JOHNSON MICHAEL
Form 4
December 08, 2010

FORM 4

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

STATEMENT OF CHANGES IN BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934, Section 17(a) of the Public Utility Holding Company Act of 1935 or Section 30(h) of the Investment Company Act of 1940

OMB APPROVAL
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Check this box if no longer subject to Section 16. Form 4 or Form 5 obligations may continue. *See* Instruction 1(b).

(Print or Type Responses)

1. Name and Address of Reporting Person *
JOHNSON MICHAEL

(Last) (First) (Middle)

800 W. OLYMPIC BOULEVARD, #406

(Street)

LOS ANGELES, CA 90015

(City) (State) (Zip)

2. Issuer Name **and** Ticker or Trading Symbol
HERBALIFE LTD. [HLF]

3. Date of Earliest Transaction (Month/Day/Year)
12/07/2010

4. If Amendment, Date Original Filed(Month/Day/Year)

5. Relationship of Reporting Person(s) to Issuer

(Check all applicable)

__X__ Director _____ 10% Owner
__X__ Officer (give title below) _____ Other (specify below)
Chairman & CEO

6. Individual or Joint/Group Filing(Check Applicable Line)
_X_ Form filed by One Reporting Person
___ Form filed by More than One Reporting Person

Table I - Non-Derivative Securities Acquired, Disposed of, or Beneficially Owned

1.Title of Security (Instr. 3)	2. Transaction Date (Month/Day/Year)	2A. Deemed Execution Date, if any (Month/Day/Year)	3. Transaction Code (Instr. 8)		4. Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)			5. Amount of Securities Beneficially Owned Following Reported Transaction(s) (Instr. 3 and 4)	6. Ownership Form: Direct (D) or Indirect (I) (Instr. 4)	7. Nature of Indirect Beneficial Ownership (Instr. 4)
			Code	V	Amount	(A) or (D)	Price			
Common Stock	12/07/2010		G[(1)]	V	26,376	D	$ 0	340,320	D	
Common Stock	12/07/2010		G[(1)]	V	26,376	A	$ 0	366,696	D	
Common Stock								55,000	I	Beneficially owned through Spouse's GRAT
Common Stock								55,000	I	Beneficially owned

				through GRAT
Common Stock		56,561	I	Beneficially owned through Michael O. Johnson IRA

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

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SEC 1474 (9-02)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned
(*e.g.*, puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4, and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Nu Deriv Secur Bene Owne Follo Repo Trans (Instr
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares		

Reporting Owners

Reporting Owner Name / Address	Relationships			
	Director	10% Owner	Officer	Other
JOHNSON MICHAEL 800 W. OLYMPIC BOULEVARD, #406 LOS ANGELES, CA 90015	X		Chairman & CEO	

Signatures

Michael O. Johnson by Brett R. Chapman, Attorney-in-Fact	12/08/2010
**Signature of Reporting Person	Date

Explanation of Responses:

***** If the form is filed by more than one reporting person, *see* Instruction 4(b)(v).

****** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. *See* 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) This transaction is voluntarily filed to reflect the contribution by the reporting person of 26,376 shares of Herbalife's common stock to the Johnson Family Trust, a trust of which the reporting person is co-trustee and co-beneficiary.

Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *see* Instruction 6 for procedure.
Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number. ntract including project management services, site identification and evaluation services, engineering and schematic design services, design development and construction services and other construction-related fees and services. Once a hub becomes operational, these capitalized costs are depreciated at the appropriate rate consistent with the estimated useful life of the underlying asset.

Impairment of long-lived assets

The Company periodically reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability is measured by comparison of the asset s carrying amount to the estimated future undiscounted net cash flows the assets are expected to generate. A deficiency in the cash flows relative to the carrying amount is an indication of the need for write-down due to impairment. The impairment write-down would be the difference between the carrying amount and the estimated fair value of the asset. There have been no such impairments of long-lived assets at December 31, 2001 and 2000.

The Company adopted the provisions of SFAS 144 with effect from January 1, 2002 and recorded an impairment write-down during the three months ended June 30, 2002 (see Note 3).

Income taxes

Deferred income taxes reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and such amounts recognized for income tax reporting purposes. Valuation allowances are provided when necessary to reduce deferred tax assets to the amount expected to be realized.

Deferred rent

The Company records its rental expense on long-term leases using the straight-line method. Differences between cash payments and rental expense are recorded as deferred rent.

Revenue

Revenue consists of monthly recurring fees for co-location and internet exchange services at the data centers, service fees associated with the delivery of professional services, and nonrecurring installation fees. Revenues from co-location and internet exchange services are billed monthly and recognized ratably over the term of the contract, generally one to five years. Professional service fees are recognized in the period in which the services were provided and represent the culmination of the earnings process. Nonrecurring installation fees are deferred and recognized ratably over the term of the related contract.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

In December 2001, the Company entered into an agreement with Qwest Hong Kong Technology Ltd (Qwest HK) whereby Qwest HK agreed to purchase from the Company various colocation and related services (Pihana Services) at some or all of the data centers operated by the Company and the Company agreed to purchase from Qwest HK various Internet access services within Asia and the United States (Qwest Services) at each of its data centers. The consideration payable for both the Pihana Services and Qwest Services was, in aggregate, $5,736,000 during a five-year period.

In light of the nature of this arrangement, the Company has accounted for the value of the purchase commitments and revenues resulting from this agreement as an exchange arrangement. As a result, and having considered the guidance in Accounting Principles Board (APB) Opinion 29, Accounting for Nonmonetary Transactions, the Company has determined that the revenue and purchase commitments arising from this arrangement should be offset and, as a result, there is no overall impact on the results of operations and balance sheet that arises from this arrangement.

Stock-based compensation

The Company accounts for stock-based awards to employees using the intrinsic value method in accordance with APB Opinion No. 25, Accounting for Stock Issued to Employees. Under the intrinsic value method no compensation expense is recorded when the exercise price of employee stock options equals or exceeds the fair value of the common stock on the date of grant. The Company provides pro forma disclosure of operating results, as if the minimum value method had been applied.

The Company accounts for stock-based awards to nonemployees using the fair value method in accordance with SFAS No. 123, Accounting for Stock-Based Compensation, and Emerging Issues Task Force (EITF) consensus on Issue No. 96-18, Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.

Comprehensive income

The Company has adopted the provisions of SFAS No. 130, Reporting Comprehensive Income. SFAS No. 130 establishes standards for the reporting and display of comprehensive income and its components; however, the adoption of this statement had no impact on the Company s net loss or stockholders equity. SFAS No. 130 requires unrealized gains or losses on the Company s available-for-sale securities and changes in cumulative translation adjustments to be included in other comprehensive income (loss). Comprehensive income (loss) consists of net loss and other comprehensive income (losses).

Cumulative translation adjustment

For foreign operations with the local currency as the functional currency, assets and liabilities are translated at period-end exchange rates, and the statement of operations is translated at the average exchange rates during the period. Gains or losses resulting from foreign currency translation are included as a component of other comprehensive income (loss).

Derivatives and hedging activities

The Company adopted SFAS No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended, at the beginning of its fiscal year 2001. The standard requires the Company to recognize all derivatives on the balance sheet at fair value. Derivatives that are not hedges must be adjusted to fair value through the statement of operations. If the derivative is a hedge, depending on the nature of the hedge, changes in the fair

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

value of derivatives will either be offset against the change in fair value of the hedged assets, liabilities or firm commitments through earnings, or recognized in other comprehensive income (loss) until the hedged item is recognized in earnings. The ineffective portion of a derivative s change in fair value will be immediately recognized in earnings. The adoption of SFAS No. 133 did not have a material effect on the financial statements of the Company. As of December 31, 2001, the Company had not entered into any derivative or hedging activities.

Recent accounting pronouncements

In November 2001, the EITF reached a consensus on EITF Issue No. 01-09, Accounting for Consideration Given by a Vendor to a Customer or a Reseller of the Vendor s Products, which is a codification of EITF Nos. 00-14, 00-22 and 00-25. This issue presumes that consideration from a vendor to a customer or reseller of the vendor s products is a reduction of the selling prices of the vendor s products and, therefore, should be characterized as a reduction of revenue when recognized in the vendor s income statement and could lead to negative revenue under certain circumstances. Revenue reduction is required unless consideration relates to a separate identifiable benefit and the benefit s fair value can be established. This issue should be applied no later than in annual or interim financial statements for periods beginning after December 15, 2001. Upon adoption the Company is required to reclassify all prior period amounts to conform to the current period presentation. The adoption of EITF No. 01-09 did not have a material impact on the financial position or results of operations of the Company.

In June 2002, the FASB issued SFAS No. 146, Accounting for Costs Associated with Exit or Disposal Activities. SFAS 146 requires that a liability for a cost associated with an exit or disposal activity be recognized when the liability is incurred. SFAS 146 eliminates the definition and requirement for recognition of exit costs in Emerging Issues Task Force Issue No. 94-3 where a liability for an exit cost was recognized at the date of an entity s commitment to an exit plan. SFAS 146 is effective for exit or disposal activities initiated after December 31, 2002. The Company does not believe that the adoption of SFAS 146 will have a material impact on its results of operations, financial position or cash flows.

Reclassifications

Certain amounts in the 2000 financial statements have been reclassified to conform to the 2001 presentation.

3. Balance Sheet Components

Cash, cash equivalents and short-term investments

Cash, cash equivalents and short-term investments consisted of the following (in thousands):

	December 31,	
	2001	**2000**
Money market	$ 35,077	$ 161,104
Municipal bonds	32,665	30,522
Total available-for-sale securities	67,742	191,626
Less: Amounts classified as cash and cash equivalents	(35,077)	(161,104)
Total market value of short-term investments	$ 32,665	$ 30,522

The maturities of short-term investments at the date of purchase were less than one year.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

As of December 31, 2001 and 2000, cost approximated market value of cash, cash equivalents and short-term investments; unrealized gains and losses were a gain of $705,000 as of December 31, 2001 and $211,000 as of December 31, 2000. As of December 31, 2001 and 2000, cash equivalents included investments in other securities with various contractual maturity dates that do not exceed 90 days. Gross realized gains and losses from the sale of securities classified as available-for-sale were not material for the nine months ended September 30, 2002 (unaudited) or the years ended December 31, 2001 and 2000. For the purpose of determining gross realized gains and losses, the cost of securities is based upon specific identification.

Included within deposits and other assets at December 31, 2001 and 2000 is $1,372,000 and $1,020,000, respectively, of restricted cash pursuant to certain lease arrangements.

Accounts receivable

Accounts receivable, net, consists of the following (in thousands):

	December 31,	
	2001	2000
Accounts receivable	$ 516	$ 6
Unearned revenue	(161)	
	355	6
Less: Allowance for doubtful accounts	(47)	
	$ 308	$ 6

Unearned revenue consists of pre-billing for services that have not yet been provided, but which have been billed to customers ahead of time in accordance with the terms of their contract. Accordingly, the Company invoices its customers at the end of a calendar month for services to be provided the following month.

Property and equipment

Property and equipment consists of (in thousands):

	December 31,	
	2001	2000
Leasehold improvements	$ 94,712	$ 2,814
Machinery and equipment	741	200
Computer equipment and software	18,041	7,603
Furniture and fixtures	1,118	717
Construction in progress	3,942	25,360
	118,554	36,694
Less: Accumulated depreciation	(10,926)	(964)
Property and equipment, net	$ 107,628	$ 35,730

As of December 31, 2001, property and equipment includes $4,229,000 of computer equipment acquired under capital leases. Accumulated amortization of the assets held under capital leases totaled $307,000. No assets were acquired under capital leases prior to December 31, 2000.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

During the years ended December 31, 2001 and 2000, the Company disposed of assets with a book value of $452,000 and $3,000, respectively, for cash proceeds of $232,000 and $nil, respectively. As a result of these disposals the Company recorded a loss on disposal of $220,000 and $3,000 during the years ended December 31, 2001 and 2000, respectively.

In August 2001 the FASB issued SFAS No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets (SFAS 144), which addresses financial accounting and reporting for the impairment or disposal of long- lived assets. SFAS 144 requires that long-lived assets to be disposed of by sale be measured at the lower of carrying amount or fair value less cost to sell, whether reported in continuing operations or in discontinued operations.

The Company adopted the provisions of SFAS 144 with effect from January 1, 2002. In accordance with the provisions of SFAS 144, the Company has considered whether indicators exist which would indicate that an impairment assessment should be undertaken. This review was undertaken during the three months ended June 30, 2002 and the Company concluded that as a result of a number of factors it would appear to be appropriate to consider whether the Company s long-lived assets, consisting primarily of the Company s IX centers, are impaired. Among the factors the Company considered were:

the continuing challenges seen in the managed service sector and the impact this has had on a number of targeted customers, such as Global Crossing, MFN, Worldcom and Level 3;

the impact of the current economic outlook on management s forecasted results for these assets and the ability to achieve their original forecasted results;

the appointment of an investment banker in April 2002 to assist with the exploration of possible sale transactions for the Company;

the status of discussions in progress at that time with certain suitors with regard to the potential sale of the assets to a third party; and

the expected resale value of the Company s fixed assets being significantly below their book value given current market conditions.

Following this impairment assessment, the Company has determined that the carrying value of the assets exceeds their estimated fair values and recorded an impairment charge of approximately $77.0 million to write-down the value of long-lived assets during the three months ended June 30, 2002. Management determined the fair value of assets based on the best available evidence and applied the traditional present value technique as permitted under SFAS 144 using a discount rate of 25%. This discount rate was based upon the risk-free rate of interest plus an adjustment for a market risk premium based upon historical risk premiums required by investors for companies of the Company s size, industry and capital structure and included risk factors specific to the Company. In addition, in determining the market risk premium, management considered venture capital rates of return required for investment companies during their early stages of development and the risk associated with the corresponding operating challenges.

In October 2002, the Company entered into a combination agreement to merge with a wholly owned subsidiary of Equinix, Inc. (see Note 10). Consistent with the guidance in SFAS 144, however, the Company has treated the carrying value of these long-lived assets as being held and used.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Accrued liabilities

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2001	2000
Accrued compensation expenses	$ 2,524	$ 1,506
Accrued construction costs	2,149	
Other liabilities	1,544	260
	$ 6,217	$ 1,766

4. Redeemable Preferred Stock

The Company s outstanding redeemable preferred stock consists of the following (in thousands, except share data):

	Series A Redeemable Preferred Stock		Series B Redeemable Convertible Preferred Stock	
	Shares	Amount	Shares	Amount
Issuance of Series A redeemable preferred stock	1,250,000	$ 2,958		$
Dividends on redeemable preferred stock		106		
Balances, December 31, 1999	1,250,000	3,064		
Issuance of Series A redeemable preferred stock	3,750,000	9,000		
Issuance of Series B redeemable convertible preferred stock, net of issuance costs of $666			79,211,469	220,333
Issuance of Series B redeemable preferred stock warrant				(6,741)
Dividends on redeemable preferred stock		790		
Balances, December 31, 2000	5,000,000	12,854	79,211,469	213,592
Issuance of Series B redeemable convertible preferred stock, net of issuance costs of $100			933,692	2,505
Issuance of Series B redeemable convertible preferred stock for non-employee services			44,803	125
Dividends on redeemable preferred stock		960		
Balances, December 31, 2001	5,000,000	13,814	80,189,964	216,222
Dividends on redeemable preferred stock (unaudited)		720		
Balances, September 30, 2002 (unaudited)	5,000,000	$ 14,534	80,189,964	$ 216,222

Liquidation value, September 30, 2002 (unaudited)	$ 12,000	$ 335,996

Included in the Series B preferred stock are 44,803 shares of Series B-1 preferred stock which were issued in 2001 in exchange for services provided to the Company. The Company has recorded an expense of $125,000 in connection with the issuance of these shares which represents the fair value of the stock granted.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Significant terms of the Series A, Series B-1, and Series B-2 preferred stock are as follows:

Dividends

Dividends on each share of Series A preferred stock accrue at 8% per annum. The dividends are cumulative and payable only if declared by the board of directors of the Company. No dividends accrue on Series B-1 or B-2 preferred stock.

Liquidation preferences

If the Company is liquidated, dissolved or wound up, the holders of the Series B-1 and B-2 preferred stock are entitled to receive prior and in preference to any distribution of any assets to the holders of common stock and Series A preferred stock. The liquidation preference of the Series B-1 and B-2 preferred stock is $4.19 per share. If funds are sufficient to make a complete distribution to the Series B-1 and B-2 preferred stockholders, the holders of the Series A preferred stock are entitled to receive, prior to and in preference to any distribution to holders of common stock, an amount equal to the price at which the Series A preferred stock was purchased from the Company plus all accrued but unpaid dividends whether or not earned or declared. The liquidation preference of the Series A preferred stock is $2.40. After such liquidation preference is satisfied, the remaining net assets are distributed ratably to the common stockholders. A merger resulting in a change in control or a sale of the Company is treated as a liquidation.

Voting rights

Each share of Series B-1 preferred stock is entitled to the number of votes of common stock into which such shares of Series B-1 preferred stock could be converted. The Series A and Series B-2 preferred stockholders have no voting rights, except in matters of a liquidation or change in ownership.

Conversion

Each share of Series B-1 preferred stock is convertible at the option of the holder into the number of shares of Class B common stock as determined by dividing the Series B issue price by the conversion price in effect at the time of the conversion, initially $2.79.

Each share of Series B-2 preferred stock is convertible at the option of the holder into one share of Series B-1 preferred stock or the number of shares of Class B common stock as determined by dividing the Series B issue price by the conversion price in effect at the time of the conversion.

Each share of Series B-1 and B-2 preferred stock is automatically converted into shares of Class B common stock at the conversion price, initially $2.79, upon the closing of an initial public offering with net proceeds equal or exceeding $80,000,000 at a price per share equal to at least $4.883 or at the election of two-thirds of the holders of Series B-1 and B-2 preferred stocks.

Series A preferred stock is non-convertible.

Redemption

The Company may at any time redeem all or any portion of the shares of Series A stock then outstanding at a price per share equal to the liquidation preference. At the request of the majority holders of the Series A preferred stock, the Company shall redeem the Series A preferred stock at an amount equal to $2.40 (plus all

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

accrued and unpaid dividends) upon the closing of an initial public offering with net proceeds equal or exceeding $25,000,000, at a price per share reflecting pre-money valuation of the Company of not less than $60,000,000. Outside of the preferences granted upon liquidation, the holders of Series B-1 and B-2 preferred stock have no redemption rights.

Series B-1 warrants

In connection with the issuance of Series B-1 preferred stock, in October 2000, the Company contingently issued warrants to purchase 15,000,000 shares of Series B-1 Stock at an exercise price of $0.01. The purchase rights represented by these warrants were exercisable at any time after March 31, 2001 provided that at such date the Company had not issued or sold at least an aggregate of 80,645,161 shares of the Company s Series B preferred stock with aggregate cash proceeds of at least $225,000,000. The terms of these warrants were amended in March, 2001 such that the warrants were exercisable at any time after March 31, 2001 provided that at such date the Company had not issued or sold at least an aggregate of 79,107,526 shares of the Company s Series B preferred stock with aggregate cash proceeds of at least $223,000,000.

As of March 31, 2001, the Company had issued 80,145,161 shares of Series B stock for total gross proceeds of $223,604,999. As a result, the conditions for the exercise of these warrants had not been met and as a result, the warrant agreement was effectively terminated.

The Company issued warrants to purchase 4,587,384 shares of Series B-1 stock at an exercise price of $5.58 per share. All of these warrants were issued to Series B-1 stockholders and expire upon the earlier of October 2005 or the closing of an initial public offering resulting in proceeds of at least $80,000,000 and with an offering price of at least $4.88 per share. The estimated value of these warrants was approximately $6,741,000 and was recorded as a reduction to the carrying value of the preferred stock. The warrant valuation was estimated in accordance with the provisions of APB Opinion No. 14, Accounting for Convertible Debt and Debt Issued with Stock Purchase Warrants , using the Black-Scholes option pricing model under the following assumptions: risk free interest rate of 5%, expected term of five years, expected dividend yield of 0% and volatility of 80%.

5. Common Stock

The authorized capital stock of the Company consists of 50,000,000 shares of Class A Common Stock, $0.001 par value, 133,524,985 shares of Class B Common Stock, $0.001 par value, and 128,530,036 shares of Preferred Stock, $0.001 par value, of which 5,000,000 have been designated Series A Preferred Stock (the Series A Preferred), 105,608,889 have been designated Series B-1 Preferred, and 17,921,147 of which have been designated Series B-2 Preferred.

Repurchase rights

In 1999, a total of 9,000,000 shares of Common Stock were issued to the Company s two founders (the founders Shares). The Company has the right of first refusal to match any purchase offer at the original issuance price with respect to the sale of such founder Shares.

In July 2000, in connection with the resignation of one of the Company s founders, the Company exercised its repurchase option and purchased 2,156,400 unvested shares of common stock at a price of $0.00045 per share. The remaining 2,203,600 vested shares owned by the founder were sold directly to other officers and common stockholders at a price of $0.5163 per share. In June 2001, the Company s other founder resigned. As a result, the founder s 843,750 unvested shares were repurchased by the Company.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Reserved shares

At December 31, 2001, the Company had reserved 105,608,889 and 12,413,214 shares of common stock for future issuance upon conversion of preferred stock and exercise of options under the stock option plan, respectively. In addition, the Company has reserved 37,508,531 shares of Series B-1 preferred stock for issuance upon the conversion of the Series B-2 preferred stock and the exercise of Series B-2 warrants.

Stock options

Under the Company s 1999 stock option plan (the Plan), up to 12,711,400 options may be granted to employees or consultants, including officers and directors, as incentive or nonstatutory options. Nonstatutory stock options granted to employees, directors, or consultants must be granted at not less than 85% of fair market value at the date of grant as determined by the board of directors of the Company. If the optionee, at the time the option is granted, owns stock representing more than 10% of the total combined voting power of all classes of stock of the Company, the option price of incentive stock options shall not be less than 110% of the fair market value of the shares on the date of grant. Options under the Plan generally become exercisable 25% on the one- year anniversary of the grant date and 1/48 per month thereafter. The options under the Plan expire 10 years from the date of grant.

A summary of stock option activity is as follows:

	Shares Available for Grant	Options Outstanding	Weighted Average Exercise Price per Share
Outstanding, June 11, 1999			$
Authorized	12,711,400		
Granted	(500,000)	500,000	0.005
Balances, December 31, 1999	12,211,400	500,000	0.005
Granted	(6,167,500)	6,167,500	0.602
Exercised		(115,000)	0.005
Canceled	634,000	(634,000)	0.625
Balances, December 31, 2000	6,677,900	5,918,500	0.577
Granted	(7,355,000)	7,355,000	0.625
Exercised		(138,186)	0.199
Canceled	901,126	(901,126)	0.060
Balances, December 31, 2001	224,026	12,234,188	$ 0.623

Additional information regarding options outstanding as of December 31, 2001 is as follows:

	Options Outstanding			Options Exercisable	
Exercise Price	Number of Shares	Weighted Average Remaining Contractual Life (in Years)	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
$0.005	40,000	7.64	$0.005	7,146	$0.005
$0.625	12,194,188	8.85	$0.625	3,909,528	$0.625

$0.005-$0.625	12,234,188	8.85	$0.623	3,916,674	$0.624

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

The weighted-average grant date minimum value per share of options granted to employees under the Plan during the years ended December 31, 2001 and 2000 and the period ended December 31, 1999 was $0.136, $0.200 and $0.0015, respectively. The number of exercisable options at December 31, 2001, 2000 and 1999 was 3,916,674, 365,925 and nil, respectively. The weighted average exercise price of the exercisable options at December 31, 2001 and 2000 was $0.624 and $0.550. No options were exercisable at December 31, 1999.

Stock-based compensation

The Company accounts for its stock-based awards to employees using the intrinsic value method in accordance with APB Opinion No. 25. Accordingly, the Company records deferred stock compensation equal to the difference between the grant price and deemed fair value of the Company s common stock on the date of grant. In 2000, the Company recorded deferred stock compensation expense of $142,000. In 2001, these options were amended to increase the exercise price to fair value. As a result, $127,000 of the unamortized deferred compensation was reversed. In addition, the Company recorded $108,000 and $35,000 of additional stock based compensation in 2001 in relation to a favorable repurchase feature provided as part of one employee stock option grant and the acceleration of option vesting for one employee upon termination of employment.

Had compensation cost been determined based on the minimum value of the options at the grant date, the impact on the Company s net loss would have been as follows (in thousands):

	Year Ended December 31,		
	2001	2000	1999
Net loss:			
As reported	$ (43,851)	$ (15,953)	$ (989)
Pro forma	$ (44,413)	$ (16,026)	$ (989)

For the purpose of pro forma disclosure, the minimum value of each option grant is estimated on the date of grant using the following assumptions for grants in 2001, 2000 and 1999: no dividend yield; risk free interest rates of approximately 4.5%, 6.4% and 5.7%, respectively; no volatility; and expected life of 5.5 years.

