tangible properties and assets of the Parent and the Subsidiary Sellers (excluding Real Property) that are material to the conduct of the Business, with only such exceptions as constitute Permitted Liens. Such tangible properties and assets of Parent and the Subsidiary Sellers are in good operating condition and repair, reasonable wear and tear excepted, except where the failure to be in such condition or repair would not, individually or in the aggregate, result in a Material Adverse Effect.

Section 3.11 Contracts.

(a) Seller Disclosure Schedule 3.11(a) contains a list of all (i) non-competition agreements or any other agreements or obligations that purport to materially restrict Sellers from competing in any material line of business, (ii) agreements that limit the ability of Sellers to own, operate, sell, transfer, pledge or otherwise dispose of any assets having aggregate value in excess of \$2,500,000, (iii) agreements or arrangements that contain any severance pay or post-employment liabilities or obligations, other than as required under law or agreements or arrangements not requiring payments of more than \$50,000 individually, (iv) each contract or agreement that is executory in whole or in part and involves expenditures or receipts of any Seller in excess of \$100,000 per year or \$300,000 over the remaining term of the agreement; (v) each lease, rental or occupancy agreement, installment and conditional sale agreement, and any other contract or agreement affecting the ownership of, leasing of, title to or use of any Assumed Leased Property; and (vi) each contract or agreement with any director, officer or employee of any Seller (collectively, the "Material Contracts").

(b) Complete, true and correct copies of each Material Contract (or written summaries of the terms of any such oral contract) have been delivered or made available to Buyer prior to or contemporaneously with the execution of this Agreement.

(c) Except as set forth on Seller Disclosure Schedule 3.11(c), no notice to, or consent or approval by, any third party is required under any of the Material Contracts as a result of or in connection with the execution, delivery, or performance of this Agreement or the consummation of the transactions contemplated hereby.

Section 3.12 Insurance. Seller Disclosure Schedule 3.12 sets forth as of the date of this Agreement a true, correct and complete list of all title, fire, general liability, malpractice liability, theft and other forms of property and casualty insurance and all fidelity bonds held by Sellers that are material to the Business.

Section 3.13 Sellers' Brokerage Agreements. Except as set forth on Seller Disclosure Schedule 3.13, no Seller has entered into any Contract with any Person engaging such Person as an investment banker, broker, finder, financial advisor and who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement. Buyer shall not be liable for any fee, commission or other amount due to such Person.

Section 3.14 Sellers' Financial Statements. To Sellers' Knowledge, (i) the audited balance sheet of the Business at December 31, 2004 and related statements of income and cash flow for the Business for the fiscal year then ended, and (ii) the unaudited balance sheet of the Business at April 30, 2005 and the related statements of income and cash flow for the Business for the four month period then ended, each fairly present, in all material respects, Sellers' financial condition and operating results, as of the dates of such statements, and have been prepared in conformity of GAAP, where applicable (except that the unaudited financial statements do not contain all footnotes required by GAAP and are subject to all normal year-end audit adjustments).

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Except as otherwise disclosed to Sellers in a schedule attached hereto and made a part hereof (as modified or supplemented from time to time by Buyer prior to the Closing (the "Buyer Disclosure Schedule")), Buyer represents and warrants to Sellers as follows (it being understood that, except for the representations and warranties contained in this Article IV, Buyer does not make any representation or warranty, express or implied, with respect to Buyer or otherwise pursuant to or in connection with this Agreement):

Section 4.1 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware with all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as currently conducted. Buyer is duly qualified to do business as a foreign limited liability company and in good standing to conduct business in each jurisdiction in which the business it is conducting, or the operation, ownership or leasing of its properties, makes such qualification necessary, other than in such jurisdictions where the failure so to qualify would not, individually or in the aggregate, result in a material adverse effect on Buyer or its business.

Section 4.2 Authorization of Agreement.

(a) Buyer has all requisite corporate power and authority to enter into the Transaction Documents and to consummate the transactions contemplated by the Transaction Documents. The execution and delivery by Buyer of the Transaction Documents and the consummation of the transactions contemplated thereby have been duly and validly authorized

by all requisite corporate action on the part of Buyer. This Agreement has been, and each of the Transaction Documents shall be, duly executed and delivered by Buyer and, subject to the entry and effectiveness of the Sale Order, each shall constitute a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

(b) The execution and delivery of the Transaction Documents and the consummation of the transactions contemplated thereby by Buyer will not conflict with, or result in any violation of, or default (with or without notice or lapse of time, or both) under (i) any provision of the certificate of incorporation or by-laws of Buyer, (ii) the provisions of any agreement to which Buyer or any of its Affiliates is a party or (iii) Applicable Law.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, notice to, or permit from, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of any of the Transaction Documents by Buyer or the consummation by Buyer of the transactions contemplated thereby, except for (i) the filing of notification and report form under the HSR Act, and the expiration or termination of the applicable waiting period thereunder, (ii) any FCC Consents or State PUC Consents as required by applicable Laws; and (iii) the entry by the Bankruptcy Court of the Sale Order.

Section 4.3 No Financing; Financial Ability. Buyer has immediate cash available necessary for the acquisition of the Acquired Assets and to perform its obligations under this Agreement.