Non-employee options

In June 2000, the Company issued 200,000 shares of common stock to a consultant for consulting services. The Company recorded $125,000 of stock compensation expense for the issuance of these shares. These shares were valued using the Black-Scholes option pricing model with the following assumptions: dividend yield of 0%; expected volatility of 80%; risk-free rate of 6% and a contractual life of 10 years.

In October 2000, the Company issued 1.1 million shares of common stock to a director for past consulting services. The Company recorded $688,000 of stock compensation expense for the issuance of these shares. The Company also issued 100,000 shares to a university for consulting services. The Company recorded $90,000 of stock compensation expense for the issuance of these shares. Both stock issuances nullified the stock options previously issued to the directors and university.

The fair value of these non-employee options were made using the Black-Scholes option-pricing model with the following weighted average assumptions: Dividend yield of 0%; Expected volatility of 80%, Risk-free rate of 6% and a contractual life of 10 years.No option grants were made to non-employees in the year ended December 31, 2001 or the period ended December 31, 1999.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

6. Income Taxes

The components of the income tax credit for the years ended December 31, 2001 and 2000 are as follows (in thousands):

	2001	2000
Current refundable from the State of Hawaii	$ 1,114	$ 224
Total	$ 1,114	$ 224

The current income tax benefit relates to a research and development tax credit the Company was eligible to receive from the State of Hawaii. This 20% credit is refundable and is based on all qualifying research and development expenditures incurred in Hawaii. This tax credit is similar to the federal research and development tax credit but the calculation does not require incremental R&D expenditures annually.

The components of net deferred tax assets at December 31, 2001 and 2000 are as follows (in thousands):

	December 31,	
	2001	2000
Deferred tax assets:		
Net operating loss carryforwards	$ 9,605	$ 3,194
Start-up costs	1,293	1,646
Deferred rent	514	250
Depreciation	458	
Accrued vacation	113	
Stock compensation	88	118
Deferred revenue	62	
	12,133	5,208
Deferred tax liabilities:		
Unrealized gain on short-term investments	(268)	(80)
Depreciation		(96)
Gross deferred tax assets	11,865	5,032
Valuation allowance	(11,865)	(5,032)
Net deferred tax assets	$	$

The 2001 and 2000 provisions differ from the amount computed using the statutory rate primarily due to foreign operations and translation adjustments.

The net increase in the valuation allowance in 2001 was primarily the result of increased net operating losses and tax credit carryforwards generated during the year, against which the Company provided a full valuation based on the Company s evaluation of the likelihood of realization of future tax benefits resulting from deferred tax assets.

As of December 31, 2001, the Company had available for carryforward net operating losses for federal and state income tax purposes of approximately $25,277,000, which will expire in 2021, and is subject to limitations. During 2001 and 2000, the Company accrued approximately

$1.1 million and $0.2 million, respectively, in research and development credits from the State of Hawaii.

The Tax Reform Act of 1986 limits the use of net operating loss and tax credit carryforwards in certain situations where changes occur in the stock ownership of a company. If the Company experiences a change in ownership, utilization of the carryforwards could be restricted.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

7. Commitments

Lease obligations

Facilities are leased under noncancelable operating leases expiring through December 31, 2015. Rent expense for the years ended December 31, 2001 and 2000, and the period from June 11, 1999 (date of inception) to December 31, 1999, was $9,599,000, $2,445,000, and $122,000, respectively.

Future minimum payments for noncancelable leases at December 31, 2001 are as follows (in thousands):

Year Ending December 31,	Capital Leases	Operating Leases
2002	$ 1,909	$ 7,883
2003	1,503	7,227
2004	293	7,153
2005		6,838
2006		6,894
Thereafter		38,665
Total minimum lease payments	3,705	$ 74,660
Less: Amount representing interest	(200)	
Present value of minimum lease payments	3,505	
Less: Current portion	(1,748)	
Long-term portion of capital lease obligations	$ 1,757	

In June 2001, the Company entered into an agreement to surrender its operating leasehold in Osaka, Japan (the Agreement to Surrender). As stipulated in the Agreement to Surrender, the Company paid rent through June 2001 and paid a cash termination on fee of approximately $463,000. In exchange, the Company received in full its deposit on this lease. This has been included in the restructuring charge for the year ended December 31, 2001.

In August 2002, the Company entered into additional lease termination agreements for two other operating leaseholds (see Note 10).

Bandwidth purchase commitment

In December 2001, the Company entered into an agreement with Qwest HK whereby Qwest HK agreed to purchase from the Company the Pihana Services at some or all of the data centers operated by the Company and the Company agreed to purchase from Qwest HK the Qwest Services at each of its data centers. The consideration payable for both the Pihana Services and Qwest Services was, in aggregate, $5,736,000 during a five-year period.

In light of the nature of this arrangement, the Company has accounted for the value of the purchase commitments and revenues resulting from this agreement as an exchange arrangement. As a result, and having considered the guidance in APB Opinion No. 29, (APB 29), the Company has determined that the revenue and purchase commitments arising from this arrangement should be offset and, as a result, there is no overall impact on the results of operations and balance sheet that arises from this arrangement.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

Software license agreement

On March 30, 2001, the Company entered into a three-year technology license agreement with Storage Networks, Inc. whereby Storage Networks granted a non-exclusive, non-assignable right and license to install and execute the Storage Network technology for the Company s internal use and external use as part of the Company s I center solutions. In exchange for this license agreement, the Company has agreed to pay the following:

Corporate launch fee of $1 million, payable in six monthly installments commencing March 2001; and

Additional minimum service fees of $1 million, payable by March 30, 2002 and $3 million, payable by March 30, 2003.

As of December 31, 2001, the Company had paid approximately $1 million in accordance with the terms of the contract and had commitments to pay $1 million in the year ended December 31, 2002 and $3 million in the year ended December 31, 2003.

In June, 2002, the Company terminated this agreement. In consideration for this termination, the Company agreed to pay a termination fee $1,250,000 in addition to approximately $1 million of payments made to date under the terms of the agreement. As a result of this termination, the Company wrote-off the remaining net book value of the license agreement of approximately $750,000.

Employee change of control commitments

Four of the Company s employees are entitled to severance pay in the event of termination. Under the agreements in place, severance payments can range from $980,000 to $3.6 million, depending on certain factors which are conditional upon a change of control for the Company.

Two employees have Hong Kong expatriate agreements which require the Company pay various expenses, including: housing; cost of living differential; education costs for children; auto expense; annual home leave costs for three weeks per year; income taxes in Hong Kong on all Company related income; and other expenses. Upon consummation of change of control prior to July 1, 2003 or if terminated then, then at the Company s option either: (i) employee shall be paid by the Company in the amount equal to any accrued and unpaid benefits for period ending July, 2003 or (ii) as a condition of such change of control any successor entity shall agree to be bound and assume the Company s obligations hereunder. Expatriate expenses for the year ending December 31, 2001 were approximately $600,000.

8. Employee Benefit Plans

Effective September 1, 2000, the Company adopted a 401(k) plan. Employees meeting the eligibility requirements, as defined, may contribute up to 15% of their salaries. The Company has not made any contributions to the 401(k) plan.

9. Related Party Transactions

Included in construction in progress and accounts payable at December 31, 2000 are $8,654,000 and $6,577,000, respectively, of software design costs owed to a Series B convertible preferred stockholder. During 2001, the Company reached an agreement to pay $2.5 million as consideration for these services and reduced the construction in progress to reflect the reduced cost.

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PIHANA PACIFIC, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)

At December 31, 2001, the Company had accounts payable of $118,000 owing to a Series B convertible preferred stockholder.

At December 31, 2001 and 2000, respectively, the Company had cash equivalents and short-term investments of $52,576,000 and $172,732,000 held with a Series B convertible preferred stockholder.

10. Subsequent Events

Leasehold property

In August 2002, the Company finalized its agreement to exit its excess office leasehold in Singapore. As part of this agreements, the Company agreed to pay a one-time cash settlement fee of $113,000 and give up its deposit on this property (approximately $100,000). As a result of vacating this property, the Company also wrote-off all property and equipment located in this excess office space, primarily leasehold improvements and some furniture and fixtures, totaling approximately $490,000.

In August, 2002, the Company entered into an arrangement to sublease part of its Honolulu office space.

Employee commitments

In March 2002, the Company granted two $600,000 promissory notes to two executive officers of the Company. These are non-interest bearing. In addition, the Company has committed to forgive these notes beginning March 2003. Forgiveness also occurs if the employees are terminated prior to a change of control of the Company.

Effective April 2002, certain employees (Covered Employee) are entitled to bonus payments in the event of a change of control. Under the terms of the proposed transaction, each Covered Employee would receive a bonus of the greater of 5% of total consideration or $1.0 million. In the case of one of the employees, any bonus to be paid will be reduced by the amount of retention loss forgiveness by the Company (up to $600,000). In addition, in the case of all these employees, any bonus to be paid will be reduced by the aggregate fair market value of all equity instruments or other benefits received pursuant to the Company s 1999 stock option plan and any other incentive plan or compensatory award paid.

Merger

In October 2002, the Company entered into a combination agreement to merge with a wholly owned subsidiary of Equinix, Inc. in exchange for approximately 76.6 million shares of Equinix common stock. The merged company will continue to operate under the Equinix name and management. The combination agreement provides that 10% of the merger consideration to be issued will be held in escrow to secure the obligations of the Company s stockholders to indemnify Equinix for certain losses.

The combination agreement contemplates that 22.5% of the fully diluted capitalization (as defined in the combination agreement) will be issued in the merger if the Company s cash balance (as defined in the combination agreement) is $28.0 million or higher. The percentage interest will be reduced based on reductions in that cash balance.

The merger is subject to a number of conditions and no assurance can be given that the merger will be completed. The Company s estimated transaction costs are approximately $2,625,000 in connection with the merger.

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UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The following unaudited pro forma combined consolidated condensed financial statements have been prepared to give effect to the proposed combination of Equinix, Inc. (Equinix or the Company), Pihana Pacific, Inc. (Pihana) and i-STT Pte Ltd (i-STT) using the purchase method of accounting and the assumptions and adjustments described in the accompanying notes to the unaudited pro forma combined consolidated condensed financial statements, including an investment in the Company by i-STT s parent company, STT Communications Ltd (STT Communications), and further reductions in amounts outstanding under both the Senior Notes and the Amended and Restated Senior Secured Credit Facility. These pro forma statements were prepared as if the combination and related transactions had been completed as of January 1, 2001 for statements of operations purposes and as of September 30, 2002 for balance sheet purposes. Equinix will continue to operate under the existing Equinix senior management team with Peter Van Camp as CEO and will be headquartered in Mountain View, California.

The unaudited pro forma combined consolidated condensed financial statements are presented for illustrative purposes only and are not necessarily indicative of the financial position or results of operations that would have actually been reported had the combination, financing and further reductions in amounts outstanding under both the Senior Notes and the Amended and Restated Senior Secured Credit Facility, occurred January 1, 2001 for statements of operation purposes and as of September 30, 2002 for balance sheet purposes, nor is it necessarily indicative of the future financial position or results of operations. The unaudited pro forma combined consolidated condensed financial statements include adjustments, which are based upon preliminary estimates, to reflect the allocation of the purchase price to the acquired assets and assumed liabilities of i-STT and Pihana. The final allocation of the purchase price will be determined after the completion of the combination and will be based upon actual net tangible and intangible assets acquired as well as liabilities assumed. The preliminary purchase price allocation for i-STT and Pihana is subject to revision as more detailed analysis is completed and additional information on the fair values of i-STT s and Pihana s assets and liabilities becomes available. Any change in the fair value of the net assets of i-STT and Pihana will change the amount of the purchase price allocable to goodwill. Additionally, changes in i-STT s and Pihana s working capital, including the results of operations from September 30, 2002 through the date the transaction is completed, will change the amount of goodwill recorded. Final purchase accounting adjustments may differ materially from the pro forma adjustments presented here.

These unaudited pro forma combined consolidated condensed financial statements are based upon the respective historical consolidated financial statements of Equinix and Pihana and the historical consolidated financials statements of i-STT, adjusted to generally accepted accounting principles in the United States of America, and should be read in conjunction with the historical consolidated financial statements of Equinix, i-STT and Pihana and related notes and Management s Discussion and Analysis of Financial Condition and Results of Operations contained elsewhere if this document.

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UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED BALANCE SHEET
AS OF SEPTEMBER 30, 2002

(In thousands)

	Historical			Pro Forma	
	Equinix	Pihana	i-STT	Adjustments	Combined
ASSETS					
Current assets:					
Cash and cash equivalents	$ 9,310	$ 5,074	$ 1,523	$ 5,774 (a)	$ 21,681
Short-term investments	2,312	33,391			35,703
Accounts receivable, net	6,721	493	694		7,908
Current portion of restricted cash and short-term investments	47				47
Prepaid expenses and other current assets	10,881	1,790	3,104	(228)(b)	15,547
Total current assets	29,271	40,748	5,321	5,546	80,886
Property and equipment, net	386,699	25,502	11,636	(25,502)(c)	398,335
Intangible assets, net				22,307 (d)	22,307
Restricted cash and short-term investments, less current portion	1,517				1,517
Debt issuance costs, net	8,695			(1,801)(e)	6,894
Other assets	2,136	6,536		(3,293)(f)	5,379
Total assets	$ 428,318	$ 72,786	$ 16,957	$ (2,743)	$ 515,318
LIABILITIES AND STOCKHOLDERS EQUITY					
Current liabilities:					
Accounts payable and accrued expenses	$ 9,862	$ 5,222	$ 1,308	$ 15,500 (g)	$ 31,892
Accrued interest payable	6,381			(5,415)(h)	966
Current portion of debt facilities and capital lease obligations	5,562	1,536		(240)(i)	6,858
Current portion of senior secured credit facility	100,000			(100,000)(j)	
Other current liabilities	3,397		21,136	(18,875)(k)	5,658
Total current liabilities	125,202	6,758	22,444	(109,030)	45,374
Debt facilities and capital lease obligations, less current portion	3,192	661		(83)(i)	3,770
Senior secured credit facility				92,500 (j)	92,500
Convertible secured notes				12,045 (l)	12,045
Senior notes	139,303			(118,207)(m)	21,096
Other liabilities	12,755	2,829		(2,829)(n)	12,755
Total liabilities	280,452	10,248	22,444	(125,604)	187,540
Stockholders equity:					
Redeemable preferred stock		14,534		(14,534)(o)	
Convertible preferred stock		222,963		(222,904)(o)	59
Common stock	99	6	32,512	(32,348)(o)	269
Additional paid-in capital	563,819			93,379 (o)	657,198
Deferred stock-based compensation	(4,244)				(4,244)
Accumulated other comprehensive income (loss)	546	294	(641)	347 (o)	546

Accumulated deficit	(412,354)	(175,259)	(37,358)	298,921 (o)	(326,050)
Total stockholders equity	147,866	62,538	(5,487)	122,861	327,778
Total liabilities and stockholders equity	$ 428,318	$ 72,786	$ 16,957	$ (2,743)	$ 515,318

The accompanying notes are an integral part of these unaudited pro forma combined consolidated condensed financial statements.

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UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED STATEMENT OF OPERATIONS FOR THE YEAR ENDED DECEMBER 31, 2001

(In thousands, except per share data)

	Historical			Pro Forma	
	Equinix	Pihana	i-STT	Adjustments	Combined
Revenues	$ 63,414	$ 1,018	$ 11,151	$ (2)(p)	$ 75,581
Costs and operating expenses:					
Cost of revenues	94,889	32,254	19,355	(11,436)(q)	135,062
Sales and marketing	16,935	8,771	3,715	1,384 (r)	30,805
General and administrative	58,286	10,881	12,355	(4,049)(s)	77,473
Restructuring charge	48,565				48,565
Total costs and operating expenses	218,675	51,906	35,425	(14,101)	291,905
Loss from operations	(155,261)	(50,888)	(24,274)	14,099	(216,324)
Interest income	10,656	5,400	56	(18)(t)	16,094
Interest expense	(43,810)	(82)	(902)	18,037 (u)	(26,757)
Loss from discontinued operations			(1,994)		(1,994)
Equity in losses of affiliates			(731)		(731)
Taxes		1,114			1,114
Other		605		(2)(v)	603
Net loss	$ (188,415)	$ (43,851)	$ (27,845)	$ 32,116	$ (227,995)
Net loss per share basic and diluted	$ (2.39)				$ (0.92)
Shares used in per share calculation basic and diluted	78,681			169,997 (y)	248,678
Net loss per share basic and diluted, as adjusted for anticipated reverse stock split (z)					$ (16.50)
Shares used in per share calculation basic and diluted, as adjusted for anticipated reverse stock split (z)					13,815

The accompanying notes are an integral part of these unaudited pro forma combined consolidated condensed financial statements.

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UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED STATEMENT OF OPERATIONS
FOR THE NINE MONTHS ENDED SEPTEMBER 30, 2002

(In thousands, except per share data)

	Historical			Pro Forma	
	Equinix	Pihana	i-STT	Adjustments	Combined
Revenues	$ 58,385	$ 3,123	$ 8,100	$ (63)(p)	$ 69,545
Costs and operating expenses:					
Cost of revenues	78,599	23,856	8,691	(11,383)(q)	99,763
Sales and marketing	12,168	5,244	1,167	1,100 (r)	19,679
General and administrative	22,735	8,029	3,538	(2,680)(s)	31,622
Restructuring and other non-recurring charges	28,960	79,770		(77,000)(w)	31,730
Total costs and operating expenses	142,462	116,899	13,396	(89,963)	182,794
Loss from operations	(84,077)	(113,776)	(5,296)	89,900	(113,249)
Interest income	961	1,283	229	(3)(t)	2,470
Interest expense	(26,411)	(145)	(306)	8,737 (u)	(18,125)
Gain on debt extinguishment	27,188			(27,188)(x)	
Equity in losses of affiliates			(665)		(665)
Other		(410)		40 (v)	(370)
Net loss	$ (82,339)	$ (113,048)	$ (6,038)	$ 71,486	$ (129,939)
Net loss per share basic and diluted	$ (0.88)				$ (0.49)
Shares used in per share calculation basic and diluted	93,687			169,997 (y)	263,684
Net loss per share basic and diluted, as adjusted for anticipated reverse stock split (z)					$ (8.87)
Shares used in per share calculation basic and diluted, as adjusted for anticipated reverse stock split (z)					14,649

The accompanying notes are an integral part of these unaudited pro forma combined consolidated condensed financial statements.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

The unaudited pro forma combined consolidated condensed financial statements included herein have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission. Certain information and certain footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations; however, management believes that the disclosures are adequate to make the information presented not misleading.

1. BASIS OF PRO FORMA PRESENTATION

On October 2, 2002, the Company entered into a combination agreement (the Combination Agreement) to purchase all of the issued and outstanding stock of i-STT, a wholly-owned Internet infrastructure services subsidiary of STT Communications, in exchange for $10,000 and approximately 93.7 million shares of common and preferred stock, representing approximately 27.5% of the modified fully diluted share amount at closing and Pihana, a leading provider of neutral Internet exchange data center services and managed e-infrastructure services in Asia-Pacific, in exchange for $10,000 and approximately 76.6 million shares of common stock, or approximately 22.5% of the modified fully diluted share amount. These acquisitions are herein referred to as the combination. The combined company will continue to operate under the Equinix name and management. Separately, STT Communications will make a $30.0 million strategic investment in the Company in the form of convertible secured notes with detachable warrants for the further issuance of approximately 30.6 million shares of stock. The Company anticipates completing the proposed transaction with STT Communications and Pihana by the end of the year. The actual number of shares of Equinix common and preferred stock and warrants to be issued will be determined on the effective date of the merger based on the then fully-diluted outstanding shares of Equinix, Pihana s cash balance and Equinix s and i-STT s working capital as defined in the Combination Agreement. Equinix will account for the combination under the purchase method of accounting. In addition to giving effect to the combination, these pro forma results have been adjusted to present the impact of the financing, Senior Note exchange and further reduction in the Amended and Restated Senior Secured Credit Facility discussed below. The combination, financing, Senior Note exchange and further reduction in the Amended and Restated Senior Secured Credit Facility have not been consummated as of the date of the preparation of these pro forma financial statements and there can be no assurances that these transactions will be consummated in the future.

The parties to the transaction considered the guidance provided in paragraph 17 of Statement of Financial Accounting Standard 141, Business Combinations and determined that Equinix is the acquiring entity in the combination. This determination was based on a number of factors including the fact that the former Equinix stockholders will have the largest voting percentage of the outstanding stock. Following the issuance of common and redeemable preferred shares by Equinix in the combination, the former Equinix stockholders would have a 51.0% voting interest in the combined entity. In addition, Equinix is the larger entity and its current management team will continue to run the day to day operations of the combined company, no party will control a majority of the board of directors and the combined company will continue to operate under the Equinix name and be headquartered in Mountain View, California.

In connection with the combination and financing transactions, Equinix has agreed to issue $30-40 million of convertible secured notes, which will be convertible into common stock on a one for one basis. These notes issued to STT Communications shall initially be convertible into shares of preferred stock at any time at the holder s option. There will be two classes of preferred stock, Series A and Series A-1. Series A preferred stock is convertible at any time, at the option of the holder, into common stock of Equinix up to the point at which (a) STT Communications has a 40% voting interest in Equinix or (b) the value of voting interests held by STT Communications exceeds $50 million. Thereafter, conversion of notes will result in the issuance of Series A-1, non-voting preferred shares. While STT Communications is able to convert their notes at any time after the closing, there are a number of factors, in addition to the anticipated premium built into the conversion price, that suggest that these notes will not be converted into equity. These include the fact that:

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

holders of the convertible secured notes will enjoy the priority position of debt over equity;

holders of the convertible secured notes will receive interest at the rate between 10% and 14% per annum, initially payable in PIK Notes (see Note 4 - Financing) semi-annually in arrears, on the unpaid principal balance;

the portion of convertible secured notes held by STT Communications will be secured by the Asia Pacific operations of the combined company, thereby providing security; and

the combined company will have $80 million of debt due in December 2005.

As a result of these factors, management does not expect the holders of the convertible secured notes to convert voluntarily prior to maturity. In the event debt securities are converted and STT Communications voting interest is maximized (at 40%), Equinix would hold a 42.7% voting interest, STT Communications 40% and Pihana 17.3%.

In connection with the proposed transaction with STT Communications and Pihana, the Company has entered into discussions with its senior lenders on the principal terms for a further amendment to the First Amendment to the Amended and Restated Senior Secured Credit Facility and such lenders have agreed to recommend the terms of a further amendment to their committees. The most significant terms and conditions of the proposed amendment are:

The Company will be granted a full waiver of previous covenant breaches and will be granted consent to use a minimum of $15.0 million of cash to retire its Senior Notes.

Future revenue and EBITDA covenants will be eliminated and the remaining covenants and ratios will be reset consistent with the performance of the combined Company for the remaining term of the loan.

The Company will permanently repay $7.5 million of the amount currently outstanding ($100.0 million as of September 30, 2002). In August 2002, the Company permanently repaid $5.0 million as part of the First Amendment to the Amended and Restated Senior Secured Credit Facility.

The amortization schedule for the Senior Secured Credit Facility will be amended such that the minimum amortization due in 2002-2004 will be significantly reduced and some amortization will be extended to 2006.

The current version of the Senior Secured Credit Facility, the First Amendment to the Amended and Restated Senior Secured Credit Facility, includes a covenant to convert a minimum of $100.0 million of Senior Notes by November 8, 2002 among others. As a result of the proposed transaction with STT Communications and Pihana and the proposed Senior Note exchange, in November 2002, the lenders agreed to waive certain conditions of the First Amendment to the Amended and Restated Senior Secured Credit Facility (the November 2002 Waiver). The most significant terms and conditions of the November 2002 Waiver are as follows:

The Company was granted a waiver of the covenant requiring the Company to convert $100.0 million of Senior Notes by November 8, 2002.

The Company was granted a waiver to reset the minimum revenue and maximum EBITDA loss covenants through December 31, 2002 and the minimum cash balance covenant through March 31, 2003.

The Company was granted a waiver, subject to certain conditions, of an event of default created by a minimum cash covenant default and a payment default, if any, in existence pursuant to the Wells Fargo Loan.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

The Company was granted a waiver, subject to certain conditions, of a default or an event of default created by a failure by the Company to make the interest payment due on the Senior Notes in December 2002.

The November 2002 Waiver expires upon the earlier of the closing of the Second Amendment to the Amended and Restated Senior Secured Credit Facility, the termination of the Combination, or December 31, 2002, provided that if the sole reason the Combination has not closed by that date is as a result of pending regulatory and related approvals the date may be extended for up to three successive 30 day periods, but such date shall not be extended past March 31, 2003. If the November 2002 Waiver expires and we have not closed the Second Amendment to the Amended and Restated Senior Secured Credit Facility, we will be in default under the terms of the First Amendment to the Amended and Restated Senior Secured Credit Facility and the lenders may require us to repay all amounts outstanding under the credit facility. The Company does not currently have sufficient cash reserves available to repay the amount outstanding under the loan.

The Company currently anticipates that a final amendment will be put in place prior to the closing of the proposed transaction. This amendment will be subject to the closing of the proposed transaction with STT Communications and Pihana.

Also in connection with the proposed transaction with STT Communications and Pihana, and in conjunction with the principal terms of a further amendment with the senior lenders, the Company has obtained agreements from the holders of a large percentage of its outstanding Senior Notes whereby such holders have agreed to tender their Senior Notes to the Company for a combination of cash and common stock and to amend the terms of the Senior Notes, provided certain conditions are met. These conditions include the tender by a minimum amount of Senior Notes, receipt by the Company of at least $30 million from the issuance of convertible promissory notes and approval of the Company s stockholders of the issuance of the common stock in connection with the exchange. The Company expects to retire a significant portion of its outstanding Senior Notes as part of the proposed transaction with STT Communications and Pihana.

Furthermore, in connection with the combination, financing and Senior Note exchange transactions described above, in order to comply with the requirements of the Nasdaq National Market, the Company will initiate a reverse stock split.

The unaudited pro forma combined consolidated condensed balance sheet as of September 30, 2002 was prepared by combining the historical unaudited consolidated condensed balance sheet data as of September 30, 2002 for Equinix and Pihana and the historical consolidated balance sheet data of i-STT, as adjusted to comply with generally accepted accounting principles in the United States, as if the combination had been consummated on that date.

The unaudited pro forma combined consolidated condensed statement of operations for the year ended December 31, 2001 and for the nine months ended September 30, 2002 combines the results of operations of Equinix and Pihana and the results of operations of i-STT, as adjusted to comply with generally accepted accounting principles in the United States, to give effect to the combination as if the combination had occurred on January 1, 2001.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

2. PURCHASE PRICE PIHANA

The following represents the preliminary allocation of the purchase price over the historical net book values of the acquired assets and assumed liabilities of Pihana as of September 30, 2002, and is for illustrative purposes only. Actual fair values will be based on financial information as of the acquisition date.

The unaudited pro forma combined consolidated condensed financial statements reflect an estimated purchase price of approximately $27,445,000, consisting of (a) a total of 76,624,000 shares of common stock valued at $25,286,000 (using a fair value per share of $0.33), (b) warrants to purchase approximately 1,075,000 shares of common stock assumed as part of the merger, with an estimated nominal fair value, (c) cash of $10,000 and (d) estimated direct transaction costs of $2,149,000. The preliminary fair market value of Equinix s common stock to be issued was determined using the five-trading-day average price surrounding the date the acquisition was announced. The preliminary fair value of the warrants assumed in the transaction was determined using the Black-Scholes option-pricing model and the following assumptions: exercise price of $23.82, contractual life of 3 years, risk-free interest rate of 4%, expected volatility of 80% and no expected dividend yield.

The final purchase price is dependent on the actual number of shares of common stock exchanged and actual direct merger costs. The following factors will impact the actual number of shares issued at closing: (a) the fully-diluted amount of shares outstanding of the Company, (b) Pihana s cash balance and (c) both the Company s and i-STT s working capital balance. The number of shares issued in connection with the Pihana acquisition in the accompanying unaudited pro forma combined consolidated condensed financial statements are based on the fully-diluted capital of the Company as of July 31, 2002 and the most stringent financial closing requirements for Pihana, Equinix and i-STT, namely that (a) Pihana has at least $28.0 million in cash (minimum cash balance per the Combination Agreement is $23.0 million), (b) Equinix s working capital is at least $644,000 (maximum working capital deficit per the Combination Agreement is $2,688,000) and (c) i-STT s working capital deficit is no more than $2,206,000 (maximum working capital deficit per the Combination Agreement is $4,206,000) (see Note 8). The final purchase price will be determined upon completion of the combination.

As a condition of the combination agreement, Pihana must terminate or amend certain leasehold interests and reduce a portion of the workforce. The Company and Pihana management estimate the direct costs attributable to these actions will be approximately $3,125,000.

Under the purchase method of accounting, the total estimated purchase price is allocated to Pihana s net tangible and intangible assets based upon their estimated fair value as of the acquisition date.

Equinix will not acquire assets nor assume liabilities primarily related to Pihana s Korean operations pursuant to the Combination Agreement. The assets and liabilities excluded from the September 30, 2002 historical balance sheet of Pihana is as follows (in thousands):

Cash and cash equivalents	$ 463
Prepaid expenses and other current assets	74
Property and equipment, net	5,598
Deposits and other assets	3,293
Accounts payable and accrued expenses	(1,025)
Capital lease obligations	(323)
Net assets of Pihana not assumed by Equinix	$ 8,080

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

Based upon the estimated purchase price of the acquisition and review of the net assets acquired and net liabilities assumed, the preliminary purchase price allocation, is as follows (in thousands):

Cash, cash equivalents and short-term investments	$	38,002
Accounts receivable		493
Prepaid expenses and other current assets		1,716
Deposits and other assets		3,243
Total assets acquired		43,454
Accounts payable and accrued expenses assumed		(4,197)
Capital lease obligations assumed		(1,874)
Estimated Pihana transaction costs		(2,625)
Estimated accrued restructuring charge		(3,125)
Net assets acquired		31,633
Estimated purchase price		(27,445)
Estimated negative goodwill allocation	$	4,188

A preliminary estimate of $4,188,000 has been allocated to negative goodwill in the acquisition of Pihana, which will be immediately reflected as a one-time extraordinary gain upon closing of the transaction. Pihana continues to use its cash and short-term investments to support its ongoing losses and as a result, they forecast utilizing a significant portion of the amount presented above prior to the combination closing. Based on the expected net assets at the closing date, we currently do not believe any gain will ultimately be recognized.

The preliminary purchase price allocation for Pihana is subject to revision as additional information on the fair values of Pihana s assets and liabilities becomes available. Any change in the fair value of the net assets of Pihana will change the amount of the purchase price allocable to negative goodwill. Additionally, changes in Pihana s working capital, including the results of operations from September 30, 2002 through the date the transaction is completed, will also change the amount of goodwill recorded. Final purchase accounting adjustments may therefore differ materially from the pro forma adjustments presented here.

There were no historical transactions between Equinix and Pihana. Certain reclassifications have been made to conform Pihana s historical amounts to Equinix s financial statement presentation.

3. PURCHASE PRICE i-STT

The following represents the preliminary allocation of the purchase price over the historical net book values of the acquired assets and assumed liabilities of i-STT as of September 30, 2002, and is for illustrative purposes only. Actual fair values will be based on financial information as of the acquisition date.

The unaudited pro forma combined consolidated condensed financial statements reflect an estimated purchase price of approximately $33,541,000, consisting of (a) a total of 34,396,000 shares of common stock and 59,256,000 shares of preferred stock valued at $30,905,000 (using a fair value per share of $0.33 for both the preferred and common shares), (b) cash of $10,000 and (c) estimated direct transaction costs of $2,626,000. The preliminary fair market value of Equinix s stock to be issued was determined using the five-trading-day average price of Equinix s common stock surrounding the date the transaction was announced.

The final purchase price is dependent on the actual number of shares of common and preferred stock exchanged and actual direct merger costs incurred. The following factors will impact the actual number of shares

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

issued at closing: (a) the fully-diluted amount of shares outstanding of the Company, (b) Pihana s cash balance and (c) both the Company s and i-STT s working capital balance. The number of shares issued in connection with the i-STT acquisition in the accompanying unaudited pro forma combined consolidated condensed financial statements are based on the fully-diluted capital of the Company as of July 31, 2002 and the most stringent financial closing requirements for Pihana, Equinix and i-STT, namely that (a) Pihana has at least $28.0 million in cash (minimum cash balance per the Combination Agreement is $23.0 million), (b) Equinix s working capital is at least $644,000 (maximum working capital deficit per the Combination Agreement is $2,688,000) and (c) i-STT s working capital deficit is no more than $2,206,000 (maximum working capital deficit per the Combination Agreement is $4,206,000) (See Note 8). The final purchase price will be determined upon completion of the merger.

The Company determined that the fair value of the Series A preferred stock and Series A-1 preferred stock and the common stock was the same because the material rights, preferences and privileges of the Series A preferred stock and Series A-1 preferred stock and the common stock are virtually identical. Specifically, the Series A preferred stock and Series A-1 preferred stock will initially be convertible into one share of common stock, subject to anti-dilution adjustments. There will be no price-based anti-dilution adjustments. There will be proportional adjustments for stock splits, stock dividends and the like. Except as otherwise provided by Delaware law, the Series A preferred stock will vote with the common stock on an as-converted to common stock basis and the Series A-1 preferred stock will be non-voting. We expect that the Series A preferred stock and Series A-1 preferred stock will only have class or series voting rights if we request stockholder approval of an action that would uniquely alter the rights of the Series A preferred stock and Series A-1 preferred stock as a class or series. In addition, in the event of a liquidation, dissolution or winding-up, our assets will be distributed pro rata to Series A preferred stock, Series A-1 preferred stock and common stock on an as-converted to common stock basis. The Series A preferred stock and Series A-1 preferred stock will not have a preference.

Equinix will not acquire certain assets nor assume certain liabilities related to i-STT s non-trade related party receivables and payables pursuant to the Combination Agreement. The assets and liabilities excluded from the September 30, 2002 historical balance sheet of i-STT is as follows:

Amounts due from related parties	$	154
Amounts owing to related parties		(18,682)
Net assets of i-STT not assumed by Equinix	$	(18,528)

Under the purchase method of accounting, the total estimated purchase price is allocated to i-STT s net tangible and intangible assets based upon their estimated fair value as of the date of completion of the merger. Based upon the estimated purchase price and the preliminary valuation, the preliminary purchase price allocation, which is subject to change based on Equinix s final analysis, is as follows (in thousands):

Cash and cash equivalents	$	1,523
Accounts receivable		694
Prepaid expenses and other current assets		2,950
Property and equipment		11,636
Intangible asset customer contracts		4,461
Intangible asset tradename		1,115
Intangible asset goodwill		16,731
Total assets acquired		39,110
Accounts payable and accrued expenses assumed		(1,308)
Other liabilities		(2,261)
Estimated i-STT transaction costs		(2,000)
Net assets acquired	$	33,541

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

A preliminary estimate of $4,461,000 has been allocated to customer contracts, an intangible asset with an estimated useful life of two years, and a preliminary estimate of $1,115,000 has been allocated to tradename, an intangible asset with an estimated useful life of one year, the contractual period of use under the Combination Agreement.

A preliminary estimate of $16,731,000 has been allocated to goodwill. Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired. In accordance with Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets , goodwill will not be amortized and will be tested for impairment at least annually. The preliminary purchase price allocation for i-STT is subject to revision as more detailed analysis is completed and additional information on the fair values of i-STT s assets and liabilities becomes available. Any change in the fair value of the net assets of i-STT will change the amount of the purchase price allocable to goodwill. Additionally, changes in i-STT s working capital, including the results of operations from September 30, 2002 through the date the transaction is completed, will also change the amount of goodwill recorded. Final purchase accounting adjustments may therefore differ materially from the pro forma adjustments presented here.

There were no historical transactions between Equinix and i-STT. Certain reclassifications have been made to conform i-STT s historical amounts to Equinix s financial statement presentation.

The pro forma adjustments do not reflect any integration adjustments such as restructuring costs to be incurred in connection with the merger or operating efficiencies and cost savings that may be achieved with respect to the combined entity as these costs are not directly attributable to the purchase agreement.

4. FINANCING

In conjunction with the combination, STT Communications will make a $30.0 million strategic investment in the Company in the form of convertible secured notes (the Convertible Secured Notes) with detachable warrants for the further issuance of approximately 30,622,000 shares of preferred stock (the Convertible Secured Note Warrants), valued at $7,935,000. The Convertible Secured Notes will bear non-cash interest at an interest rate of 14% per annum, payable semi-annually in arrears, and have an initial term of five years. Interest on the Convertible Secured Notes will be payable in kind in the form of additional convertible secured notes having a principal amount equal to the amount of interest then due having terms which are identical to the terms of the Convertible Secured Notes (the PIK Notes). The Convertible Secured Notes and Convertible Secured Note Warrants cannot be converted into shares of voting stock for a two year period, except under certain limited circumstances as defined in the agreements. Notwithstanding this, STT Communication s voting ownership is limited to 40% of the outstanding shares of the combined company.

The unaudited pro forma combined consolidated condensed financial statements reflect an estimated valuation on the Convertible Secured Note Warrants of $7,935,000 which is reflected as a discount to the Convertible Secured Notes. The preliminary fair value of the warrants was calculated under the provisions of APB 14 and determined using the Black-Scholes option-pricing model under the following assumptions: contractual life of five years, risk-free interest rate of 4%, expected volatility of 80% and no expected dividend yield. The Company has considered the guidance in EITF 98-5, Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios , and has determined that the Convertible Secured Notes contain a beneficial conversion feature. The beneficial conversion feature has an estimated value of $10,020,000 and is also reflected as a discount to the Convertible Secured Notes (the Beneficial Conversion Feature). The values of both the Convertible Secured Note Warrants and the Beneficial Conversion Feature will be amortized using the effective interest rate method to interest expense over the five-year term of the Convertible Secured Notes.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

As the PIK Notes have terms that are identical to the terms of the Convertible Secured Notes, the PIK Notes will also have a beneficial conversion feature. The additional beneficial conversion feature associated with the PIK Notes, which will be issued semi-annually, will result in an incremental charge to the Company s interest expense over the term of the Convertible Secured Notes and PIK Notes (the Additional Beneficial Conversion Feature). For purposes of the accompanying unaudited pro forma combined consolidated statements of operations, additional interest expense has been reflected associated with this Additional Beneficial Conversion Feature (collectively valued at $12,045,000), as a result of the Company s historical stock performance at each semi-annual date from January 1, 2001, as compared to the Company s historical stock value on October 2, 2002, the commitment date of the Convertible Secured Notes and the PIK Notes.

5. SENIOR NOTE EXCHANGE

As a condition to closing the combination and financing, Equinix is required to substantially reduce the outstanding debt so that no more than $22.3 million of Senior Notes are outstanding at closing. This amount may be increased with the consent of two of the three combining companies. If only $22.3 million of our Senior Notes are outstanding at closing, the Company will have retired $124.95 million of Senior Notes in the Senior Note exchange. Prior to signing the Combination Agreement, the Company received offers to exchange $101.2 million of outstanding Senior Notes.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

In connection with the combination and financing, Equinix has made an offer to exchange cash and shares of common stock for all of the outstanding Senior Notes. The tables below describe the amount the Company will pay for every $1.00 of principal of Senior Notes exchanged and the aggregate consideration that will be given for the Senior Notes.

Table 1 Consideration per $1.00 principal amount of Senior Notes exchanged

Total Principal Amount Exchanged ($ in millions)					
Equal to or greater than:	but less than:	Cash Consideration	Maximum Stock Consideration**	Maximum Value of Stock Consideration***	Maximum Total Consideration per $1.00 Senior Note Exchanged
$115.0*	$125.0	$0.13	.469	$0.13	$0.26
$125.0	$132.5	$0.14	.383	$0.11	$0.25
$132.5	$140.0	$0.15	.317	$0.09	$0.24
$140.0	$147.2	$0.16	.261	$0.07	$0.23
$147.2	NA	$0.17	.212	$0.06	$0.23

Table 2 Aggregate consideration for Senior Notes exchanged

Total Principal Amount Exchanged ($ in millions)					
Equal to or greater than:	but less than:	Maximum Aggregate Cash Consideration ($ in millions)	Maximum Aggregate Stock Consideration (shares in millions)**	Aggregate Value of Stock Consideration ($ in millions)***	Maximum Total Aggregate Consideration ($ in millions)
$115.0*	$125.0	$16.3	58.6	$16.4	$32.7
$125.0	$132.5	$18.6	50.7	$14.2	$32.8
$132.5	$140.0	$21.0	44.4	$12.4	$33.4
$140.0	$147.2	$23.6	38.4	$10.8	$34.4
$147.2	NA	$25.0	31.2	$8.7	$33.7

* The Company has assumed a minimum of $115.0 million of Senior Notes are exchanged. In the event that less than $115.0 million of Senior Notes are exchanged and the Senior Note exchange is consummated, the cash consideration paid per $1.00 of principal amount of Senior Notes exchanged and the aggregate shares issued shall equal the amounts set forth for $115.0 million of Senior Notes exchanged.

** Actual numbers may decrease depending upon total number of shares issued in the combination and the financing and the principal amount of Senior Notes exchanged.

*** Stock value based on the closing price of the Company s common stock on The Nasdaq National Market on December 6, 2002 of $0.28.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

We have commenced an exchange offer for all of our outstanding Senior Notes, and the holders of the Senior Notes currently have until December 24, 2002 to tender their Senior Notes to us in exchange for the consideration described above. The expiration of the exchange offer may be extended at the Company s option and the closing of the Senior Note exchange is conditioned upon our stockholders approving Proposal 1 to authorize the issuance of the shares in the Senior Note exchange. See The Senior Note Exchange beginning on page 82.

In the accompanying unaudited pro forma combined consolidated condensed financial statements, the Company has assumed that $124,950,000 of Senior Notes are tendered, utilizing $16,243,000 in cash and issuing 58,977,000 shares of common stock.

The unaudited pro forma combined consolidated condensed financial statements reflect an estimated value on the common stock issued of $19,462,000 (using a fair value per share of $0.33). The final consideration given to the Senior Note holders is dependent on the amount of actual Senior Notes tendered and the stock price on the date the debt is extinguished. Using these assumptions, the Company would recognize a gain on debt extinguishment of approximately $82,116,000, net of $3,000,000 for anticipated costs associated with this transaction, and the write-off of $5,415,000 of accrued and unpaid interest on the Senior Notes being tendered, the write-off of $2,801,000 of debt issuance costs and $6,743,000 of the Senior Note discount associated with Senior Notes retired.

As noted above, the actual gain that the Company will recognize is based on the amount of Senior Notes tendered and the fair value of the Company s common stock on the day of the actual tender. The Company has assumed in the accompanying unaudited pro forma combined consolidated condensed financial statements that the equity issued in connection with the proposed retirement of Senior Notes is valued at $0.33 per share. If there was a 10% increase in this amount and if there was a 10% decrease in this amount, the gain on debt extinguishment that the Company would recognize would be approximately $80.2 million and $84.1 million, respectively.

During the first half of 2002, the Company retired $52.8 million of Senior Notes in exchange for approximately 16.0 million shares of common stock and approximately $2.5 million of cash, and as a result, recognized a $27.2 million gain on debt extinguishment. The unaudited pro forma combined consolidated condensed statements of operations reflect these transactions as if they had occurred on January 1, 2001.

6. FURTHER AMENDMENT OF SENIOR SECURED CREDIT FACILITY

In connection with the combination, financing and Senior Note exchange, the Company has entered into discussions with its senior lenders on the principal terms for a further amendment to the Amended and Restated Senior Credit Facility and such lenders have agreed to recommend the terms of a further amendment to their credit committees. As part of this proposed second amendment to the Amended and Restated Senior Secured Credit Facility, the Company will permanently repay $7.5 million of the amount currently outstanding ($100.0 million as of September 30, 2002). In August 2002, the Company permanently repaid $5.0 million as part of the First Amendment to the Amended and Restated Senior Secured Credit Facility. The unaudited pro forma combined consolidated condensed statements of operations reflect both the proposed $7.5 million repayment and the $5.0 million repayment made in August 2002 as if they had occurred on January 1, 2001. In addition, estimated amendment fees paid to the lenders of $1.0 million have been reflected as additional debt issuance costs and amortized to interest expense over the remaining term of this facility.

7. REVERSE STOCK SPLIT

On November 25, 2002, the Nasdaq National Market notified the Company that as a result of the combination, financing and Senior Note exchange, the Company will be required to submit an application to re-qualify for initial listing on the Nasdaq National Market. One of the conditions to qualifying for initial listing

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

is that the Company s stock price must trade at or above $5.00 per share. For the last several months, the Company s common stock has traded substantially below $5.00. To bring the trading price of the Company s common stock above $5.00, the Company s board of directors has authorized a reverse stock split to reduce the number of shares of the Company s common stock outstanding. As a result of the reverse stock split, shares of the Company s common stock will be combined into a smaller number of shares of the Company s common stock. While the reverse stock split will reduce the number of shares held by each of the Company s stockholders, it will not change the percentage of the Company s common stock owned by each stockholder. Based on the Company s stock price on December 6, 2002 of $0.28 per share, in order to achieve the $5.00 minimum share price, the Company would need to complete a reverse stock split such that for every 17.86 shares currently outstanding, there would be one share outstanding following such reverse stock split. The Company anticipates that the actual reverse stock split ratio will cause the Company s stock price to exceed the $5.00 minimum requirement. Shares issuable in the combination, the financing and the Senior Note exchange will be adjusted to reflect the reverse stock split. While the exact reverse stock split is not yet known at this time, at a minimum, it will be whatever is required to bring the Company into compliance with the minimum $5.00 per share Nasdaq requirement. As a result, the unaudited pro forma combined consolidated condensed statements of operations reflect an 18 for 1 reverse stock split based on the current trading levels of the Company s common stock.

8. PRO FORMA ADJUSTMENTS

The accompanying unaudited pro forma combined consolidated condensed financial statements have been prepared assuming the transactions described above were completed on September 30, 2002 for balance sheet purposes and as of January 1, 2001 for statement of operations purposes.

The unaudited pro forma combined consolidated condensed balance sheet gives effect to the following pro forma adjustments:

(a) Represents the following adjustments to cash and cash equivalents (in thousands):

Cash consideration for i-STT and Pihana acquisitions	$	(20)
Cash related to Korean subsidiary excluded from Pihana acquisition		(463)
Cash received from financing		30,000
Cash paid to Senior Note holders		(16,243)
Senior Secured Credit Facility repayments		(7,500)
Net change in cash and cash equivalents	$	5,774

(b) Represents an adjustment for assets excluded from the acquisition of Pihana ($74,000) and i-STT ($154,000).

(c) Represents an adjustment for assets excluded from the Pihana acquisition ($5,598,000) and the write-off of Pihana s remaining property and equipment ($19,904,000) due to the negative goodwill created in the Pihana acquisition.

(d) Represents the addition of the customer contract intangible asset of $4,461,000, the tradename intangible asset of $1,115,000 and goodwill of $16,731,000 created in the acquisition of i-STT.

(e) Represents the $2,801,000 write-off of debt issuance costs in conjunction with the retirement of Senior Notes, offset by the $1,000,000 of new debt issuance costs in conjunction with the further amendment of the Senior Secured Credit Facility.

(f) Represents an adjustment for assets excluded in the Pihana acquisition.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

(g) Represents the following adjustments to accounts payable and accrued expenses (in thousands):

Accrual for Equinix s i-STT transaction costs	$	2,626
Accrual for Equinix s Pihana transaction costs		2,149
Accrual for i-STT s transaction costs		2,000
Accrual for Pihana s transaction costs		2,625
Accrual for Pihana s restructuring costs		3,125
Accrued expenses related to the Korean subsidiary excluded from the Pihana acquisition		(1,025)
Accrual for Equinix s costs to retire Senior Notes		3,000
Accrual for Equinix s costs to amend Senior Secured Credit Facility		1,000
Net change in accounts payable and accrued expenses	$	15,500

(h) Represents the write-off of accrued but unpaid interest on Senior Notes being retired.

(i) Represents an adjustment for capital lease obligations excluded in the Pihana acquisition.

(j) Represents the reclassification of the Senior Secured Credit Facility to non-current as a result of the proposed amendment, offset by the permanent repayment of $7,500,000 in connection with this transaction.

(k) Represents an adjustment for i) intercompany liabilities due to STT Communications and other related parties excluded in the i-STT acquisition ($18,682,000) and ii) the $193,000 write-off of i-STT s deferred revenue as no legal performance obligations exist post-closing, including amounts deferred under Staff Accounting Bulletin 101 (SAB 101).

(l) Represents the issuance of the Convertible Secured Notes offset by the amounts attributable to the Convertible Secured Note Warrants and the Beneficial Conversion Feature.

(m) Represents the $124,950,000 retirement of Senior Notes, offset by the $6,743,000 write-off of unamortized Senior Note discount. No tax effects are provided due to the Company s pre-transaction net operating loss carryforwards, which should be adequate to offset the tax liability on any cancellation of indebtedness income.