Section 4.4 Buyer's Brokerage Agreements. Except as set forth on Buyer Disclosure Schedule 4.4, none of Buyer or its Affiliates has entered into any Contract with any Person engaging such Person as an investment banker, broker, finder, financial advisor and who would be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

Section 4.5 Litigation. There is no suit, action or proceeding pending or, to the Knowledge of Buyer, threatened against Buyer, nor is there any judgment, decree, unfunded settlement, conciliation agreement, letter of deficiency, award, temporary restraining order, injunction, rule or order of any Governmental Authority outstanding against Buyer, that may (a) affect, challenge or impair the ability of Buyer to perform its obligations under this Agreement or the Transaction Documents or the consummation of the transactions contemplated hereunder or thereunder or (b) delay or prevent the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents, nor is there any judgment, decree, injunction, rule or order of any Governmental Agency, arbitrator or mediator outstanding against Buyer or any Affiliate thereof having, or which could be expected to have, any effect referred to in clause (a) or (b) above.

Section 4.6 Certain Investment Representations. Buyer is purchasing the Shares for its own account with the present intention of holding such securities for investment purposes and not with a view to or for sale in connection with any public distribution of such securities in violation of any federal or state securities laws. Buyer is an "accredited investor" as defined in

Regulation D promulgated by the Securities and Exchange Commission under the Securities Act. Buyer acknowledges that it is informed as to the risks of the transactions contemplated hereby and of ownership of the Shares. Buyer acknowledges that the Shares have not been registered under the Securities Act or any state or foreign securities laws and that the Shares may not be sold, transferred, offered for sale, pledged hypothecated or otherwise disposed of unless such transfer, sale, assignment, pledge, hypothecation or other disposition is pursuant to the terms of an effective registration statement under the Securities Act and is registered under any applicable state or foreign securities laws or pursuant to an exemption from registration under the Securities Act and any applicable state or foreign securities laws.

ARTICLE V COVENANTS

Section 5.1 Conduct of the Business.

(a) Operating Covenants. During the period from the date hereof to the effectiveness of the Management Services Agreement, each Seller covenants that (except as consented to in writing by Buyer, which consent shall not be unreasonably withheld, and except as required by the applicable provisions of the Bankruptcy Code and any orders of the Bankruptcy Court) it shall either satisfy, or cause to be satisfied, the following:

(i) Each Seller shall conduct the Business only in the ordinary and normal course consistent with past practice, and no Seller shall enter into, amend or renew any Contracts relating to the Business involving more than \$100,000.00 per year or \$300,000.00 over the term of the Contract or terminate or reject any Assumed Contract;

(ii) Each Seller shall not grant any increase in any benefit under any Employee Benefit Plan. Except as required by Law, as approved by the Bankruptcy Court or pursuant to the terms of any existing Employee Benefit Plan or Contract, each Seller shall not grant any severance or termination pay to, or enter into any employment or severance agreement with, any director, officer, or employee thereof, either individually or as part of a class of similarly situated persons. Each Seller shall not establish, adopt or enter into any new Employee Benefit Plan or Contract in regard to employees thereof;

(iii) Each Seller shall not merge or consolidate with or into any legal entity, dissolve, or liquidate;

(iv) Each Seller shall use its reasonable efforts, and shall use its reasonable efforts to cause its Affiliates to, maintain the Acquired Assets in good condition;

(v) Each Seller shall not sell, transfer, mortgage, pledge or subject any of the material Acquired Assets to any Lien, except for Permitted Liens; and

(vi) Each Seller shall not commit or agree, whether in writing or otherwise, to take any action prohibited by this Section 5.1(a).

(b) Management Services Agreement.

(i) [intentionally deleted]

(ii) Sellers and Buyer shall enter into a Management Services Agreement substantially in the form of Exhibit F attached hereto (the "Management Services Agreement"), which shall be effective as of the date of receipt of all approvals under the HSR Act and all required FCC Consents, and shall contain certain provisions including, but not limited to, agreements for the operation of the Acquired Assets still owned by any of the Sellers at all times from the date of receipt of all required approvals under the HSR Act and FCC Consents through the Final Closing Date, representations as to authority and ability to operate the Acquired Assets, covenants as to compliance with applicable Laws and Regulations, indemnification of Sellers by Buyer, and such other terms as may be acceptable or necessary to Sellers. Pursuant to and as set forth in the Management Services Agreement, Sellers shall remain in ultimate control of all Acquired Assets still owned by any of the Sellers and Buyer shall provide management and related services to Sellers therefor, subject to the ultimate direction of Sellers and consistent with all applicable Laws and Regulations.

(iii) Subject to Section 5.1(a), commencing as of the date of entry of the Sale Order and continuing until the Management Services Agreement becomes effective, Sellers shall (A) perform all commercially reasonable acts to conduct the operation of the business in the ordinary course and in good faith, (B) provide Buyer with access to all accounting and other financial records and other information and materials in their possession that are necessary or desirable to inform Buyer as to the conduct of the Business and (C) prepare accurate, complete and timely submission of all required applications, reports, correspondence and other documentation, and all regulatory fees and other assessments with all federal and state regulatory commissions relating to the acquisition, use, maintenance, or renewal of the Permits and the operations thereunder, including but not limited to any and all reports, notices, tariffs, forms and other documents required by the FCC and local, state or other federal governmental authorities.

(iv) The parties mutually expect and agree that Buyer may, during the period from the date of entry of the Sale Order until termination of the Management Services Agreement, and subject to the consent and ultimate control of Parent, request that Sellers take actions Buyer reasonably believes are required to optimize the networks and business operations of the Subsidiary Sellers, and to realize reasonably achievable network and operational savings and efficiencies.

(v) From and after the date of receipt of the required approval under the HSR Act and all FCC Consents and the effectiveness of the Management Services Agreement, Buyer and Sellers shall operate the Acquired Assets in accordance with the Management Services Agreement.

Section 5.2 Access: Operation of Acquired Assets.