(n) Represents the $359,000 write-off of Pihana s deferred revenue as no legal performance obligations exist post-closing, including amounts deferred under SAB 101, and the $2,470,000 write-off of Pihana s deferred rent as no legal performance obligations exist post-closing related to this liability. The Company will straightline rent expense for all leaseholds acquired in the combination commencing upon closing.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

(o) Represents the following adjustments to stockholders equity (in thousands):

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	Total
Redeemable preferred stock	$ (14,534)	$	$	$	$	$	$	$ (14,534)
Convertible preferred stock	(222,963)				59			(222,904)
Common stock	(6)	(32,512)	77		34		59	(32,348)
Additional paid-in capital			25,209		30,812	17,955	19,403	93,379
Accumulated other comprehensive income (loss)	(294)	641						347
Accumulated deficit	175,259	37,358		4,188			82,116	298,921
Total stockholders equity	$ (62,538)	$ 5,487	$ 25,286	$ 4,188	$ 30,905	$ 17,955	$ 101,578	$ 122,861

(1) To eliminate the historical stockholders equity of Pihana.

(2) To eliminate the historical shareholders equity of i-STT.

(3) Represents the estimated value of the Company s common stock to be issued in the acquisition of Pihana.

(4) Represents the estimated one-time gain on acquisition of subsidiary attributed to the negative goodwill created in the Pihana acquisition.

(5) Represents the estimated value of the Company s common and preferred stock to be issued in the acquisition of i-STT.

(6) Represents the value attributable to the Convertible Secured Note Warrants and the Beneficial Conversion Feature arising from the financing transaction.

(7) Represents the estimated value of the Company s common stock to be issued in conjunction with the exchange of additional Senior Notes and the resulting one-time gain on debt extinguishment.

The unaudited pro forma combined consolidated condensed statements of operations give effect to the following pro forma adjustments:

(p) Represents the reversal of revenues related to Pihana s Korean subsidiary excluded from the Pihana acquisition.

(q) Represents (i) the reversal of Pihana depreciation as its historical property and equipment was prescribed no value in the acquisition, (ii) the reversal of depreciation and operating expenses related to Pihana s Korean subsidiary excluded from the Pihana acquisition and (iii) the reversal of rent expense associated with an excess Pihana leasehold that must be exited as a condition in the Combination Agreement.

(r) Represents (i) the amortization of the i-STT customer contract intangible resulting from the proposed acquisition, over an estimated useful life of 24 months (ii) the amortization of the i-STT tradename intangible resulting from the proposed acquisition, over an estimated useful life of 12 months partially offset by (iii) the reversal of rent expense associated with Pihana s excess sales office leaseholds and the savings resulting from the related reduction in workforce as a condition in the Combination Agreement.

(s) Represents the reversal of rent expense associated with the excess Pihana headquarter leasehold and the savings resulting from the related reduction in workforce as a condition in the Combination Agreement.

(t) Represents the reversal of interest income generated by cash held by Pihana s Korean subsidiary excluded in the Pihana acquisition.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

(u) Represents (i) the additional interest expense associated with the Convertible Secured Notes issued in the financing transaction, (ii) the reversal of interest expense associated with the retirement of Senior Notes under the Senior Note exchange transaction and (iii) the reversal of interest expense associated with the repayments of the Senior Secured Credit Facility as follows (in thousands):

	For the year ended December 31, 2001	For the nine months ended September 30, 2002
Interest expense from Convertible Secured Notes	$ (4,200)	$ (3,150)
Interest expense associated with Convertible Secured Note Warrants and Beneficial Conversion Feature	(3,591)	(2,693)
Interest expense associated with the Additional Beneficial Conversion Feature	(458)	(1,806)
Interest expense savings associated with Senior Note exchanges	25,611	15,848
Net interest expense savings associated with Senior Secured Credit Facility repayments	675	506
Interest expense related to Korean subsidiary excluded from Pihana acquisition		32
Net change to interest expense	$ 18,037	$ 8,737

(v) Represents the reversal of other income and expense related to Pihana s Korean subsidiary excluded in the Pihana acquisition.

(w) Represents the reversal of Pihana s $77,000,000 one-time impairment charge for long-lived assets as these assets would have been written-off in conjunction with closing due to the negative goodwill created in the Pihana acquisition.

(x) Represents the reversal of the gain on debt extinguishments associated with the historical Senior Note debt exchanges during the nine months ended September 30, 2002 as these unaudited pro forma financial statements assume that these retirements took place as of January 1, 2001.

(y) Represents the shares of common stock associated with the combination and Senior Note exchange as described above as if they were outstanding as of January 1, 2001 as follows (in thousands):

Common stock issued in connection with Pihana acquisition	76,624
Common stock issued in connection with i-STT acquisition	34,396
Common stock issued in connection with Senior Note exchange	58,977
	169,997

(z) Represents the effects of an 18 for 1 reverse stock split.

9. SENSITIVITY ANALYSIS

The transactions presented above are based on assumptions that are reasonable as of the date of this filing, namely the amount of Senior Notes the Company expects to retire ($124.95 million) and the equity consideration to be paid by the Company in connection with the acquisitions of i-STT (93.7 million shares of stock) and Pihana (76.6 million shares of stock). The following factors will impact these assumptions at actual closing: (a) the actual amount of Senior Notes presented for tender, (b) Pihana s cash balance and (c) both the Company s and i-STT s working capital balance.

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NOTES TO UNAUDITED PRO FORMA COMBINED CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Continued)

To assist in evaluating the effects of the transactions described above and their effect on the Company s on-going statements of operations, the following information is presented. The following pro forma net loss per share data is presented prior to any contemplated reverse stock split.

Senior Notes

The Company has assumed in the accompanying unaudited pro forma combined consolidated condensed financial statements that $124.95 million of Senior Notes will be presented for tender. The following represents how an approximate $10.0 million increase and decrease to this amount would impact interest expense and pro forma net loss per share for the year ended December 31, 2001 and the nine months ended September 30, 2002:

Amount of Senior Notes tendered	Cash consideration	Shares of common stock issued	Change from assumed retirement of $125 million of Senior Notes	Impact on annual interest expense	Pro forma net loss per share for the year ended December 31, 2001	Pro forma net loss per share for the nine months ended September 30, 2002
$115,000,000	$ 14,950,000	58,995,000	$ (9,950,000)	$ (1,434,000)	$ (0.93)	$ (0.49)
$124,950,000	$ 16,243,000	58,977,000	$	$	$ (0.92)	$ (0.49)
$135,000,000	$ 20,250,000	45,765,000	$ 10,050,000	$ 1,448,000	$ (1.01)	$ (0.52)

Equity Consideration

The Company has assumed in the accompanying unaudited pro forma combined consolidated condensed financial statements that 93.7 million shares of the Company s stock (or approximately 27.5% of the Company s fully-diluted capital stock as of closing) are issued in connection with the i-STT acquisition and that 76.6 million shares of the Company s stock (or 22.5% of the Company s fully-diluted capital stock as of closing) are issued in connection with the Pihana acquisition based on each company meeting their most stringent financial closing requirement, namely that (a) Pihana has at least $28.0 million in cash (minimum cash balance per the Combination Agreement is $23.0 million), (b) Equinix s working capital is at least $644,000 (maximum working capital deficit per the Combination Agreement is $2,688,000) and (c) i-STT s working capital deficit is no more that $2,206,000 (maximum working capital deficit per the Combination Agreement is $4,206,000). The following represents how each company meeting their minimum financial closing requirement would impact amortization expense and pro forma net loss per share for the year ended December 31, 2001 and the nine months ended September 30, 2002:

	Pihana post-combination share ownership	i-STT post-combination share ownership	Impact on intangible assets created in the combination	Impact on annual amortization expense	Pro forma net loss per share for the year ended December 31, 2001	Pro forma net loss per share for the nine months ended September 30, 2002
Pihana cash balance is $23,000,000	16.00%	28.88%	$ 838,000	$ 311,000	$ (1.05)	$ (0.55)
Pihana cash balance is $28,000,000	22.50%	27.50%	$	$	$ (0.92)	$ (0.49)
Equinix working capital is ($2,688,000)	22.65%	27.68%	$ 409,000	$ 61,000	$ (0.92)	$ (0.48)
Equinix working capital is $644,000	22.50%	27.50%	$	$	$ (0.92)	$ (0.49)
i-STT working capital is ($4,206,000)	22.59%	27.22%	$ 1,553,000	$ 233,000	$ (0.93)	$ (0.49)
i-STT working capital is ($2,206,000)	22.50%	27.50%	$	$	$ (0.92)	$ (0.49)

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Annex A

COMBINATION AGREEMENT

among

EQUINIX, INC.,

EAGLE PANTHER ACQUISITION CORP.,

EAGLE JAGUAR ACQUISITION CORP.,

i-STT PTE LTD,

STT COMMUNICATIONS LTD,

PIHANA PACIFIC, INC.

and

Jane Dietze, as

Representative of the Stockholders of Pihana Pacific, Inc.

Dated as of October 2, 2002

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COMBINATION AGREEMENT

COMBINATION AGREEMENT, dated as of October 2, 2002 (this *Agreement*), among EQUINIX, INC., a Delaware corporation (*Parent*), EAGLE PANTHER ACQUISITION CORP., a Delaware corporation and an indirect wholly owned subsidiary of Parent (*Merger Sub*), EAGLE JAGUAR ACQUISITION CORP., a Delaware corporation and an indirect wholly owned subsidiary of Parent (*SP Sub*), STT COMMUNICATIONS LTD, a corporation organized under the laws of the Republic of Singapore (*STT Communications*), i-STT PTE LTD, a corporation organized under the laws of the Republic of Singapore and a wholly owned subsidiary of STT Communications (i-STT), PIHANA PACIFIC, INC., a Delaware corporation (*Pihana*), and Jane Dietze, as Pihana Stockholders Representative (as defined in Section 9.06 hereof). Parent, Merger Sub, SP Sub, STT Communications, i-STT and Pihana shall each individually be referred to herein as a *Party* and collectively as *Parties*.

W I T N E S S E T H

WHEREAS, The Parties hereto have determined it to be in each of their best interests to consummate a three-way transaction pursuant to which (i) STT Communications will transfer all of the outstanding capital stock of i-STT to SP Sub (the Stock Purchase) and (ii) Merger Sub will merge with and into Pihana and Pihana will become an indirect wholly-owned subsidiary of Parent (the Merger);

The Stock Purchase

WHEREAS, upon the terms and subject to the conditions of this Agreement, STT Communications and Parent will effect the Stock Purchase in exchange for the issuance of shares of (i) Parent s common stock, par value $0.001 per share (Parent Common Stock) and (ii) Parent s Series A Convertible Preferred Stock, par value $0.001 per share (Parent Preferred Stock and together with the Parent Common Stock, the Parent Shares), in accordance with this Agreement and the other transactions contemplated by this Agreement;

WHEREAS, the board of directors of STT Communications has (i) determined that the Stock Purchase and the other transactions contemplated in this Agreement are advisable, fair to, and in the best interests of, STT Communications and its stockholders and (ii) unanimously approved and adopted this Agreement, the Stock Purchase, and the other transactions contemplated by this Agreement;

The Merger

WHEREAS, upon the terms and subject to the conditions of this Agreement and in accordance with the General Corporation Law of the State of Delaware (the DGCL), Merger Sub will merge with and into Pihana pursuant to which Pihana will become an indirect wholly owned indirect subsidiary of Parent;

WHEREAS, the board of directors of Pihana has (i) determined that the Merger and the other transactions contemplated hereby are advisable, fair to, and in the best interests of, Pihana and its stockholders, (ii) unanimously approved this Agreement, the Merger, and the other transactions contemplated by this Agreement, and (iii) determined to unanimously recommend that the stockholders of Pihana adopt this Agreement and the Merger;

WHEREAS, pursuant to the Merger, each outstanding share of Series A Preferred Stock, par value $0.001 per share, of Pihana (the *Pihana Series A Preferred Stock*), and Series B-1 Preferred Stock, par value $0.001 per share, of Pihana (the *Pihana Series B-1 Preferred Stock*), shall be converted into the right to receive shares of Parent Common Stock and cash, at the rates determined in this Agreement;

WHEREAS, the boards of directors of each of Parent, Merger Sub and SP Sub have (i) determined that the Stock Purchase and the Merger are consistent with and in furtherance of the long-term business strategy of Parent

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and fair to, and in the best interests of, Parent, Merger Sub, SP Sub and their respective stockholders, (ii) approved this Agreement and the issuance of shares of (x) Parent Common Stock and (y) Parent Preferred Stock in accordance with this Agreement and the other transactions contemplated by this Agreement, and (iii) determined to unanimously recommend that the stockholders of Parent approve this Agreement and the other transactions contemplated herein;

WHEREAS, the Stock Purchase and the Merger shall collectively be referred to herein as the *Combination* and other certain capitalized terms used in this Agreement are defined in Section 10.02 of this Agreement; and

WHEREAS, concurrently with the execution of this Agreement, as a condition and inducement to Pihana and STT Communications willingness to enter into this Agreement, all executive officers and directors of Parent and all of their respective affiliates, in their capacity as stockholders of Parent, are entering into Voting Agreements with STT Communications, i-STT and Pihana in substantially the form attached hereto as *Exhibit A* (each, a *Parent Voting Agreement* and collectively, the *Parent Voting Agreements*).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Parent, Merger Sub, SP Sub, STT Communications, i-STT, Pihana and the Pihana Stockholders Representative hereby agree as follows:

ARTICLE I-A

THE MERGER

SECTION 1A.01 *The Merger*. Upon the terms of this Agreement and subject to the conditions set forth in this Agreement, and in accordance with the DGCL, at the Effective Time (as defined in Section 1A.02), Merger Sub shall be merged with and into Pihana. As a result of the Merger, the separate corporate existence of Merger Sub shall cease, and Pihana shall continue as the surviving corporation of the Merger (the *Surviving Corporation*).

SECTION 1A.02 *Effective Time; Closing*. As promptly as practicable (but in no event later than three business days) following the satisfaction or, if permissible by the express terms of this Agreement, waiver of the conditions set forth in Article VII (or such other date as may be agreed by each of the Parties), Parent and Pihana shall cause the Merger to be consummated by (i) filing a certificate of merger (the *Certificate of Merger*) with the Secretary of State of the State of Delaware in such form as is required by, and executed in accordance with, the relevant provisions of the DGCL and (ii) making all other filings and recordings required under the DGCL. The term *Effective Time* means the date and time of the filing of the Certificate of Merger (or such later time as may be agreed by each of the Parties and specified in the Certificate of Merger). Immediately prior to the filing of the Certificate of Merger, a closing (the *Closing*) will be held at the offices of Latham & Watkins, 885 Third Avenue, Suite 1000, New York, New York 10022-4802 (or such other place as the Parties may agree). The date and time on which the Closing shall occur is referred to herein as the *Closing Date*.

SECTION 1A.03 *Effect of the Merger*. At and after the Effective Time, the Merger shall have the effects as set forth in the applicable provisions of the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of each of Pihana and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, disabilities and duties of each of Pihana and Merger Sub shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Corporation.

SECTION 1A.04 *Certificate of Incorporation and Bylaws of the Surviving Corporation*.

(a) At the Effective Time, the certificate of incorporation of Pihana as the Surviving Corporation shall be amended and restated to read the same as the certificate of incorporation of Merger Sub as in effect

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immediately prior to the Effective Time, except that Article 1 of the amended and restated certificate of incorporation of the Surviving Corporation, instead of reading the same as Article 1 of the certificate of incorporation of Merger Sub, shall read as follows: The name of this corporation is Pihana Pacific, Inc.

(b) At the Effective Time, the bylaws of Pihana as the Surviving Corporation shall be amended to read the same as the bylaws of Merger Sub as in effect immediately prior to the Effective Time, except that all references to Merger Sub in the amended and restated bylaws of the Surviving Corporation shall be changed to refer to Pihana Pacific, Inc.

SECTION 1A.05 *Directors and Officers*. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the amended and restated certificate of incorporation and the amended and restated bylaws of the Surviving Corporation, and the officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified by Parent s board of directors.

SECTION 1A.06 *Legends*.

(a) Pihana understands that the certificates evidencing the Parent Shares shall bear the following legends:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE *SECURITIES ACT*). THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE OFFERED AND SOLD ONLY IN A TRANSACTION REGISTERED UNDER THE SECURITIES ACT OR IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENT OF THE SECURITIES ACT.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER UNDER THE COMBINATION AGREEMENT, DATED AS OF OCTOBER 2, 2002, AMONG THE ISSUER AND THE OTHER PARTIES THERETO. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER.

ARTICLE I-B

THE STOCK PURCHASE

SECTION 1B.01 *The Stock Purchase*. Upon the terms of this Agreement and subject to the conditions set forth in this Agreement, at the Effective Time, STT Communications shall sell, assign, transfer, convey and deliver to SP Sub and SP Sub shall purchase, acquire and accept for delivery from STT Communications all right, title and interest in and to all outstanding shares of the capital stock of i-STT (the *i-STT Shares*), free and clear of all encumbrances for the aggregate purchase price as set forth in Article II-B. STT Communications may elect to transfer the i-STT Shares to a direct or indirect wholly-owned subsidiary to act as its nominee prior to the Closing. In such case, all references to ownership and delivery of i-STT Shares in this Agreement shall be deemed to refer to ownership and delivery by such nominee, and all references to deliveries of Parent Shares and other consideration to STT Communications shall be deemed to refer to deliveries to such nominee. Such transfer will not, in any event, relieve STT Communications from any of its obligations under this Agreement. STT Communications alternatively may elect to transfer Parent Shares received hereunder or other securities of Parent received under the Securities Purchase Agreement to such a nominee following Closing, and nothing contained in this Agreement, the Securities Purchase Agreement or any other agreement or instrument entered into in connection herewith or therewith shall be deemed to restrict such a transfer that is otherwise made in compliance with applicable law.

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SECTION 1B.02 *Closing*. STT Communications shall deliver to Parent at the Closing:

(a) share certificates in respect of the i-STT Shares, together with the valid share transfer forms in respect of the i-STT Shares, duly executed by STT Communications in favor of SP Sub and/or its nominee(s);

(b) if required, duly completed and executed statutory declaration(s) in relation to the transfer of the i-STT Shares in the form prescribed by the Stamp Duty Branch of the Inland Revenue Authority of Singapore, such statutory declaration to be drafted and prepared by Parent and approved in form and substance by STT Communications and which shall be duly sworn by STT Communications, together with all documents reasonably required by the Stamp Duty Branch of the Inland Revenue Authority of Singapore to be attached to such statutory declaration(s) and a working sheet computing the net asset value per i-STT Share, or in lieu of such statutory declaration(s), a letter in the form prescribed by the Stamp Duty Branch of the Inland Revenue Authority of Singapore and in form and substance agreed to by STT Communications and signed by a director or secretary of i-STT incorporating a working sheet computing the net asset value per i-STT Share;

(c) certified true copies of the resolutions passed by the board of directors of i-STT: (i) approving the transfer of i-STT Shares to SP Sub and/or the transfer of all or any part of the i-STT Shares to SP Sub; (ii) authorizing the issue of new share certificates in respect of the i-STT Shares in favor of SP Sub; (iii) approving the entry into the register of members of i-STT, the name of SP Sub and/or such nominee(s) of SP Sub as the holder of the i-STT Shares and the making of such other entries into other corporate records of i-STT as may be necessary; and (iv) effecting and accepting the resignation of the directors and officers of i-STT in accordance with Section 1B.03;

(d) certified true copies of the resolutions passed by the board of directors of STT Communications: (i) approving the sale of i-STT Shares to SP Sub; and (ii) authorizing the entry into, execution (under seal, where appropriate), delivery and performance of this Agreement and all other documents and agreements ancillary or pursuant thereto or in connection therewith; and

(e) such waivers or consents as may be necessary to enable SP Sub to be registered in the register of members of i-STT as holders of any and all of the i-STT Shares.

SECTION 1B.03 *Directors and Officers*. The directors and officers of i-STT immediately prior to the Effective Time shall resign as of the Effective Time.

SECTION 1B.04 *Legends*

(a) STT Communications understands that the shares of Parent capital stock issued in connection with the Stock Purchase shall bear the following legends:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE *SECURITIES ACT*). THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE OFFERED AND SOLD ONLY IN A TRANSACTION REGISTERED UNDER THE SECURITIES ACT OR IN A TRANSACTION EXEMPT FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS ON TRANSFER UNDER THE COMBINATION AGREEMENT, DATED AS OF OCTOBER 2, 2002, AMONG THE ISSUER AND THE OTHER PARTIES THERETO. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER.

(b) STT Communications understands that the i-STT Escrow Shares (as defined below) shall also bear the following legend:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO CERTAIN INDEMNITY OBLIGATIONS AND MAY NOT BE SOLD, EXCHANGED OR OTHERWISE

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TRANSFERRED OR DISPOSED OF EXCEPT IN COMPLIANCE WITH THE TERMS AND PROVISIONS OF THE COMBINATION AGREEMENT DATED AS OF OCTOBER 2, 2002, BETWEEN THE ISSUER, THE STOCKHOLDER AND THE OTHER PARTIES THERETO, AS SUCH AGREEMENT MAY BE AMENDED, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL EXECUTIVE OFFICES OF THE ISSUER.

ARTICLE II-A

PIHANA MERGER CONSIDERATION; EXCHANGE OF PIHANA CERTIFICATES

SECTION 2A.01 *Pihana Merger Consideration.*

(a) At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, Pihana or the holders of any of the following securities:

(i) each share of Pihana Common Stock (as defined herein) issued and outstanding immediately prior to the Effective Time (other than any shares of Pihana Common Stock to be cancelled pursuant to Section 2A.01(a)(iv) and any Dissenting Shares (as defined in Section 2A.06)) shall be cancelled and, in accordance with Pihana s certificate of incorporation, no consideration shall be issued on account thereof;

(ii) each share of Pihana Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Pihana Series A Preferred Stock to be canceled pursuant to Section 2A.01(a)(iv) and any Dissenting Shares (as defined in Section 2A.06)) shall be converted into the right to receive (i) its pro rata portion of an amount of cash equal to $10,000 (the *Cash Consideration*) less the Pihana Incentive Compensation Plan Cash Factor multiplied by a fraction the numerator of which is the Series A Liquidation Preference Amount and the denominator of which is the Series A Liquidation Preference Amount plus the Series B-1 Liquidation Preference Amount and (ii) such number of shares of Parent Common Stock equal to the Pihana Series A Preferred Stock Exchange Ratio (as defined in Section 2A.01(b));

(iii) each share of Pihana Series B-1 Preferred Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Pihana Series B-1 Preferred Stock to be canceled pursuant to Section 2A.01(a)(iv) and any Dissenting Shares (as defined in Section 2A.06)) shall be converted into the right to receive (i) its pro rata portion of an amount of cash equal to the Cash Consideration less the Pihana Incentive Compensation Plan Cash Factor multiplied by a fraction the numerator of which is the Series B-1 Liquidation Preference Amount and the denominator of which is the Series A Liquidation Preference Amount plus the Series B-1 Liquidation Preference Amount and (ii) such number of shares of Parent Common Stock equal to the Pihana Series B-1 Preferred Stock Exchange Ratio (as defined in Section 2A.01(b));

(iv) each Covered Employee shall be entitled to receive (i) its pro rata portion of the Pihana Incentive Compensation Plan Cash Factor and (ii) its pro rata portion of the Pihana Incentive Compensation Plan Shares.

(v) each share of Pihana Stock held in the treasury of Pihana and each share of Pihana Stock owned by Parent or any direct or indirect wholly owned subsidiary of Parent or of Pihana immediately prior to the Effective Time shall be cancelled and no consideration shall be issued on account thereof; and

(vi) each share of common stock, par value $0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassesable share of common stock, par value $0.001 per share, of the Surviving Corporation. The stock certificate evidencing shares of common stock of Merger Sub shall then evidence ownership of the outstanding share of common stock of the Surviving Corporation.

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(b) As used in this Agreement, the following terms have the following meanings:

(i) *Aggregate Merger Consideration* means the number of shares of Parent Common Stock (the *Parent Merger Shares*) representing 22.5% of the Parent Fully Diluted Share Amount (as defined below) at the Effective Time, as may be decreased in accordance with the Pihana Consideration Adjustment Schedule (as defined in Section 2A.02(h)), and as may be increased in accordance with the Parent Consideration Adjustment Schedule (as defined in Section 2C.02(h)) or the i-STT Consideration Adjustment Schedule (as defined in Section 2B.02(h)).

(ii) *Covered Employees* means the employees identified as such in the Pihana Incentive Compensation Plan.

(iii) *Pihana Escrow Shares* means the number of Parent Merger Shares (rounded up to the next whole number) determined by multiplying the Aggregate Merger Consideration by 0.10.

(iv) *Pihana Incentive Compensation Plan* means the Pihana Pacific Incentive Compensation Plan dated April 9, 2002.

(v) *Pihana Incentive Compensation Plan Cash Factor* means the aggregate amount of cash payable to the Covered Employees pursuant to the Pihana Incentive Compensation Plan.

(vi) *Pihana Incentive Compensation Plan Shares* means the aggregate number of shares of Parent Common Stock payable to the Covered Employees pursuant to the Pihana Incentive Compensation Plan.

(vii) *Parent Fully Diluted Share Amount* means, as of the Effective Time, all shares of Parent Common Stock outstanding, all Parent Options with an exercise price equal to or less than $2.00 after giving effect to any anti-dilution adjustments as a result of the Combination (as adjusted for the assumed net exercise of such options) and all Parent Warrants with an exercise price equal to or less than $2.00 after giving effect to any anti-dilution adjustments as a result of the Combination (as adjusted for the assumed net exercise of such warrants). *Schedule 2A.01(b)* illustrates the calculation of Parent Fully Diluted Share Amount as if the Closing Date were July 31, 2002. The Parent Fully Diluted Share Amount will be recalculated at the Effective Time using the same methodology. For the avoidance of doubt, the Parent Fully Diluted Share Amount at the Effective Time shall be calculated after giving effect to the exchange of the Senior Notes (as defined in Section 7.01(g)(ii)) but without giving effect to the transactions contemplated by the Securities Purchase Agreement (as defined in Section 7.01(g)(iv)).

(viii) *Series A Preferred Stock Exchange Ratio* means (a) the product (calculated to five decimal places) obtained by multiplying (x) the Aggregate Merger Consideration less the Pihana Incentive Compensation Plan Shares by (y) a fraction the numerator of which is the Series A Preferred Stock Liquidation Amount and the denominator of which is the sum of (A) Series A Preferred Stock Liquidation Amount plus (B) the Series B-1 Preferred Stock Liquidation Amount divided by (b) the number of shares of Series A Preferred Stock issued and outstanding immediately prior to the Effective Time.

(ix) *Series B-1 Preferred Stock Exchange Ratio* means (a) the product (calculated to five decimal places) obtained by multiplying (x) the Aggregate Merger Consideration less the Pihana Incentive Compensation Plan Shares by (y) a fraction the numerator of which is the Series B-1 Preferred Stock Liquidation Amount and the denominator of which is the sum of (A) Series A Preferred Stock Liquidation Amount plus (B) the Series B-1 Preferred Stock Liquidation Amount divided by (b) the number of shares of Series B-1 Preferred Stock issued and outstanding immediately prior to the Effective Time.

(x) *Series A Preferred Stock Liquidation Amount* means the product (calculated to five decimal places) obtained by multiplying (x) the number of shares of Series A Preferred Stock outstanding times (y) an amount equal to $2.40.

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(xi) *Series B-1 Preferred Stock Liquidation Amount* means the product (calculated to five decimal places) obtained by multiplying (x) the number of shares of Series B-1 Preferred Stock outstanding times (y) $4.19.

(c) If, during the period between the date hereof and the Effective Time, any change in the capital stock of Parent shall occur by reason of reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period or any similar event, the Aggregate Merger Consideration, the Series A Preferred Stock Exchange Ratio, the Series B-1 Preferred tock Exchange Ratio, the Pihana Incentive Compensation Plan Shares and the Pihana Escrow Shares shall be correspondingly adjusted to the extent appropriate to reflect such stock dividend, subdivision, reclassification, recapitalization, split, combination, exchange or readjustment of shares.

SECTION 2A.02 *Determination of Pihana Working Capital, Pihana Cash Balance and Pihana Net Liabilities*.

(a) No later than five business days and no earlier than ten business days prior to the Closing Date, Pihana shall prepare a certificate certified by Pihana s chief financial officer (the *Initial Pihana Certificate*) which contains: (i) an estimated consolidated balance sheet of Pihana and its subsidiaries (the *Pihana Closing Balance Sheet*) as of the opening of business on the day during which the Closing Date occurs without giving effect to the transactions contemplated hereby, (ii) a calculation of the estimated Pihana Working Capital (as defined in Section 2A.02(h)), (iii) a calculation of the estimated Pihana Cash Balance (as defined in Section 2A.02(h)), and (iv) a calculation of the estimated Pihana Total Other Liabilities (as defined in Section 2A.02(h)). Following receipt of the Initial Pihana Certificate, STT Communications and Parent shall have the right to review the Initial Pihana Certificate and consult in good faith with Pihana regarding the Initial Pihana Certificate. No later than one business day prior to the Closing Date, Pihana shall deliver to Parent a final certificate certified by Pihana s chief financial officer (the *Final Pihana Certificate*) identical to the Initial Pihana Certificate; *provided*, *however*, that the Final Pihana Certificate shall include any revisions mutually agreed upon by Parent, STT Communications and Pihana following such consultation period. The Pihana Closing Balance Sheet and the calculation of Pihana Working Capital, Pihana Cash Balance and Pihana Total Other Liabilities (x) shall be prepared using the same accounting principles, methods of computing estimates and otherwise on a consistent basis with those used in preparing the Pihana Audited Financial Statements and Pihana Interim Financial Statements and (y) shall include the same line items as the Pihana Reference Balance Sheet (all as defined in Section 3A.08).

(b) As soon as practicable, but in no event later than 60 days following the Closing Date, Parent and STT Communications shall prepare a calculation of Pihana Cash Balance (the *Final Pihana Adjustment Calculation*).

(c) Parent and STT Communications shall deliver a copy of the Final Pihana Adjustment Calculation to the Pihana Stockholders Representative promptly after it has been prepared. After receipt of the Final Pihana Adjustment Calculation, the Pihana Stockholders Representative shall have 30 days to review the Final Pihana Adjustment Calculation. Unless the Pihana Stockholders Representative delivers written notice to Parent and STT Communications on or prior to the 30th day after receipt of the Final Pihana Adjustment Calculation stating that the Pihana Stockholders Representative objects to the Final Pihana Adjustment Calculation (and setting forth in reasonable detail his calculation of disputed items), the Pihana Stockholders Representative shall be deemed to have accepted and agreed to the Final Pihana Adjustment Calculation. If the Pihana Stockholders Representative so notifies STT Communications of his objections to the Final Pihana Adjustment Calculation, the Stockholders Representative and STT Communications shall, within 60 days (or such longer period as the parties may mutually agree) following such notice (the *Pihana Adjustment Resolution Period*), attempt to resolve their differences, and any resolution by the Stockholders Representative and STT Communications, subject to the approval of Parent, which approval shall not be unreasonably withheld, as to any disputed amounts that are communicated to the Escrow Agent (as defined in Section 2A.03(b)) jointly by the Pihana Stockholders Representative, STT Communications and Parent and shall be final, binding and conclusive.

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(d) Any amounts remaining in dispute at the conclusion of the Pihana Adjustment Resolution Period (the *Pihana Unresolved Items*) shall be submitted to Ernst & Young LLP (or, if Ernst & Young LLP is unwilling to serve, such other internationally recognized firm of independent public accountants to be mutually agreed upon) (the *Independent Auditors*) within ten days after the expiration of the Pihana Adjustment Resolution Period. Each of the Pihana Stockholders Representative, Parent and STT Communications shall offer a final, good faith resolution to the Pihana Unresolved Items. The Independent Auditors shall then be required to choose one of the two proposed resolutions as most representative of correct calculation, under the terms of this Agreement, of the Pihana Unresolved Items. The Independent Auditors resolution of the Pihana Unresolved Items shall be made within 45 days of the submission of the Pihana Unresolved Items thereto (if practicable), shall be set forth in a written statement delivered to Parent and the Pihana Stockholders Representative and shall be final, binding and conclusive, absent fraud or manifest error. The term *Pihana Adjusted Calculation*, as used in this Agreement, shall mean the definitive Pihana Cash Balance agreed to (or deemed agreed to) by Parent, STT Communications and the Pihana Stockholders Representative under Section 2A.02(c) or, if Pihana Unresolved Items are submitted to the Independent Auditors, such definitive Pihana Cash Balance, as adjusted to reflect the determination of the Independent Auditors under this Section 2A.02(d).

(e) If and to the extent the Pihana Adjusted Calculation is less than the Pihana Cash Balance as shown in the Final Pihana Certificate (the *Pihana Cash Balance Deficiency*), then Parent shall deliver written notice to the Escrow Agent and the Pihana Stockholders Representative specifying the amount of Pihana Cash Balance Deficiency, and the Escrow Agent shall, in accordance with the terms of the Escrow Agreement, deliver to Parent and STT Communications out of the Escrow Fund (as defined in Section 2A.03(b)) an aggregate number of Pihana Escrow Shares calculated and allocated between Parent and STT Communications in accordance with the Pihana Consideration Adjustment Schedule within five days of such notice. In addition, if and to the extent that (i) the lesser of (a) the Pihana Cash Balance Objective and (b) the Pihana Adjusted Calculation exceeds (ii) the Pihana Cash Balance as shown in the Final Pihana Certificate (the *Pihana Cash Balance Excess*), then Parent shall deliver written notice to the Escrow Agent, the Pihana Stockholders Representative, STT Communications and Parent s transfer agent (the *Transfer Agent*) specifying the amount of Pihana Cash Balance Excess, and instructing the Transfer Agent (on behalf of Parent) and STT Communications to deliver an aggregate number of shares of Parent Common Stock to the Pihana Stockholders Representative and the Escrow Agent calculated (and allocated from STT Communications and Parent) in accordance with the Pihana Consideration Adjustment Schedule (nine-tenths of which shares will be deliverable to the Stockholders Representative on behalf of the Pihana Stockholders and one-tenth of which will be deliverable to the Escrow Agent for inclusion in the Escrow Fund within five days of such notice.

(f) During the calculation of Pihana Working Capital, Pihana Cash Balance and Pihana Total Other Liabilities prior to or following the Closing and the period of any review or dispute within the contemplation of this Agreement, (i) each party hereto shall provide, or cause to be provided, to the other parties and their authorized representatives, all reasonably requested access to all relevant books, records, workpapers and employees of the Surviving Corporation or Parent, whether then-employed by the Surviving Corporation or Parent, or the Pihana Stockholders Representative, as the case may be, to the extent such materials or persons are within their possession or control and (ii) the Pihana Stockholders Representative and Parent shall cooperate in full with each other and their authorized representatives, including the provision on a timely basis of all information necessary or useful.

(g) In acting under this Section 2A.02, the Independent Auditors shall be entitled to the privileges and immunities of arbitrators. Each party agrees to execute, if requested by the Independent Auditors, a reasonable engagement letter. All fees and expenses relating to the work, if any, to be performed by the Independent Auditors (the Independent Auditors Fees) shall be borne pro rata by Parent, STT Communications and the Escrow Account (as defined in Section 2A.03(b)) in proportion to the allocation of the dollar amount of the Pihana Unresolved Items, made by the Independent Auditors such that the prevailing party or parties pays a lesser proportion of the fees and expenses.

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(h) As used in this Agreement, the following terms have the following meanings:

(i) *Decrease in Pihana Working Capital* means the positive amount, if any, by which $-5,066,000 (i.e. a working capital deficit) exceeds Pihana Working Capital (as defined below).

(ii) *Pihana Cash Balance* means (x) the sum of Pihana s and Pihana Subsidiaries (as defined in Section 3A.03(a)) consolidated (i) cash, consolidated cash equivalents and consolidated short-term investments as shown on the Pihana Closing Balance Sheet, (ii) any Hawaii R&D Tax Credit, GST, VAT and Consumption Tax refunds in Singapore, Japan, Hong Kong and Australia that are determined to be collectible and receivable, (iii) except as provided in clause (x) of Section 2A.03(h)(viii), amounts paid before the date of or accrued in the Pihana Closing Balance Sheet with respect to restructuring costs on or after the date of such balance sheet, (iv) retention bonuses payable after December 31, 2002 as provided in Section 5.01(y) to the extent such amount has been paid before the date of the Pihana Closing Balance Sheet, (v) $500,000 reimbursement of fees paid to IRG provided such amount has been paid and (vi) an amount equal to 90 days of payment of expatriate benefits under the Lay Expatriate Agreement (as defined in the Pihana Disclosure Letter); minus (y) the sum of (i) any Decrease in Pihana Working Capital, (ii) any Pihana Unspent Capital Expenditures (as defined below), (iii) all net liabilities to be incurred after the Closing as a result of, related to or otherwise or otherwise by virtue of the transactions contemplated in Sections 7.02(s) (which does not include reduction-in-force costs on or after the Closing), 7.02(t) and 7.02(u) of this Agreement and (iv) any cash received pursuant to the exercise of any outstanding Pihana Options or Pihana Warrants after the date of this Agreement.

(iii) *Pihana Cash Balance Objective* is set forth in Section 2A.02(h)(iii) of the Pihana Disclosure Letter.

(iv) *Pihana Cash Balance Shortfall* means the positive amount, if any, by which the Pihana Cash Balance Objective exceeds the Pihana Cash Balance as shown in the Final Pihana Certificate.

(v) *Pihana Consideration Adjustment Schedule* determines the amount of shares to be allocated to each of Parent and STT Communications in the event of a Pihana Cash Balance Shortfall or a Pihana Cash Balance Deficiency. The Pihana Consideration Adjustment Schedule is attached hereto as *Schedule 2A.02(h)(v)*. Any Pihana Cash Balance Shortfall shall be reflected in the calculation of Aggregate Merger Consideration deliverable pursuant to Section 2A.03 and, if applicable, the Aggregate Stock Purchase Consideration deliverable at Closing pursuant to Section 2B.01, and any Pihana Cash Balance Deficiency (which shall not duplicate any adjustments already accounted for as a result of a Pihana Cash Balance Shortfall) shall be given effect pursuant to the deliveries set forth in Section 2A.02(e).

(vi) *Pihana Total Other Liabilities* means total consolidated (v) non-current liabilities, (w) long-term liabilities, (x) current portion of long-term liabilities, (y) short-term indebtedness and (z) accrued interest.

(vii) *Pihana Unspent Capital Expenditures* means the positive amount, if any, by which $1,750,000 exceeds the actual and committed capital expenditures of Pihana and its subsidiaries (other than actual or committed capital expenditures relating to Pihana s subsidiary in Korea) for the period from July 1, 2002 to the Closing.

(viii) *Pihana Working Capital* means Pihana s and Pihana Subsidiaries (t) consolidated current assets (excluding cash, cash equivalents and short-term investments and any Hawaii R&D Tax Credit, GST, VAT and Consumption Tax refunds in Singapore, Japan, Hong Kong and Australia that are determined to be collectible and receivable) as shown on the Pihana Closing Balance Sheet, plus (u) except as provided in clause (x), amounts accrued in the Pihana Closing Balance Sheet with respect to restructuring costs on or after the date of such balance sheet, minus (v) their consolidated current liabilities (not including current portion of long-term liabilities, short-term indebtedness or accrued interest) as shown on the Pihana Closing Balance Sheet plus (w) retention bonuses payable after

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December 31, 2002 as provided in Section 5.01(y) to the extent such amount has been paid or is accrued for in the Final Panther Certificate minus (x) severance payments due on or after the Closing with respect to the Covered Employees (including any additional amounts required to be withheld thereon for Taxes) plus (y) $500,000 reimbursement of fees paid to IRG provided such amount has been paid or is accrued for in the Final Pihana Certificate plus (z) credit for 90 days of payment of expatriate benefits under the Lay Expatriate Agreement. The current portion of long-term debt and the current portion of capital lease obligations shall not be deemed a current liability for purposes of determining Pihana Working Capital. The non-current portion of deferred rent and deferred revenue shall be deemed to be current liabilities for purposes of determining Pihana Working Capital.

(i) An example of Pihana s initial calculation of Pihana Working Capital, Pihana Cash Balance and Pihana Total Other Liabilities based upon the Pihana Reference Balance Sheet is set forth in Section 2A.02(i) of the Pihana Disclosure Letter.

SECTION 2A.03 *Exchange of Certificates*.

(a) *Exchange Procedures*. From and after the Effective Time, a bank or trust company to be designated by Parent shall act as exchange agent (the *Exchange Agent*) in effecting the exchange of the applicable Parent Merger Shares for certificates which immediately prior to the Effective Time represented outstanding shares of Pihana Common Stock and Pihana Preferred Stock (collectively, *Pihana Stock*) (*Pihana Share Certificates*) and which were converted into the right to receive Parent Merger Shares pursuant to Section 2A.01. As promptly as practicable after the Effective Time, Parent and the Exchange Agent shall mail to each record holder of Pihana Share Certificates a letter of transmittal (the *Letter of Transmittal*) in a form approved prior to the Closing by Parent and Pihana and instructions for use in surrendering such Pihana Share Certificates and receiving the applicable Parent Merger Shares pursuant to Section 2A.01. At or prior to the Effective Time, Parent shall cause to be deposited in trust with the Exchange Agent, the Cash Consideration and the Parent Merger Shares less the Pihana Escrow Shares.

Upon the surrender of each Pihana Share Certificate for cancellation to the Exchange Agent, together with a properly completed Letter of Transmittal and such other documents as may reasonably be required by Parent:

(i) Parent shall cause to be issued to the holder of such Pihana Share Certificate in exchange therefor (A) a check for such holder s pro rata portion of the Cash Consideration and (B) a separate stock certificate representing the Parent Merger Shares to which such holder is entitled pursuant to Section 2A.01 (less the Pihana Escrow Shares attributable to the pro rata interest of such holder in the Escrow Fund pursuant to Section 2.03(b)); and

(ii) Pihana Share Certificates so surrendered shall forthwith be cancelled.

If a transfer of ownership of shares of Pihana Stock is not registered in the transfer records of Pihana, the applicable Parent Merger Shares may be issued to a person other than the person in whose name Pihana Share Certificate so surrendered is registered if Pihana Share Certificate representing such shares of Pihana Stock is presented to Parent, accompanied by all documents required to evidence and effect such transfer and evidence that (i) the shares are transferable and (ii) any applicable stock transfer taxes have been paid.

Until surrendered as contemplated by this Article II-A, each Pihana Share Certificate shall, subject to appraisal rights under the DGCL and Section 2A.06, be deemed at any time after the Effective Time to represent only the right to receive upon surrender the applicable Parent Merger Shares with respect to the shares of Pihana Stock formerly represented thereby to which such holder is entitled pursuant to Section 2A.01.

(b) *Escrow Fund*. Prior to or simultaneously with the Closing, the Pihana Stockholders Representative and Parent shall enter into an escrow agreement (the *Escrow Agreement*) with an escrow agent selected by Parent and reasonably acceptable to the Pihana Stockholders Representative (the *Escrow Agent*) substantially in the form of *Exhibit B* hereto. Pursuant to the terms of the Escrow Agreement, Parent

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shall deposit one or more certificates in the name of the Escrow Agent representing the Pihana Escrow Shares into an escrow account, which account is to be managed by the Escrow Agent (the *Escrow Account*) to serve as security for the Pihana Stockholders indemnity obligations hereunder. Any Pihana Escrow Shares in the Escrow Account are referred to herein as the *Escrow Fund*. In connection with such deposit of the Pihana Escrow Shares with the Escrow Agent and as of the Effective Time, each holder of Pihana Stock will be deemed to have received and deposited with the Escrow Agent each stockholder s (other than holders of Dissenting Shares) pro rata interest in the Escrow Fund as determined as of Closing by reference to such stockholder s ownership of shares of Pihana Stock (plus any additional shares as may be issued upon any stock split, stock dividend or recapitalization effected by Parent after the Effective Time with respect to shares constituting the Escrow Fund), without any act of the stockholders of Pihana (the *Pihana Stockholders*). Distributions of any Pihana Escrow Shares from the Escrow Account shall be governed by the terms and conditions of the Escrow Agreement. The adoption of this Agreement by Pihana Stockholders shall constitute approval of the Escrow Agreement and of all the arrangements relating thereto, including, without limitation, the placement of the Pihana Escrow Shares in escrow and the appointment of the Pihana Stockholders Representative.

(c) *Distributions with Respect to Unexchanged Parent Merger Shares*. No dividends or other distributions declared or made after the Effective Time with respect to Parent Merger Shares comprising part of the Aggregate Merger Consideration with a record date after the Effective Time shall be paid to the holder of any unsurrendered Pihana Share Certificate with respect to the Parent Merger Shares represented thereby until the holder of such Pihana Share Certificate shall surrender such Pihana Share Certificate in accordance with this Section 2A.03.

(d) *No Further Rights in Pihana Stock*. The Parent Merger Shares issued upon the conversion of shares of Pihana Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Pihana Stock.

(e) *No Fractional Shares*. Notwithstanding any other provision of this Agreement, no fractional shares of Parent Common Stock shall be issued upon the conversion and exchange of Pihana Share Certificates, and no holder of Pihana Share Certificates shall be entitled to receive a fractional share of Parent Common Stock. In the event that any holder of Pihana Stock would otherwise be entitled to receive a fractional share of Parent Common Stock (after aggregating all shares and fractional shares of Parent Common Stock issuable to such holder), then such holder will receive an aggregate number of shares of Parent Common Stock rounded up or down to the nearest whole share (with 0.5 being rounded up). In the event that any holder of Pihana Stock would otherwise be entitled to receive a fractional share of Parent Common Stock (after aggregating all shares and fractional shares of Parent Common Stock issuable to such holder), then such holder will receive an aggregate number of shares of Parent Common Stock rounded up or down to the nearest whole share.

(f) *No Liability*. Neither Parent nor the Surviving Corporation shall be liable to any holder of shares of Pihana Stock for any such shares of Parent Common Stock (or dividends or distributions with respect thereto) or cash properly and legally delivered to a public official pursuant to any abandoned property, escheat or similar law.

(g) *Withholding Rights*. Each of the Exchange Agent, the Surviving Corporation and Parent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of Pihana Stock such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code (as defined in Section 10.02(d)), or any provision of state, local or foreign Tax (as defined in Section 3A.15(c)) Law (as defined in Section 3A.06(a)). To the extent that amounts are so withheld by the Exchange Agent, the Surviving Corporation or Parent, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Pihana Stock in respect of which such deduction and withholding were made by the Exchange Agent, the Surviving Corporation or Parent, as the case may be.

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(h) *Lost Certificates*. If any Pihana Share Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Pihana Share Certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such person of a bond, in such reasonable amount as the Surviving Corporation may reasonably direct, as indemnity against any claim that may be made against it with respect to such Pihana Share Certificate, Parent shall issue in exchange for such lost, stolen or destroyed Pihana Share Certificate, the applicable Parent Merger Shares (and dividends or other distributions pursuant to Section 2A.03(c)) to which such person is entitled pursuant to the provisions of this Article II-A.

(i) *Return of Parent Merger Shares*. Promptly following the end of the sixth full calendar month after the Effective Time, the Exchange Agent shall return to Parent all of the remaining Parent Merger Shares and Cash Consideration in the Exchange Agent s possession and the Exchange Agent s duties shall terminate. Thereafter, upon the surrender of a Pihana Share Certificate to Parent, together with a properly executed Letter of Transmittal and such other documents as may reasonably be required by Parent, and subject to applicable abandoned property, escheat and similar Laws, the holder of such Pihana Share Certificate shall be entitled to receive in exchange therefor the applicable Parent Merger Shares (and dividends or other distributions pursuant to Section 2A.03(c)) without any interest thereon.

SECTION 2A.04 *Stock Transfer Books*. At the Effective Time, the stock transfer books of Pihana shall be closed and there shall be no further registration of transfers of shares of Pihana Stock thereafter on the records of Pihana.

SECTION 2A.05 *Pihana Stock Options; Pihana Warrants*.

(a) Parent will not assume options to purchase Pihana Common Stock issued by Pihana.

(b) At the Effective Time, each warrant to acquire shares of Series B-1 Preferred Stock granted and outstanding immediately prior to the Effective Time (each a *Pihana Warrant*), whether or not contingent or earned and whether exercisable or unexercisable, that does not terminate by its terms at or prior to the Effective Time, shall be converted into a warrant to acquire shares of Parent Common Stock in accordance with its terms. Each Pihana Warrant so converted shall continue to have, and be subject to, the same terms and conditions set forth in such Pihana Warrant immediately prior to the Effective Time, except that (i) such Pihana Warrant shall be exercisable (or become exercisable in accordance with its terms) for that number of whole shares of Parent Common Stock (rounded down to the nearest whole number) equal to the product of the number of shares of Pihana Series B-1 Preferred Stock that were issuable upon exercise of such Pihana Warrant immediately prior to the Effective Time multiplied by the Series B-1 Exchange Ratio (as modified to reflect any post-closing adjustments to the Aggregate Merger Consideration), and (ii) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Pihana Warrant shall be equal to the exercise price per share of Pihana Stock at which such Pihana Warrant was exercisable immediately prior to the Effective Time divided by the Pihana Series B-1 Preferred Stock Exchange Ratio (as modified to reflect any post-closing adjustment to the Aggregate Merger Consideration and rounded down to the nearest whole cent).

SECTION 2A.06 *Dissenting Shares*.

(a) Notwithstanding any provision of this Agreement to the contrary, shares of Pihana Stock that are outstanding immediately prior to the Effective Time and which are held by stockholders who have exercised and perfected appraisal rights for such shares of Pihana Stock in accordance with the DGCL (collectively, the *Dissenting Shares*) shall not be converted into or represent the right to receive the applicable Parent Merger Shares. Such stockholders shall be entitled to receive payment of the appraised value of such shares of Pihana Stock held by them in accordance with the DGCL, unless and until such stockholders fail to perfect or effectively withdraw or otherwise lose their appraisal rights under the DGCL. All Dissenting Shares held by stockholders who shall have failed to perfect or who effectively shall have withdrawn or lost

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their right to appraisal of such shares of Pihana Stock under the DGCL shall thereupon be deemed to have been converted into and to have become exchangeable for, as of the Effective Time, the right to receive the applicable Parent Merger Shares, without any interest thereon, upon the surrender, in the manner provided in Section 2A.03 (including the provision for the Pihana Escrow Shares pursuant to Section 2A.03(b)), of the corresponding Pihana Share Certificate.

(b) Pihana shall give Parent (i) prompt notice of any demands for appraisal received by Pihana, withdrawals of such demands, and any other related instruments served pursuant to the DGCL and received by Pihana and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the DGCL. Pihana shall not, except with the prior written consent of Parent, make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

ARTICLE II-B

i-STT STOCK PURCHASE CONSIDERATION

SECTION 2B.01 *i-STT Stock Purchase Consideration*.

(a) At the Closing, Parent shall pay and deliver the Aggregate Stock Purchase Consideration (as defined in Section 2B.01(b)) to STT Communications for the i-STT Shares.

(b) As used in this Agreement, the following terms have the following meanings:

(i) *Aggregate Stock Purchase Consideration* means (a) cash in the amount of $10,000 and (b) the number of Parent Shares representing 27.5% of the Parent Fully Diluted Share Amount, as may be (i) increased in accordance with the Pihana Consideration Adjustment Schedule or the Parent Consideration Adjustment Schedule and (ii) decreased by the number of Parent Shares equal to the quotient obtained by dividing (x) i-STT Working Capital Shortfall (as defined in Section 2B.02(h)), by (y) the $1.53 (the *Parent Stock Purchase Shares*). Any decrease in the Aggregate Stock Purchase Consideration pursuant to clause (ii) shall be allocated in accordance with the i-STT Consideration Adjustment Schedule (as defined in Section 2B.02(h)). The Aggregate Stock Purchase Consideration to be paid to STT Communications shall be paid in accordance with the i-STT Consideration Breakdown (as defined below).

(ii) *i-STT Escrow Shares* means the number of Parent Stock Purchase Shares (rounded up to the next whole number) determined by multiplying the Aggregate Stock Purchase Consideration by 0.50. The i-STT Escrow Shares shall, to the extent possible, be shares of Parent Preferred Stock and shall bear the legend identified in Section 1B.04(b) until the R&W Termination Date (as defined in Section 9.01(a)), at which time STT Communications shall be entitled to receive replacement Certificates not bearing the legend.

(iii) *i-STT Consideration Breakdown* means the allocation of consideration to be received by STT Communications between (A) Parent Common Stock and (B) Parent Preferred Stock. First, STT Communications will receive such number of shares of Parent Common Stock equal to 10.1% of the Parent Fully Diluted Share Amount. The remaining Aggregate Stock Purchase Consideration will be paid to STT Communications in the form of Parent Preferred Stock. The certificate of designation designating the rights preferences and privileges of the Parent Preferred Stock is attached hereto as *Exhibit C*.

(c) If, during the period between the date hereof and the Effective Time, any change in the capital stock of Parent shall occur by reason of reclassification, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period or any similar event, the Aggregate Stock Purchase Consideration and the i-STT Escrow Shares shall be correspondingly adjusted to the extent appropriate to reflect such stock dividend, subdivision, reclassification, recapitalization, split, combination, exchange or readjustment of shares.

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SECTION 2B.02 *Determination of i-STT Working Capital and i-STT Net Liabilities*.

(a) No later than five business days and no earlier than ten business days prior to the Closing Date, i-STT, together with STT Communications, shall prepare a certificate certified by i-STT s chief financial officer (the *Initial i-STT Certificate*) which contains: (i) an estimated consolidated balance sheet of i-STT and its subsidiaries (the *i-STT Closing Balance Sheet*) as of the opening of business on the day during which the Closing Date occurs without giving effect to the transactions contemplated hereby, (ii) a calculation of the estimated i-STT Working Capital (as defined in Section 2B.02(h)) and (iii) a calculation of the estimated i-STT Total Other Liabilities (as defined in Section 2B.02(h)). Following receipt of the Initial i-STT Certificate, Parent and Pihana shall have the right to review the Initial i-STT Certificate and consult in good faith with i-STT regarding the Initial i-STT Certificate. No later than one business day prior to the Closing Date, i-STT shall deliver to Parent and Pihana a final certificate certified by i-STT s chief financial officer (the *Final i-STT Certificate*) identical to the Initial i-STT Certificate; *provided*, *however* that the Final i-STT Certificate shall include any revisions mutually agreed upon by Parent, Pihana, i-STT and STT Communications following such consultation period. The i-STT Closing Balance Sheet and the calculation of i-STT Working Capital and i-STT Total Other Liabilities (x) shall be prepared in accordance with the same accounting principles, methods of computing estimates and otherwise on a consistent basis with those used in preparing the i-STT Audited Financial Statements and i-STT Interim Financial Statements and (y) shall include the same line items as the i-STT Reference Balance Sheet (all as defined in Section 3B.08).

(b) As soon as practicable, but in no event later than 60 days following the Closing Date, Parent and the Pihana Stockholders Representative shall prepare a calculation of i-STT Working Capital (the *Final i-STT Adjustment Calculation*).

(c) Parent shall deliver a copy of the Final i-STT Adjustment Calculation to STT Communications promptly after it has been prepared. After receipt of the Final i-STT Adjustment Calculation, STT Communications shall have 30 days to review the Final i-STT Adjustment Calculation. Unless STT Communications delivers written notice to Parent on or prior to the 30th day after receipt of the Final i-STT Adjustment Calculation stating that STT Communications objects to the Final i-STT Adjustment Calculation (and setting forth in reasonable detail its calculation of disputed items), STT Communications shall be deemed to have accepted and agreed to the Final i-STT Adjustment Calculation. If STT Communications so notifies Parent of its objections to the Final i-STT Adjustment Calculation, the parties shall, within 60 days (or such longer period as the parties may mutually agree) following such notice (the *i-STT Adjustment Resolution Period*), attempt to resolve their differences.

(d) Any amounts remaining in dispute at the conclusion of the i-STT Adjustment Resolution Period (the *i-STT Unresolved Items*) shall be submitted to the Independent Auditors within ten days after the expiration of the i-STT Adjustment Resolution Period. Each of Parent and STT Communications shall offer a final, good faith resolution to the i-STT Unresolved Items. The Independent Auditors shall then be required to choose one of the two proposed resolutions as most representative of the correct calculation, under the terms of this Agreement, of the i-STT Unresolved Items. The Independent Auditors resolution of the i-STT Unresolved Items shall be made within 45 days of the submission of the i-STT Unresolved Items thereto (if practicable), shall be set forth in a written statement delivered to Parent and the Pihana Stockholders Representative and STT Communications and shall be final, binding and conclusive, absent fraud or manifest error. The term *i-STT Adjusted Calculation*, as used in this Agreement, shall mean the definitive i-STT Working Capital agreed to (or deemed agreed to) by Parent and STT Communications under Section 2B.02(c) or, if i-STT Unresolved Items are submitted to the Independent Auditors, such definitive i-STT Working Capital, as adjusted to reflect the determination of the Independent Auditors under this Section 2B.02(d).

(e) If and to the extent the i-STT Adjusted Calculation is less than i-STT Working Capital as shown in the Final i-STT Certificate (the *i-STT Working Capital Deficiency*), then Parent shall deliver written notice to STT Communications and the Pihana Stockholders Representative specifying the amount of i-STT Working Capital Deficiency, and STT Communications shall deliver to Parent and to the Escrow

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Agent for deposit into the Escrow Account, calculated and allocated in accordance with the i-STT Consideration Adjustment Schedule, an aggregate number of i-STT Escrow Shares equal to the quotient obtained by dividing (i) i-STT Working Capital Deficiency by (ii) $1.53 within five days of such notice. In addition, if and to the extent that (i) the lesser of (a) the i-STT Working Capital Objective and (b) the i-STT Adjusted Calculation exceeds (ii) i-STT Working Capital as shown in the Final i-STT Certificate, (the *i-STT Working Capital Excess*), then Parent shall deliver written notice to STT Communications, the Pihana Stockholders Representative and the Transfer Agent specifying the amount of i-STT Working Capital Excess, and instructing the Transfer Agent (on behalf of Parent) and the Escrow Agent (on behalf of the Pihana Stockholders) to deliver an aggregate number of shares of Parent Common Stock to STT Communications equal to the quotient obtained by dividing (x) i-STT Working Capital Excess, by (y) $1.53, calculated (and allocated from Parent and the Pihana Stockholders) in accordance with the i-STT Consideration Adjustment Schedule within five days of such notice.

(f) During the calculation of i-STT Working Capital and i-STT Total Other Liabilities prior to or following the Closing and the period of any review or dispute within the contemplation of this Agreement, (i) each of i-STT, STT Communications and Parent shall provide, or cause to be provided, to the other Parties and their authorized representatives, all reasonably requested access to all relevant books, records, workpapers and employees of STT Communications or Parent, whether then-employed by STT Communications or Parent, as the case may be, to the extent such materials or persons are within their possession or control and (ii) STT Communications and Parent shall cooperate in full with each other and their authorized representatives, including the provision on a timely basis of all information necessary or useful.

(g) In acting under this Section 2B.02, the Independent Auditors shall be entitled to the privileges and immunities of arbitrators. Each party agrees to execute, if requested by the Independent Auditors, a reasonable engagement letter. All Independent Auditors Fees shall be borne pro rata by Parent, STT Communications and the Escrow Account in proportion to the allocation of the dollar amount of the i-STT Unresolved Items, made by the Independent Auditors such that the prevailing party or parties pays a lesser proportion of the fees and expenses.

(h) As used in this Agreement, the following terms have the following meanings:

(i) *i-STT Consideration Adjustment Schedule* determines the amount of shares to be allocated to each of Parent, the Escrow Account (on behalf of the Pihana Stockholders) and the Pihana Stockholders in the event of a i-STT Working Capital Shortfall or a i-STT Working Capital Deficiency. The i-STT Consideration Adjustment Schedule is attached hereto as *Schedule 2B.02(h)(i)*. Any i-STT Working Capital Shortfall shall be reflected in the calculation of the Aggregate Stock Purchase Consideration deliverable at Closing pursuant to Section 2B.01 and the Aggregate Merger Consideration deliverable pursuant to Section 2A.03, and any i-STT Working Capital Deficiency (which shall not duplicate any adjustments already accounted for as a result of an i-STT Working Capital Shortfall) shall be given effect pursuant to the deliveries set forth in Section 2B.02(e).

(ii) *i-STT Total Other Liabilities* means total consolidated (v) non-current liabilities, (w) long-term liabilities (x) current portion of long-term liabilities, (y) short-term indebtedness and (z) accrued interest.

(iii) *i-STT Working Capital* means i-STT s and i-STT Subsidiaries consolidated current assets (including cash, cash equivalents and short-term investments) as shown on the i-STT Closing Balance Sheet minus their consolidated current liabilities (not including current portion of long-term liabilities, short-term indebtedness and accrued interest) as shown on the i-STT Closing Balance Sheet.

(iv) *i-STT Working Capital Objective* is set forth in Section 2B.02(h)(iv) of the i-STT Disclosure Letter.

(v) *i-STT Working Capital Shortfall* means the positive amount, if any, by which the i-STT Working Capital Objective exceeds the i-STT Working Capital as shown in the Final i-STT Certificate.

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(i) An example of i-STT s initial calculation of i-STT Working Capital and i-STT Total Other Liabilities based upon the i-STT Reference Balance Sheet is set forth in Section 2B.02(i) of the i-STT Disclosure Letter.

SECTION 2B.03 *i-STT Stock Options.* Parent will not assume options to purchase capital stock issued by STT Communications.

ARTICLE II-C

PARENT STOCK ADJUSTMENT

SECTION 2C.01 *Parent Stock Outstanding at the Closing*. At the Closing, the stockholders of Parent immediately prior to the Effective Time will retain the Parent Fully Diluted Share Amount less the sum of (a) the Aggregate Merger Consideration and (b) the Aggregate Stock Purchase Consideration (the *Parent Post-Combination Shares*). As provided in the Parent Consideration Adjustment Schedule (as defined in Section 2C.02(h)), the Parent Post-Combination Shares will be decreased by the number of Parent Shares equal to the quotient obtained by dividing (x) Parent Working Capital Shortfall (as defined in Section 2C.02(h), by (y) $1.53, and any such decrease shall be allocated in accordance with the Parent Consideration Adjustment Schedule.

SECTION 2C.02 *Determination of Parent Working Capital and Parent Net Liabilities*.

(a) No later than five business days and no earlier than ten business days prior to the Closing Date, Parent shall prepare a certificate certified by Parent s chief financial officer (the *Initial Parent Certificate*) which contains: (i) an estimated consolidated balance sheet of Parent and its subsidiaries (the *Parent Closing Balance Sheet*) as of the opening of business on the day during which the Closing Date occurs without giving effect to the transactions contemplated hereby, (ii) a calculation of the estimated Parent Working Capital (as defined in Section 2C.02(h)) and (iii) a calculation of the estimated Parent Total Other Liabilities (as defined in Section 2C.02(h)). Following receipt of the Initial Parent Certificate, i-STT and Pihana shall have the right to review the Initial Parent Certificate and consult in good faith with Parent regarding the Initial Parent Certificate. No later than one business day prior to the Closing Date, Parent shall deliver to i-STT and Pihana a final certificate certified by Parent s chief financial officer (the *Final Parent Certificate*) identical to the Initial Parent Certificate; *provided*, *however* that the Final Parent Certificate shall include any revisions mutually agreed upon by Parent, i-STT and Pihana following such consultation period. The Parent Closing Balance Sheet and the calculation of Parent Working Capital and Parent Total Other Liabilities shall be prepared in accordance with the same accounting principles, methods of computing estimates and otherwise on a consistent basis with those used in preparing the financial statements contained in the Parent SEC Reports (as defined in Section 4.05) and shall contain the same line items as contained in such financial statements.

(b) As soon as practicable, but in no event later than 60 days following the Closing Date, STT Communications and the Pihana Stockholders Representative shall prepare a calculation of Parent Working Capital (the *Final Parent Adjustment Calculation*).

(c) STT Communications and the Pihana Stockholders Representative shall deliver a copy of the Final Parent Adjustment Calculation to Parent promptly after it has been prepared. After receipt of the Final Parent Adjustment Calculation, Parent shall have 30 days to review the Final Parent Adjustment Calculation. Unless Parent delivers written notice to STT Communications on or prior to the 30th day after receipt of the Final Parent Adjustment Calculation stating that Parent objects to the Final Parent Adjustment Calculation (and setting forth in reasonable detail its calculation of disputed items), Parent shall be deemed to have accepted and agreed to the Final Parent Adjustment Calculation. If Parent so notifies STT Communications of its objections to the Final Parent Adjustment Calculation, the parties shall, within 60 days (or such longer period as the parties may mutually agree) following such notice (the *Parent Adjustment Resolution Period*), attempt to reach an agreement that resolves their differences.

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(d) Any amounts remaining in dispute at the conclusion of the Parent Adjustment Resolution Period (the *Parent Unresolved Items*) shall be submitted to the Independent Auditors within ten days after the expiration of the Parent Adjustment Resolution Period. Each of Parent and STT Communications shall offer a final, good faith resolution to the Parent Unresolved Items. The Independent Auditors shall then be required to choose one of the two proposed resolutions as most representative of the correct calculation, under the terms of this Agreement, of the Parent Unresolved Items. The Independent Auditors resolution of the Parent Unresolved Items shall be made within 45 days of the submission of the Parent Unresolved Items thereto (if practicable), shall be set forth in a written statement delivered to Parent and STT Communications and shall be final, binding and conclusive, absent fraud or manifest error. The term *Parent Adjusted Calculation*, as used in this Agreement, shall mean the definitive Parent Working Capital agreed to (or deemed agreed to) by Parent and STT Communications under Section 2C.02(c) or, if Parent Unresolved Items are submitted to the Independent Auditors, such definitive Parent Working Capital, as adjusted to reflect the determination of the Independent Auditors under this Section 2C.02(d).

(e) If and to the extent Parent Adjusted Calculation is less than Parent Working Capital as shown in the Final Parent Certificate (the *Parent Working Capital Deficiency*), then STT Communications and the Pihana Stockholders Representative shall deliver written notice to Parent specifying the amount of Parent Working Capital Deficiency, and Parent shall deliver to STT Communications, the Escrow Agent for deposit into the Escrow Account and Pihana Stockholders Representative, calculated and allocated in accordance with the Parent Consideration Adjustment Schedule, an aggregate number of Parent Shares equal to the quotient obtained by dividing (i) Parent Working Capital Deficiency by (ii) $1.53 within five days of such notice. In addition, if and to the extent that (i) the lesser of (a) the Parent Working Capital Objective and (b) the Parent Adjusted Calculation exceeds (ii) Parent Working Capital as shown in the Final Parent Certificate, (the *Parent Working Capital Excess*), then Parent shall deliver written notice to STT Communications, the Pihana Stockholders Representative and the Transfer Agent specifying the amount of Parent Working Capital Excess, and STT Communications and the Escrow Agent (on behalf of the Pihana Stockholders) shall deliver an aggregate number of shares of Parent Common Stock to Parent equal to the quotient obtained by dividing (x) Parent Working Capital Excess, by (y) $1.53, calculated (and allocated from STT Communications and the Escrow Agent) in accordance with the Parent Consideration Adjustment Schedule within five days of such notice.

(f) During the calculation of Parent Working Capital and Parent Total Other Liabilities prior to or following the Closing and the period of any review or dispute within the contemplation of this Agreement, (i) each of Parent, STT Communications and the Pihana Stockholders Representative shall provide, or cause to be provided, to the other parties and their authorized representatives, all reasonably requested access to all relevant books, records, workpapers and employees of STT Communications, Pihana Stockholders Representative or Parent, whether then-employed by STT Communications, Pihana Stockholders Representative or Parent, as the case may be, to the extent such materials or persons are within their possession or control and (ii) STT Communications, Pihana Stockholders Representative and Parent shall cooperate in full with each other and their authorized representatives, including the provision on a timely basis of all information necessary or useful.

(g) In acting under this Section 2C.02, the Independent Auditors shall be entitled to the privileges and immunities of arbitrators. Each party agrees to execute, if requested by the Independent Auditors, a reasonable engagement letter. All Independent Auditors Fees shall be borne pro rata by Parent, STT Communications and the Escrow Account in proportion to the allocation of the dollar amount of the Parent Unresolved Items, made by the Independent Auditors such that the prevailing party or parties pays a lesser proportion of the fees and expenses.

(h) As used in this Agreement, the following terms have the following meanings:

(i) *Parent Consideration Adjustment Schedule* determines the amount of shares to be allocated to each of STT Communications, the Escrow Account (on behalf of the Pihana Stockholders) and the Pihana Stockholders in the event of a Parent Working Capital Shortfall or a Parent Working Capital Deficiency. The Parent Consideration Adjustment Schedule is attached hereto as Schedule 2C.02(h)(i).

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Any Parent Working Capital Shortfall shall be reflected in the calculation of the Aggregate Merger Consideration deliverable pursuant to Section 2A.03 and the Aggregate Stock Purchase Consideration deliverable at Closing pursuant to Section 2B.01, and any Parent Working Capital Deficiency (which shall not duplicate any adjustments already accounted for as a result of a Parent Working Capital Shortfall) shall be given effect pursuant to the deliveries set forth in Section 2C.02(e).

(ii) *Parent Total Other Liabilities* means total consolidated (v) non-current liabilities, (w) long-term liabilities (x) current portion of long-term liabilities, (y) short-term indebtedness and (z) accrued interest (including accrued interest on the Senior Notes (as defined in Section 7.01(g)(ii)) and on the Syndicated Loan (as defined in Section 7.01(g)(iii)), but excluding the principal amount of the Senior Notes and the Syndicated Loan.

(iii) *Parent Working Capital* means the Parent s and Parent Subsidiaries consolidated current assets (including cash, cash equivalents and short-term investments; provided, however that any cash received as a result of the exercise of outstanding Parent options or warrants after the date of this Agreement shall not be included for this determination) minus their consolidated current liabilities (not including current portion of long-term liabilities, short-term indebtedness or accrued interest) as shown on the Parent Closing Balance Sheet.

(iv) *Parent Working Capital Objective* is set forth in Section 2C.02(h)(iv) of the Parent Disclosure Letter.

(v) *Parent Working Capital Shortfall* means the positive amount, if any, by which the Parent Working Capital Objective exceeds Parent Working Capital as shown in the Final Parent Certificate.

(i) An example of Parent s initial calculation of Parent Working Capital and Parent Total Other Liabilities is set forth in Section 2C.02(i) of the Parent Disclosure Letter.

ARTICLE III-A

REPRESENTATIONS AND WARRANTIES OF PIHANA

Pihana hereby represents and warrants to Parent, Merger Sub and STT Communications that the statements contained in this Article III-A are true and correct except as set forth in the disclosure letter delivered by Pihana to Parent, Merger Sub and STT Communications concurrently with the execution of this Agreement (the *Pihana Disclosure Letter*). The Pihana Disclosure Letter shall be arranged according to specific sections in this Article III-A and any other section hereof where it is clear, upon a reading of such disclosure without any independent knowledge on the part of the reader regarding the matter disclosed, that the disclosure is intended to apply to such other section.

SECTION 3A.01 *Organization and Qualification.* Pihana is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and otherwise hold and operate its properties and other assets and to carry on its business as it is now being conducted and as currently proposed to be conducted, except where the failure to be so organized, existing or in good standing or to have such corporate power and authority has not had, and would not reasonably be expected to have, individually or in the aggregate, a Pihana Material Adverse Effect (as defined below). Pihana is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not reasonably be expected to have, individually or in the aggregate, a Pihana Material Adverse Effect. Section 3A.01 of the Pihana Disclosure Letter sets forth each jurisdiction where Pihana is qualified or licensed as a foreign corporation and each other jurisdiction in which Pihana owns, uses, licenses or leases real property or has employees or engages independent contractors. The term *Pihana Material Adverse Effect* means any event, change, circumstance or effect that is, or would be reasonably likely to have, either individually or in the

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aggregate, a materially adverse effect on the business, operations, condition (financial or otherwise), assets (tangible or intangible), liabilities, properties, or results of operations of Pihana and the Pihana Subsidiaries (as defined in Section 3A.03(a)), taken as a whole, except for any such events, changes, circumstances or effects primarily resulting from or arising in connection with (i) any changes in general economic or business conditions of the markets in which Pihana and its subsidiaries operate that do not disproportionately impact Pihana and the Pihana Subsidiaries taken as a whole, or (ii) any changes or events affecting the industry in which Pihana operates that do not disproportionately impact Pihana and the Pihana Subsidiaries, taken as a whole (it being understood that in any controversy concerning the applicability of the preceding exceptions, Pihana shall have the burden of proof with respect to the elements of such exceptions).

SECTION 3A.02 *Certificate of Incorporation and Bylaws*. Pihana has heretofore made available to Parent and STT Communications a complete and correct copy of (a) the certificate of incorporation and the bylaws of Pihana including all amendments thereto, (b) the minute books containing all consents, actions and meeting of the stockholders of Pihana and Pihana s board of directors and any committees thereof, and (c) the stock transfer books of Pihana setting forth all issuances or transfers of record of any capital stock of Pihana. Such certificate of incorporation and bylaws are in full force and effect. Pihana is not in violation of any of the provisions of its certificate of incorporation or bylaws. The corporate minute books, stock certificate books, stock registers and other corporate records of Pihana are complete and accurate, and the signatures appearing on all documents contained therein are the true or facsimile signatures of the persons purported to have signed the same.

SECTION 3A.03 *Pihana Subsidiaries*.

(a) Section 3A.03(a) of the Pihana Disclosure Letter sets forth: (i) the name of each corporation, partnership, limited liability company, joint venture or other entity in which Pihana has, directly or indirectly, an equity interest representing 50% or more of the capital stock thereof or other equity interests therein (individually, a *Pihana Subsidiary* and, collectively, the *Pihana Subsidiaries*); (ii) the number and type of outstanding equity securities of each Pihana Subsidiary and a list of the holders thereof; (iii) the jurisdiction of organization of each Pihana Subsidiary; (iv) the name of the officers and directors of each Pihana Subsidiary; and (v) the jurisdictions in which each Pihana Subsidiary is qualified or holds licenses to do business as a foreign corporation.

(b) Each Pihana Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Each Pihana Subsidiary is duly qualified or licensed to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its business or the ownership or leasing of its properties requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing has not had, and could not reasonably be expected to have, individually or in the aggregate, a Pihana Material Adverse Effect. Each Pihana Subsidiary has all requisite power and authority to carry on its business as it is now being conducted and as currently proposed to be conducted and to own, lease and otherwise use the assets and properties owned and used by it. Pihana has delivered to the Parent and STT Communications complete and accurate copies of the charter, bylaws or other organizational documents of each Pihana Subsidiary. No Pihana Subsidiary is in default under or in violation of any provision of its charter, bylaws or other organizational documents. All of the issued and outstanding shares of capital stock of each Pihana Subsidiary are duly authorized, validly issued, fully paid, nonassesable and free of preemptive rights. All shares of each Pihana Subsidiary are held of record or owned beneficially by either Pihana or another Pihana Subsidiary and are held or owned free and clear of any restriction on transfer (other than restrictions under applicable securities laws), claim, security interest, option, warrant, right, lien, call, commitment, equity or demand. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which Pihana or any Pihana Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of any Pihana Subsidiary. There are no outstanding stock appreciation, phantom stock or similar rights with respect to any Pihana Subsidiary. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of any Pihana Subsidiary.

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(c) Pihana does not control, directly or indirectly, or have any direct or indirect equity participation or similar interest in any corporation, partnership, limited liability company, joint venture, trust or other business association which is not a Pihana Subsidiary. There are no contractual obligations of Pihana to make any investment in (whether in the form of a loan, capital contribution or otherwise), any other person.

SECTION 3A.04 *Capitalization*.

(a) The authorized capital stock of Pihana consists of 183,524,985 shares of Common Stock, par value $0.001 per share, of which 50,000,000 shares are Class A Common Stock, par value $0.001 per share (the *Class A Common Stock*), and 133,524,985 shares are Class B Common Stock, par value $0.001 per share (the *Class B Common Stock* and together with the Class A Common Stock, the *Pihana Common Stock*), 5,000,000 shares of Pihana Series A Preferred Stock, 105,608,889 shares of Pihana Series B-1 Preferred Stock, and 17,921,147 shares of Series B-2 Preferred Stock, par value $0.001 per share (the *Pihana Series B-2 Preferred Stock* and together with the Pihana Series A Preferred Stock, the Pihana Series B-1 Preferred Stock, the *Pihana Preferred Stock*). As of the date of this Agreement, (i) 6,854,211 shares of Class A Common Stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and nonassesable, (ii) 27,916,096 shares of Class B Common Stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and nonassesable, and (iii) no shares of Pihana Common Stock are held in the treasury of Pihana and (iv) 10,196,400 shares of Pihana Common Stock are reserved for future issuance pursuant to outstanding options to purchase Pihana Common Stock issued by Pihana pursuant to the Pihana Stock Plan (as defined in Section 3A.04(b)) (*Pihana Options*). As of the date of this Agreement, (A) 5,000,000 shares of Pihana Series A Preferred Stock are issued and outstanding, (B) 80,189,964 shares of Pihana Series B-1 Preferred Stock are issued and outstanding, and (C) no shares of Pihana Series B-2 Preferred Stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and nonassesable. Each share of Pihana Preferred Stock is convertible into one share of Pihana Common Stock. There are no other shares of Pihana Preferred Stock outstanding. As of the date of this Agreement, the outstanding shares of Pihana Common Stock and Pihana Preferred Stock are owned of record as set forth in Section 3A.04(a) of the Pihana Disclosure Letter. Section 3A.04(a) of the Pihana Disclosure Letter also provides an accurate and complete description of the terms of each repurchase option or right of first refusal which is held by Pihana as of the date of this Agreement and to which any of such shares is subject.

(b) Pihana has reserved 13,229,693 shares of Pihana Common Stock for issuance under Pihana s 1999 Stock Option Plan (the *Pihana Stock Plan*) of which options to purchase 10,375,350 shares of Pihana Common Stock are outstanding as of the date of this Agreement. Section 3A.04(b) of the Pihana Disclosure Letter accurately sets forth with respect to each Pihana Option that is outstanding as of the date of this Agreement: (i) the name of the holder of such Pihana Option; (ii) the total number of shares of Pihana Common Stock that was originally subject to such Pihana Option; (iii) the number of shares of Pihana Common Stock that remain subject to such Pihana Option; (iv) the date on which such Pihana Option was granted and the term of such Pihana Option; (v) the vesting schedule and vesting commencement date for such Pihana Option; (vi) the exercise price per share of Pihana Common Stock purchasable under such Pihana Option; (vii) whether such Pihana Option has been designated an incentive stock option as defined in Section 422 of the Code; and (viii) the current employee or independent contractor status of the holder of such Pihana Option. No Pihana Option will by its terms require an adjustment in connection with the Combination, except as contemplated by this Agreement. Except as provided in Section 3A.04(b) of the Pihana Disclosure Letter, neither the consummation of transactions contemplated by this Agreement, nor any action taken or to be taken by Pihana in connection with such transactions, will result in (i) any acceleration of exercisability or vesting, whether or not contingent on the occurrence of any event after consummation of the Combination, in favor of any optionee under any Pihana Option; (ii) any additional benefits for any optionee under any Pihana Option; or (iii) the inability of Parent after the Effective Time to exercise any right or benefit held by Pihana prior to the Effective Time with respect to any shares of Pihana Common Stock previously issued upon exercise of a Pihana Option, including, without limitation, the right to repurchase an optionee s unvested shares on termination of such optionee s employment.

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(c) Pihana has reserved 4,587,384 shares of Pihana Common Stock for future issuance pursuant to the exercise of Pihana Warrants. Section 3A.04(c) of the Pihana Disclosure Letter sets forth, with respect to each Pihana Warrant issued to any person: (i) the name of the holder of such Pihana Warrant; (ii) the total number and type of shares of Pihana Stock that are subject to such Pihana Warrant; (iii) the exercise price per share of Pihana Stock purchasable under such Pihana Warrant; (iv) the total number of shares of Pihana Stock with respect to which such warrant is immediately exercisable; (v) the vesting schedule for such Pihana Warrant; and (vi) the term of such Pihana Warrant.

(d) Except as described in Section 3A.04(b) above or as set forth in Sections 3A.04(b) and 3A.04(c) of the Pihana Disclosure Letter, there are no options, warrants or other rights, agreements, arrangements or commitments of any character, whether or not contingent, relating to the issued or unissued capital stock of Pihana or obligating Pihana to issue or sell any share of capital stock of, or other equity interest in, Pihana. All shares of Pihana Stock so subject to issuance, upon issuance in accordance with the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and nonassesable. The holders of Pihana Options and Pihana Warrants have been or will be given, or shall have properly waived, any required notice of the Combination prior to the Effective Time, and all such rights, if any with respect to the Merger, will terminate at or prior to the Effective Time.

(e) Pihana does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of Pihana on any matter.

(f) Except as set forth in Section 3A.04(f) of the Pihana Disclosure Letter, all of the securities offered, sold or issued by Pihana (i) have been offered, sold or issued in compliance with the requirements of the Federal securities laws and any applicable state securities or blue sky laws and (ii) are not subject to any preemptive right, right of first refusal, right of first offer or right of rescission.

(g) Except as set forth in Section 3A.04(g) of the Pihana Disclosure Letter, Pihana has never repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities of Pihana or any Pihana Subsidiary, other than unvested securities in the ordinary course upon termination of employment or consultancy. There are no outstanding contractual obligations of Pihana to repurchase, redeem or otherwise acquire any share of capital stock of, or other equity interest in, Pihana. Except as set forth in Section 3A.04(g) of the Pihana Disclosure Letter, there are no stockholder agreements, voting trusts or other agreements or understandings to which Pihana is a party, or of which Pihana is aware, that (i) relate to the voting, registration or disposition of any securities of Pihana, (ii) grant to any person or group of persons the right to elect, or designate or nominate for election, a director to the board of directors of Pihana, or (iii) grant to any person or group of persons information rights.

(h) Pihana has received (i) all necessary waivers and consents from the holders of Pihana Preferred Stock to distribute the Aggregate Merger Consideration in accordance with Article II-A of this Agreement, and (ii) all necessary approvals from the holders of Pihana Preferred Stock for the Pihana Pacific Incentive Compensation Plan. Pihana will not suffer any adverse tax consequence as a result of obtaining the waiver referred to in clause (i).

(i) An updated Section 3A.04 of the Pihana Disclosure Letter reflecting changes permitted by this Agreement in the capitalization of Pihana between the date hereof and the Effective Time shall be delivered by Pihana to Parent on the fifth business day preceding the date of the Parent Stockholders Meeting (as defined in Section 6.01(a)).

(j) Pihana Stockholders receiving Parent Merger Shares each have substantial experience in evaluating and investing in private placement transactions of securities in companies similar to Parent so that they are each capable of evaluating the merits and risks of their respective investments in Parent and each has the capacity to protect their own interests. Each such Pihana Stockholder is an accredited investor within the meaning of SEC Rule 501 of Regulation D, as presently in effect.

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SECTION 3A.05 *Authority Relative to This Agreement*.

(a) Pihana has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Merger, the Combination and the other transactions contemplated by this Agreement. The execution and delivery of this Agreement by Pihana and the consummation by Pihana of the Merger, the Combination and the other transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of Pihana are necessary to authorize this Agreement or to consummate the Merger, the Combination and the other transactions contemplated by this Agreement (other than the filing and recordation of appropriate merger documents as required by the DGCL). This Agreement has been duly and validly executed and delivered by Pihana and, assuming the due authorization, execution and delivery by Parent, Merger Sub, i-STT and STT Communications, constitutes a legal, valid and binding obligation of Pihana, enforceable against Pihana in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors rights generally and subject, as to enforceability, to the effect of general principles of equity.

(b) Without limiting the generality of the foregoing, the board of directors of Pihana, at a meeting duly called and held, has unanimously (i) determined that the Merger, the Combination and the other transactions contemplated hereby are advisable, fair to, and in the best interests of, Pihana and its stockholders, (ii) approved the Merger and the Combination, this Agreement and the other transactions contemplated hereby in accordance with the provisions of the DGCL and Pihana s charter documents, (iii) directed that this Agreement be submitted to Pihana Stockholders for their adoption and (iv) resolved to recommend that Pihana Stockholders vote in favor of the adoption of this Agreement. The requisite vote of the Pihana Stockholders to adopt this Agreement has been received and is in full force and effect.

SECTION 3A.06 *No Conflict; Required Filings and Consents*.

(a) The execution and delivery of this Agreement by Pihana do not, and the performance of its obligations under this Agreement by Pihana will not, (i) conflict with or violate the certificate of incorporation or bylaws of Pihana or any Pihana Subsidiary, (ii) assuming that all consents, approvals, authorizations and other actions described in Section 3A.06(b) have been obtained and all filings and obligations described in Section 3A.06(b) have been made or complied with, conflict with or violate in any material respect any foreign or domestic (Federal, state or local) law, statute, ordinance, franchise, permit, concession, license, writ, rule, regulation, order, injunction, judgment or decree (*Law*) applicable to Pihana or any of the Pihana Subsidiaries or by which any property or asset of Pihana or any of the Pihana Subsidiaries is bound or affected, or (iii) conflict with, result in any material breach of or constitute a material default (or an event which with notice or lapse of time or both would become a default) under, require consent, approval or notice under, give to others any right of termination, amendment, acceleration or cancellation of, require any payment under, or result in the creation of a lien or other encumbrance on any property or asset of Pihana or any Pihana Subsidiary pursuant to, any material permit, franchise or other instrument to which Pihana or any Pihana Subsidiary is a party or by which any property or asset of Pihana or any Pihana Subsidiary is bound or affected.

(b) The execution and delivery of this Agreement by Pihana do not, and the performance of its obligations under this Agreement by Pihana will not, require any consent, approval, order, permit, or authorization from, or registration, notification or filing with, any domestic or foreign governmental, regulatory or administrative authority, agency or commission, any court, tribunal or arbitral body, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental authority (a *Governmental Entity*), except (i) for the filing and recordation of appropriate merger documents as required by the DGCL, and (ii) for such other consents, approvals, orders, permits, authorizations, registrations, notifications or filings, which if not obtained or made could not reasonably be expected, individually or in the aggregate, to prevent or materially delay the consummation of the transactions contemplated by this Agreement.

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SECTION 3A.07 *Permits; Compliance*.

(a) Pihana and each Pihana Subsidiary is in possession of all material franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for Pihana and each Pihana Subsidiary to own, lease and otherwise hold and operate its properties and other assets and to carry on its business as it is now being conducted and as currently proposed to be conducted (the *Pihana Permits*). All Pihana Permits are in full force and effect and will not be affected by the Closing and no suspension or cancellation of any Pihana Permit is pending or, to the knowledge of Pihana, threatened. Neither Pihana nor any Pihana Subsidiary has received any notice or other communication from any Governmental Entity regarding (i) any actual or possible violation of or failure to comply with any material term or requirement of any Pihana Permit, or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Pihana Permit.

(b) Neither Pihana nor any Pihana Subsidiary is in conflict with, or in default or violation of, in each case, in any material respect, (i) any Law applicable to Pihana or any Pihana Subsidiary or by which any material property or asset of Pihana or any Pihana Subsidiary is bound or affected, (ii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Pihana or any Pihana Subsidiary is a party or by which Pihana or any Pihana Subsidiary or any material property or asset of Pihana or any Pihana Subsidiary is bound or affected, or (iii) any Pihana Permit.

SECTION 3A.08 *Financial Statements*.

(a) True and complete copies of (i) the audited consolidated balance sheets of Pihana and the Pihana Subsidiaries as of December 31, 2000 and 2001, and the related audited consolidated statements of operations, consolidated changes in stockholders equity and consolidated cash flows for the years then ended, together with the related notes thereto (collectively referred to herein as the *Pihana Audited Financial Statements*), and (ii) the unaudited consolidated balance sheet of Pihana and the Pihana Subsidiaries as of June 30, 2002 (the *Pihana Reference Balance Sheet*), and the related unaudited consolidated statements of operations, consolidated changes in stockholders equity and consolidated cash flows for the six months ended June 30, 2002 (collectively referred to herein as the *Pihana Interim Financial Statements*), are attached as Section 3A.08(a) of the Pihana Disclosure Letter. The Pihana Audited Financial Statements and the Pihana Interim Financial Statements (including, in each case, any notes thereto) were prepared in accordance with United States generally accepted accounting principles (*GAAP*) applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by GAAP) and each present fairly, in all material respects, the consolidated financial position of Pihana and the Pihana Subsidiaries as at the respective dates thereof and the consolidated results of operations for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which were not and are not expected, individually or in the aggregate, to be material).

(b) Except as set forth in Section 3A.08(b) of the Pihana Disclosure Letter or as contemplated by this Agreement, Pihana and the Pihana Subsidiaries do not have any debts, liabilities or obligations of any nature (whether known or unknown, accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, or as a guarantor or otherwise) (*Pihana Liabilities*), other than (i) Pihana Liabilities recorded or reserved against in the Pihana Reference Balance Sheet, or Pihana Liabilities in existence as of June 30, 2002 and not required by GAAP to be recorded therein, (ii) current liabilities reflected in the Pihana Working Capital as shown on the Pihana Adjusted Calculation and incurred since June 30, 2002 in the ordinary course of business, or (iii) any other liabilities in an amount less than $100,000 individually or $500,000 in the aggregate which have been or are incurred in the ordinary course of business. Except as set forth in Section 3A.08(b) of the Pihana Disclosure Letter, as of the date of this Agreement, there are no outstanding warranty claims against Pihana.

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SECTION 3A.09 *Absence of Certain Changes or Events*. Since June 30, 2002, except as contemplated by or as disclosed in this Agreement, Pihana and the Pihana Subsidiaries have conducted their respective businesses only in the ordinary course and in a manner consistent with past practice and, since such date, there has not been any Pihana Material Adverse Effect.

SECTION 3A.10 *Absence of Litigation*. There is no litigation, suit, claim, action, proceeding or investigation pending or, to the knowledge of Pihana, threatened against Pihana or any Pihana Subsidiary, or any property or asset owned or used by Pihana or any Pihana Subsidiary or any person whose liability Pihana or any Pihana Subsidiary has or may have assumed, either contractually or by operation of Law, before any arbitrator or Governmental Entity (a *Pihana Legal Proceeding*) that could reasonably be expected, to (i) impair the operations of Pihana or any Pihana Subsidiary as currently conducted, including, without limitation, any claim of infringement of any intellectual property right, (ii) impair the ability of Pihana or any Pihana Subsidiary to perform its obligations under this Agreement or (iii) prevent, delay or make illegal the consummation of the transactions contemplated by this Agreement. Pihana is not a party to and has not received any written notice or threat (written or otherwise) of a claim or dispute that could reasonably be expected to result in a material Pihana Legal Proceeding. Neither Pihana nor any Pihana Subsidiary, the officers or directors thereof in their capacity as such, or any property or asset of Pihana or any Pihana Subsidiary is subject to any continuing order of, consent decree, settlement agreement or other similar written agreement with, or, to the knowledge of Pihana, continuing investigation by, any Governmental Entity, or any order, writ, judgment, injunction, decree, determination or award of any court, arbitrator or Governmental Entity. As of the date of this Agreement, neither Pihana nor any Pihana Subsidiary has any plans to initiate any Pihana Legal Proceeding against any third party.

SECTION 3A.11 *Employee Benefit Plans; Labor Matters*.

(a) Section 3A.11(a) of the Pihana Disclosure Letter lists (i) all employee benefit plans (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (*ERISA*)), and all bonus, stock option, stock purchase, stock appreciation right, restricted stock, phantom stock, incentive, deferred compensation, retiree medical, disability or life insurance, cafeteria benefit, dependent care, disability, director or employee loan, fringe benefit, sabbatical, supplemental retirement, severance or other benefit plans, programs or arrangements, and all employment, termination, severance or other contracts or agreements (whether formal or informal and whether in writing or not) to which Pihana or any Pihana Subsidiary is a party, with respect to which Pihana or any Pihana Subsidiary has any obligation or which are maintained, contributed to or sponsored by Pihana or any Pihana Subsidiary for the benefit of any current or former employee, officer or director of Pihana or any Pihana Subsidiary, (ii) each employee benefit plan for which Pihana or any Pihana Subsidiary could incur a material liability under Section 4069 of ERISA in the event such plan has been or were to be terminated, (iii) any plan in respect of which Pihana or any Pihana Subsidiary could incur liability under Section 4212(c) of ERISA, and (iv) any employment agreements, offer letters or other contracts, arrangements or understandings between Pihana or any Pihana Subsidiary and any employee of Pihana or any Pihana Subsidiary (whether legally enforceable or not, whether formal or informal and whether in writing or not) including, without limitation, any contracts, arrangements or understandings relating to a sale of Pihana (each, a *Pihana Plan*, and collectively, the *Pihana Plans*).

(b) Pihana has made available to Parent with a true and complete copy of each Pihana Plan (or a written summary where the Pihana Plan is not in writing), and (i) a copy of each trust or other funding arrangement, (ii) the current summary plan description and all subsequent summaries of material modifications, (iii) the three (3) most recent annual reports (Form 5500 series and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Pihana Plan, (iv) the most recently received Internal Revenue Service determination letter for each Pihana Plan intended to qualify under Section 401(a) (if applicable), (v) the most recently prepared actuarial report and financial statement in connection with each such Pihana Plan (if applicable), (vi) any correspondence with the Internal Revenue Service (other than relating to an application for a determination letter or other advance ruling regarding qualification under Section 401(a) of the Code or the Department of Labor with respect to each such Pihana Plan and (vii) each form of notice of grant and stock option agreement used to

document Pihana Options. Except as disclosed on Section 3A.11(a) of the Pihana Disclosure Letter, there are no other employee benefit plans, programs, arrangements or agreements, whether formal or informal, whether in writing or not, to which Pihana or any Pihana Subsidiary is a party, with respect to which Pihana or any Pihana Subsidiary has any obligation or which are maintained, contributed to or sponsored by Pihana or any Pihana Subsidiary for the benefit of any current or former employee, officer or director of Pihana or any Pihana Subsidiary that provide a material level of benefits. Neither Pihana nor any Pihana Subsidiary has an express or implied commitment, whether legally enforceable or not, (x) to create, incur liability with respect to, or cause to exist, any other employee benefit plan, program or arrangement, (y) to enter into any contract or agreement to provide compensation or benefits to any individual, or (z) to modify, change or terminate any Pihana Plan in a way that would materially increase the cost of providing benefits under the Pihana Plan, other than with respect to a modification, change or termination required by ERISA, the Code or other applicable Law.

(c) None of the Pihana Plans is a multiemployer plan (within the meaning of Section 3(37) or 4001(a)(3) of ERISA) (*Multiemployer Plan*) or a single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) for which Pihana or any Pihana Subsidiary could incur liability under Section 4063 or 4064 of ERISA (a *Single Employer Plan*). Except as provided in Section 3A.11(c) of the Pihana Disclosure Letter, each Pihana Plan is subject only to the Laws of the United States or a political subdivision thereof.

(d) Except as set forth in Section 3A.11(d) of the Pihana Disclosure Letter, none of the Pihana Plans provides for the payment of separation, severance, termination or similar benefits to any person or obligates Pihana or any Pihana Subsidiary to pay separation, severance, termination or similar-type benefits solely or partially as a result of any transaction contemplated by this Agreement or as a result of a change in ownership or control, within the meaning of such term under Section 280G of the Code. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any material payment (including, without limitation, severance, unemployment compensation, golden parachute, forgiveness of indebtedness or otherwise) becoming due under any Pihana Plan, (ii) materially increase any benefits otherwise payable under any Pihana Plan or other arrangement, (iii) result in the acceleration of the time of payment, vesting or funding of any benefits including, but not limited to, the acceleration of the vesting and exercisability of any Pihana Option, or (iv) affect in any material adverse respects any Pihana Plan s current treatment under any Laws including any Tax or social contribution Law. No Pihana Plan provides, or reflects or represents any material liability to provide health, disability, or life insurance benefits to any person following termination of employment for any reason, except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended (*COBRA*), other applicable statute, and Pihana is not obligated to provide to any employee (either individually or to employees as a group) or any other person that such employee or other person would be provided with health, disability, or life insurance benefits following termination of employment, except to the extent required by statute.

(e) Each Pihana Plan is now and always has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws, without limitation, ERISA and the Code. Each of Pihana and each Pihana Subsidiary has performed all obligations in all material respects required to be performed by it under, is not in any material respect in default under or in violation of, and has no knowledge of any material default or material violation by any party to, any Pihana Plan. No action, claim or proceeding is pending or, to the knowledge of Pihana, threatened with respect to any Pihana Plan (other than claims for benefits in the ordinary course or relating to qualified domestic relations orders described in Section 414(p) of the Code) and Pihana is not aware of any fact or event that exists that could be reasonably expected to give rise to any such action, claim or proceeding. Neither Pihana nor any person that is a member of the same controlled group as Pihana or under common control with Pihana within the meaning of Section 414 of the Code (each, an *ERISA Affiliate*) is subject to any material penalty or Tax with respect to any Pihana Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code. Each Pihana Plan can be amended, terminated or otherwise discontinued at any time without material liability to Parent, Pihana or any of their ERISA Affiliates (other than benefits already accrued, ordinary administration

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expenses, and the expenses associated with terminating the plan), other than contractual rights held by employees pursuant to employment agreements and option agreements each of which affirms an at will employment relationship. Neither Pihana nor any affiliate has, prior to the Effective Time and in any material respect, violated in any material respect any of the health care continuation requirements of COBRA, the requirements of the Family Medical Leave Act of 1993, the requirements of the Health Insurance Portability and Accountability Act of 1996, the requirements of the Women s Health and Cancer Rights Act of 1998, the requirements of the Newborns and Mothers Health Protection Act of 1996, or any amendment to each such act, or any similar provisions of state Law applicable to its employees.

(f) Each Pihana Plan intended to qualify under Section 401(a) or Section 401(k) of the Code and each trust intended to qualify under Section 501(a) of the Code (i) has received a favorable determination, opinion, notification or advisory letter from the Internal Revenue Service with respect to each such Pihana Plan as to its qualified status under the Code, including all amendments to the Code effected by the Tax Reform Act of 1986 and subsequent legislation, and no fact or event has occurred since the date of such determination letter or other letter from the Internal Revenue Service to adversely affect the qualified status of any such Pihana Plan or the exempt status of any such trust, or (ii) has remaining a period of time under applicable Treasury regulations or Internal Revenue Service pronouncements in which to apply for such a letter and make any amendments necessary to obtain a favorable determination as to the qualified status of each such Pihana Plan or take other actions needed to insure the tax-qualified status of that Pihana Plan.

(g) Neither Pihana nor any Pihana Subsidiary nor any ERISA Affiliate has incurred any material liability under, arising out of or by operation of Title IV of ERISA (other than liability for premiums to the Pension Benefit Guaranty Corporation arising in the ordinary course), including, without limitation, any liability in connection with (i) the termination or reorganization of any employee benefit plan subject to Title IV of ERISA or (ii) the withdrawal from any Multiemployer Plan or Single Employer Plan, and Pihana is unaware of any fact or event that exists that could be reasonably expected to give rise to any such material liability.

(h) Neither Pihana nor any Pihana Subsidiary has, since January 1, 1996, terminated, suspended, discontinued contributions to or withdrawn from any employee pension benefit plan subject to Title IV of ERISA, including, without limitation, any Multiemployer Plan. All material amounts of contributions, premiums or payments required to be paid to any Pihana Plan have been paid on or before their due dates. Except as would not reasonably be expected to individually or in the aggregate, have a Pihana Material Adverse Effect, all such contributions have been fully deducted for income tax purposes and no such deduction has been challenged or disallowed by any Governmental Entity and Pihana is unaware of any fact or event that exists that could give rise to any such challenge or disallowance.

(i) Except as set forth in Section 3A.11(i) of the Pihana Disclosure Letter, (i) neither Pihana nor any Pihana Subsidiary is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by Pihana or any Pihana Subsidiary or in Pihana s or any Pihana Subsidiary s business, and currently there are no organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit that would reasonably affect Pihana or any Pihana Subsidiary; (ii) there are no strikes, slowdowns or work stoppages pending or, to the knowledge of Pihana, threatened between Pihana or any Pihana Subsidiary and any of its employees, and neither Pihana nor any Pihana Subsidiary has experienced any such strike, slowdown or work stoppage within the past three years; (iii) neither Pihana nor any Pihana Subsidiary has breached or otherwise failed to comply in any material respect with the provisions of any collective bargaining or union contract and there are no grievances outstanding against Pihana or any Pihana Subsidiary under any such agreement or contract; (iv) Pihana and each Pihana Subsidiary have not engaged in any unfair labor practice, and there are no unfair labor practice complaints pending against Pihana or any Pihana Subsidiary before the National Labor Relations Board or any other Governmental Entity or any current union representation questions involving employees of Pihana or any Pihana Subsidiary; (v) Pihana and each Pihana Subsidiary are currently in compliance in all material respects with all applicable Laws relating to the employment of labor, including those related to wages, hours, worker classification (including the proper classification of independent contractors and consultants),

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collective bargaining, workers compensation and the payment and withholding of Taxes and other sums as required by the appropriate Governmental Entity and has withheld and paid to the appropriate Governmental Entity or is holding for payment not yet due to such Governmental Entity all amounts required to be withheld from employees of Pihana or any Pihana Subsidiary and is not liable for any arrears of wages, Taxes, penalties or other sums for failure to comply with any of the foregoing; (vi) Pihana and each Pihana Subsidiary has paid in full to all employees or adequately accrued for in accordance with GAAP consistently applied all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees; (vii) there is no claim with respect to payment of wages, salary, overtime pay, workers compensation benefits or disability benefits that has been asserted or threatened against Pihana or any Pihana Subsidiary or that is now pending before any Governmental Entity with respect to any person currently or formerly employed by Pihana or any Pihana Subsidiary; (viii) neither Pihana nor any Pihana Subsidiary is a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Entity relating to employees or employment practices; (ix) Pihana and each Pihana Subsidiary are in compliance in all material respects with all Laws and regulations relating to occupational safety and health Laws and regulations, and there is no charge or proceeding with respect to a violation of any occupational safety or health standards that has been asserted or is now pending or threatened with respect to Pihana or any Pihana Subsidiary; (x) Pihana and each Pihana Subsidiary are in compliance in all material respects with all Laws and regulations relating to discrimination in employment, and there is no charge of discrimination in employment or employment practices for any reason, including, without limitation, age, gender, race, religion or other legally protected category, which has been asserted or, to the knowledge of Pihana, threatened against Pihana or any Pihana Subsidiary or that is now pending before the United States Equal Employment Opportunity Commission or any other Governmental Entity; and (xi) each employee of Pihana and each Pihana Subsidiary who is not a citizen of the country in which he or she is located has all approvals, authorizations and papers necessary to work in the country in accordance with applicable Law.

(j) Section 3A.11(j) of the Pihana Disclosure Letter contains a true and complete list of (i) all individuals who serve as employees of or consultants to Pihana and each Pihana Subsidiary as of the date hereof, (ii) in the case of such employees, the position and base compensation to each payable to each such individual, and (iii) in the case of each such consultant, the consulting rate payable to such individual.

(k) To Pihana s knowledge, no employee of or consultant to Pihana or any Pihana Subsidiary has been injured in the workplace or in the course of his or her employment or consultancy, except for injuries which are covered by insurance or for which a claim has been made under worker s compensation or similar Laws.

(l) No employee or former employee of Pihana or any Pihana Subsidiary is owed any wages, benefits or other compensation for past services (other than wages, benefits and compensation accrued in the ordinary course of business during the current pay period and accrued vacation).

SECTION 3A.12 *Contracts*.

(a) Section 3A.12(a) of the Pihana Disclosure Letter lists (under the appropriate subsection) each of the following written or oral contracts and agreements of Pihana or any Pihana Subsidiary as of the date of this Agreement (such contracts and agreements being the *Pihana Material Contracts*):

(i) each contract and agreement for the purchase or lease of personal property with any supplier or for the furnishing of services to Pihana or any Pihana Subsidiary with payments greater than $50,000 per year;

(ii) all broker, exclusive dealing or exclusivity, distributor, dealer, manufacturer s representative, franchise, agency, sales promotion, market research, marketing, consulting and advertising contracts and agreements to which Pihana or any Pihana Subsidiary is a party or any other contract that compensates any person based on any sales by Pihana or any Pihana Subsidiary that is not cancelable (without penalty) upon 30 days notice;

(iii) all leases and subleases of real property;

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(iv) all contracts and agreements relating to indebtedness for borrowed money of Pihana or any Pihana Subsidiary, including any contracts and agreements in which Pihana or any Pihana Subsidiary is a guarantor of indebtedness;

(v) all contracts and agreements with any Governmental Entity to which Pihana or any Pihana Subsidiary is a party;

(vi) all contracts containing confidentiality requirements (including all nondisclosure agreements);

(vii) all contracts and agreements between or among Pihana or any Pihana Subsidiary and any stockholder of Pihana or any Pihana Subsidiary or any affiliate of such person;

(viii) all contracts and agreements relating to the voting and any rights or obligations of a stockholder of Pihana or any Pihana Subsidiary;

(ix) all contracts to manufacture for, supply to or distribute to any third party any products or components;

(x) all contracts regarding the acquisition, issuance or transfer of any securities and each contract affecting or dealing with any securities of Pihana or any Pihana Subsidiary, including, without limitation, any restricted stock agreements or escrow agreements;

(xi) all contracts providing for indemnification of any officer, director, employee or agent of Pihana or any Pihana Subsidiary;

(xii) all contracts related to or regarding the performance of consulting, advisory or other services or work of any type by any third party (other than employees);

(xiii) all other contracts that have a term of more than 60 days and that may not be terminated by Pihana or any Pihana Subsidiary, without penalty, within 30 days after the delivery of a termination notice by Pihana or any Pihana Subsidiary;

(xiv) any agreement of Pihana or any Pihana Subsidiary that is terminable upon or prohibits assignment or a change of ownership or control of Pihana;

(xv) all other contracts and agreements, whether or not made in the ordinary course of business, that are reasonably expected to result in an exchange of consideration with an aggregate value greater than $50,000, either during the year ending December 31, 2002 or 2003; and

(xvi) any agreement of guarantee, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any person.

(b) Each Pihana Material Contract (i) is valid and binding on Pihana or a Pihana Subsidiary, as the case may be, and, on the other parties thereto, and is in full force and effect, and (ii) except as set forth on Section 3A.06 of the Pihana Disclosure Letter, upon consummation of the transactions contemplated by this Agreement, shall continue in full force and effect without penalty, right of termination that would not have otherwise existed but for the transactions contemplated by this Agreement, change to mutual terms or other adverse consequence. Neither Pihana nor any Pihana Subsidiary is in material breach or material violation of, or material default under, any Pihana Material Contract and, to the knowledge of Pihana, no other party to any Pihana Material Contract is in material breach or material violation thereof or default thereunder.

(c) Pihana has delivered to Parent and STT Communications accurate and complete copies of all Pihana Material Contracts identified in Section 3A.12(a) of the Pihana Disclosure Letter, including all amendments thereto. Section 3A.12(a) of the Pihana Disclosure Letter provides an accurate description of the terms of each Pihana Material Contract that is not in written form.

(d) Except as set forth in Section 3A.12(d) of the Pihana Disclosure Letter, to Pihana s knowledge, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time)

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will, or would be reasonably be expected to, (i) result in a material breach or material violation of, or material default under, any Pihana Material Contract, (ii) give any entity the right to declare a default, seek damages or exercise any other remedy under any Pihana Material Contract, (iii) give any entity the right to accelerate the maturity or performance of any Pihana Material Contract or (iv) give any entity the right to cancel, terminate or modify any Pihana Material Contract.

SECTION 3A.13 *Environmental Matters*.

(a) To the best of Pihana s knowledge, Pihana and each Pihana Subsidiary (i) is in compliance with all applicable Environmental Laws (as defined below), (ii) holds all Environmental Permits (as defined below) necessary to conduct Pihana s or each Pihana Subsidiary s business and (iii) is in compliance with their respective Environmental Permits.

(b) To the best of Pihana s knowledge, neither Pihana nor any Pihana Subsidiary has released and, to the knowledge of Pihana, no other person has released Hazardous Materials (as defined below) on any real property owned or leased by Pihana or any Pihana Subsidiary or, during their ownership or occupancy of such property, on any property formerly owned or leased by Pihana or any Pihana Subsidiary.

(c) Neither Pihana nor any Pihana Subsidiary has received any written request for information, or been notified that it is a potentially responsible party, under CERCLA (as defined below) or any similar Law of any state, locality or any other jurisdiction. Neither Pihana nor any Pihana Subsidiary has entered into or agreed to any consent decree or order or is subject to any judgment, decree or judicial order relating to compliance with Environmental Laws, Environmental Permits or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials and, to the knowledge of Pihana, no investigation, litigation or other proceeding is pending or threatened in writing with respect thereto.

(d) None of the real property currently or formerly owned or leased by Pihana or any Pihana Subsidiary is listed or, to the knowledge of Pihana, proposed to be listed on the National Priorities List under CERCLA, as updated through the date of this Agreement, or any similar list of sites in the United States or any other jurisdiction requiring investigation or cleanup.

For purposes of this Agreement:

CERCLA means the U.S. Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date hereof.

Environmental Laws means any Federal, state or local statute, law, ordinance, regulation, rule, code or order of the United States, or any other jurisdiction and any enforceable judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to pollution or protection of the environment or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials, as in effect as of the date of this Agreement.

Environmental Permits means any permit, approval, identification number, license and other authorization required under any applicable Environmental Law.

Hazardous Materials means (i) any petroleum, petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials or polychlorinated biphenyls or (ii) any chemical, material or substance defined or regulated as toxic or hazardous or as a pollutant or contaminant or waste under any applicable Environmental Law.

SECTION 3A.14 *Intellectual Property*. To the best of their knowledge after reasonable inquiry, Pihana and the Pihana Subsidiaries have sufficient title and ownership of or license to all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for their

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businesses as now conducted without any conflict with or infringement of the rights of others, except for such items as have yet to be conceived or developed or that are expected to be available for licensing on reasonable terms from third parties. Section 3A.14 of the Pihana Disclosure Letter contains a complete list of licenses, registered copyrights and trademarks, patents, trademark and patent registrations or applications, as the case may be, of Pihana and the Pihana Subsidiaries. There are no outstanding options, licenses, or agreements of Pihana or any Pihana Subsidiary of any kind relating to the foregoing, nor are Pihana or the Pihana Subsidiaries bound by or party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other person or entity, except, in either case, for standard end-user, object code, internal-use software license and support/maintenance agreements. Pihana and the Pihana Subsidiaries have not received any communications alleging that they have violated or, by conducting their businesses as proposed, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity. Pihana and the Pihana Subsidiaries are not aware that any of their employees are obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of Pihana s and the Pihana Subsidiaries businesses. Neither the execution nor delivery of this Agreement, nor the carrying on of Pihana s and the Pihana Subsidiaries businesses by the employees, will, to the best of Pihana s and the Pihana Subsidiaries knowledge after reasonable inquiry, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

SECTION 3A.15 *Taxes*.

(a) All Tax (as defined below) returns, statements, reports, declarations and other forms and documents (including without limitation estimated Tax returns and reports and material information returns and reports) required to be filed with any Tax Authority (as defined below) on or before the Closing with respect to any Taxable (as defined below) period ending on or before the Closing, by or on behalf of Pihana or any Pihana Subsidiary (collectively, *Pihana Tax Returns* and individually, a *Pihana Tax Return*), have been or will be completed and filed when due (including any extensions of such due date) and all amounts shown due on such Pihana Tax Returns on or before the Effective Time have been or will be paid on or before such date (except to the extent that a reserve for Taxes has been reflected on the Pihana Interim Financial Statements in accordance with GAAP). The Pihana Interim Financial Statements (i) fully accrue all actual and contingent liabilities for Taxes (as defined below) with respect to all periods through June 30, 2002 and Pihana has not and will not incur any Tax liability in excess of the amount reflected (excluding any amount thereof that reflects timing differences between the recognition of income for purposes of GAAP and for Tax purposes) on the Pihana Reference Balance Sheet included in the Pihana Interim Financial Statements with respect to such periods, and (ii) properly accrues in accordance with GAAP all material liabilities for Taxes payable after June 30, 2002, with respect to all transactions and events occurring on or prior to June 30, 2002. All information set forth in the notes to the Pihana Interim Financial Statements relating to Tax matters is true, complete and accurate in all material respects. Pihana has not incurred any material Tax liability since June 30, 2002 other than in the ordinary course of business and Pihana has made adequate provisions for all Taxes since that date in accordance with GAAP on at least a quarterly basis. The adjusted basis of Pihana s assets exceed the sum of its liabilities. None of the Pihana Subsidiaries (other than any of such entities that are organized under the laws of a State of the United States) has either current or accumulated earnings and profits within the meaning of Section 312 of the Code.

(b) Pihana has withheld and paid to the applicable financial institution or Tax Authority all amounts required to be withheld. To the knowledge of Pihana, no Pihana Tax Returns filed with respect to Taxable years through the Taxable year ended December 31, 2001 in the case of the United States, have been examined and closed. Pihana (or any member of any affiliated or combined group of which Pihana has been a member) has not granted any extension or waiver of the limitation period applicable to any Pihana Tax Returns that is still in effect and there is no material claim, audit, action, suit, proceeding, or (to the

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knowledge of Pihana) investigation now pending or threatened against or with respect to Pihana in respect of any Tax or assessment. No notice of deficiency or similar document of any Tax Authority has been received by Pihana, and there are no liabilities for Taxes (including liabilities for interest, additions to Tax and penalties thereon and related expenses) with respect to the issues that have been raised (and are currently pending) by any Tax Authority that could, if determined adversely to Pihana, materially and adversely affect the liability of Pihana for Taxes. There are no liens for Taxes (other than for current Taxes not yet due and payable) upon the assets of Pihana. Pihana has never been a member of an affiliated group of corporations, within the meaning of Section 1504 of the Code other than a group of which Pihana is the common parent. Pihana is in full compliance with all the terms and conditions of any Tax exemption or other Tax-sparing agreement or order of a foreign government, and the consummation of the Merger will not have any adverse effect on the continued validity and effectiveness of any such Tax exemption or other Tax-sparing agreement or order. Neither Pihana nor any person on behalf of Pihana has entered into or will enter into any agreement or consent pursuant to the collapsible corporation provisions of Section 341(f) of the Code (or any corresponding provision of state, local or foreign income tax Law) or agreed to have Section 341(f)(2) of the Code (or any corresponding provision of state, local or foreign income tax Law) apply to any disposition of any asset owned by Pihana. None of the assets of Pihana is property that Pihana is required to treat as being owned by any other person pursuant to the so-called safe harbor lease provisions of former Section 168(f)(8) of the Code. None of the assets of Pihana directly or indirectly secures any debt the interest on which is tax exempt under Section 103(a) of the Code. None of the assets of Pihana is tax-exempt use property within the meaning of Section 168(h) of the Code. Pihana has not made and will not make a deemed dividend election under Treas. Reg. §1.1502-32(f)(2) or a consent dividend election under Section 565 of the Code. Pihana has never been a party (either as a distributing corporation, a distributed corporation or otherwise) to any transaction intended to qualify under Section 355 of the Code or any corresponding provision of state Law. Pihana has not participated in (and will not participate in) an international boycott within the meaning of Section 999 of the Code. Except as set forth in Section 3A.15(b) of the Pihana Disclosure Letter, Pihana (other than any non-United States Subsidiaries of Pihana) does not have and has not had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States of America and such foreign country and Pihana has not engaged in a trade or business within any foreign country. Pihana has never elected to be treated as an S-corporation under Section 1362 of the Code or any corresponding provision of Federal or state Law. All material elections with respect to Pihana s Taxes made during the fiscal years ending December 31, 1999, 2000 and 2001 are reflected on Pihana s Tax Returns for such periods, copies of which have been provided to Parent. After the date of this Agreement, no material election with respect to Taxes will be made without the prior written consent of Parent, which consent will not be unreasonably withheld or delayed. Pihana is not party to any joint venture, partnership, or other arrangement or contract which could be treated as a partnership for Federal income tax purposes. Pihana is not currently and never has been subject to the reporting requirements of Section 6038A of the Code. Except as provided in Section 3A.15(b) of the Pihana Disclosure Letter, there is no agreement, contract or arrangement to which Pihana is a party that could, individually or collectively, result in the payment of any amount that would not be deductible by reason of Sections 280G (as determined without regard to Section 280G(b)(4)), 162 (other than 162(a)) or 404 of the Code. Pihana is not a party to or bound by any Tax indemnity, Tax sharing or Tax allocation agreement (whether written or unwritten or arising under operation of Federal Law as a result of being a member of a group filing consolidated Pihana Tax Returns, under operation of certain state Laws as a result of being a member of a unitary group, or under comparable Laws of other states or foreign jurisdictions) that includes a party other than Pihana nor does Pihana owe any amount under any such agreement. Pihana has previously made available to Parent and i-STT true and correct copies of all income, franchise, and sales Pihana Tax Returns, and, as reasonably requested by Parent, prior to the date hereof, presently existing information statements and reports. Pihana is not, and has not been, a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code, and will not be a United States real property holding corporation as of the Closing Date. Except as provided in Section 3A.15(b) of the Pihana Disclosure Letter, Pihana has not been and will not be required to include any material adjustment in Taxable income for any Tax period (or portion thereof)

pursuant to Section 481 or 263A of the Code or any comparable provision under state or foreign Tax Laws as a result of transactions, events or accounting methods employed prior to the Merger.

(c) For purposes of this Agreement, the following terms have the following meanings: *Tax* (and, with correlative meaning, *Taxes* and *Taxable*) means any and all taxes including, without limitation, (i) any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, value added, net worth, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Entity responsible for the imposition of any such tax (domestic or foreign) (a *Tax Authority*), (ii) any liability for the payment of any amounts of the type described in (i) as a result of being a member of an affiliated, consolidated, combined or unitary group for any taxable period or as the result of being a transferee or successor thereof and (iii) any liability for the payment of any amounts of the type described in (i) or (ii) as a result of any express or implied obligation to indemnify any other person. As used in this Section 3A.15, the term Pihana means Pihana, any Pihana Subsidiaries and any entity included in, or required under GAAP to be included in, any of the Pihana Audited Financial Statements or the Pihana Interim Financial Statements.

(d) In relation to goods and services tax and/or value-added or other similar tax, Pihana (i) has been duly registered and is a taxable person; (ii) has complied, in all respects, with all statutory requirements, orders, provisions, directions or conditions; (iii) maintains complete, correct and up to date records as is required by the applicable legislation; and (iv) has not been required by the relevant authorities of customs and excise to give security.

SECTION 3A.16 *Assets; Absence of Liens and Encumbrances*. Pihana and each Pihana Subsidiary own, lease or have the legal right to use all of the assets, properties and rights of every kind, nature, character and description, including, without limitation, real property and personal property (other than intellectual property, which is covered by Section 3A.14), used in the conduct of the business of Pihana or such Pihana Subsidiary or otherwise owned or leased by Pihana or such Pihana Subsidiary and, with respect to contract rights, is a party to and enjoys the right to the benefits of all material contracts, agreements and other arrangements used by Pihana or such Pihana Subsidiary in or relating to the conduct of the business of Pihana and each Pihana Subsidiary (all such properties, assets and contract rights being the *Pihana Assets*). Pihana and each Pihana Subsidiary have good and marketable title to, in the case of real property Pihana Assets, or, in the case of leased or subleased Pihana Assets, valid and subsisting leasehold interests in, all the Pihana Assets, or, in the case of personal property, title to, free and clear of all mortgages, liens, pledges, charges, claims, defects of title, restrictions, security interests or encumbrances of any kind or character (*Liens*) except for (x) Liens for current Taxes not yet due and payable, and (y) Liens that have arisen in the ordinary course of business and that do not, individually or in the aggregate, materially detract from the value, or materially interfere with the present or contemplated use, of the Pihana Assets subject thereto or affected thereby. The equipment of Pihana and the Pihana Subsidiaries used in the operations of their business is, taken as a whole, in good operating condition and repair, ordinary wear and tear excepted.

SECTION 3A.17 *Owned Real Property*. Pihana and the Pihana Subsidiaries do not own any real property.

SECTION 3A.18 *Certain Interests*.

(a) No holder of greater than 1% of the voting power of Pihana or its affiliates or any officer or director of Pihana or any Pihana Subsidiary and, to the knowledge of Pihana, no immediate relative or spouse (or immediate relative of such spouse) who resides with, or is a dependent of, any such officer or director:

(i) has any direct or indirect financial interest in any creditor, competitor, supplier manufacturer, agent, representative, distributor or customer of Pihana or any Pihana Subsidiary; provided, however,

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that the ownership of securities representing no more than 1% of the outstanding voting power of any creditor, competitor, supplier manufacturer, agent, representative, distributor or customer, and which are listed on any national securities exchange or traded actively in the national over-the-counter market, shall not be deemed to be a financial interest as long as the person owning such securities has no other connection or relationship with such creditor, competitor, supplier, manufacturer, agent, representative, distributor or customer;

(ii) owns, directly or indirectly, in whole or in part, or has any other interest in, any tangible or intangible property that Pihana or any Pihana Subsidiary uses in the conduct of its business (except for any such ownership or interest resulting from the ownership of securities in a public company);

(iii) has any claim or cause of action against Pihana or any Pihana Subsidiary other than claims arising out of employment agreements disclosed in the Pihana Disclosure Letter; or

(iv) has outstanding any indebtedness to Pihana or any Pihana Subsidiary.

(b) Except for the payment of employee compensation in the ordinary course of business, consistent with past practice, neither Pihana nor any Pihana Subsidiary has any liability or any other obligation of any nature whatsoever to any Pihana Stockholder or any affiliate thereof or to any officer or director of Pihana or any Pihana Subsidiary or, to the knowledge of Pihana, to any immediate relative or spouse (or immediate relative of such spouse) of any such officer or director.

SECTION 3A.19 *Insurance Policies*. Section 3A.19 of the Pihana Disclosure Letter sets forth (i) a true and complete list of all insurance policies to which Pihana or any Pihana Subsidiary is a party or is a beneficiary or named insured as of the date of this Agreement and (ii) any material claims made thereunder or made under any other insurance policy within the three years ended on the date of this Agreement. True and complete copies of all such policies have been made available to Parent and STT Communications. All premiums due on such policies as of the date of this Agreement have been paid, and Pihana and each Pihana Subsidiary is otherwise in compliance with the terms of such policies. Neither Pihana nor any Pihana Subsidiary has failed to give any notice or present any claim under any such policy in a timely fashion, except where such failure would not prejudice Pihana s or any Pihana Subsidiary s ability to make a claim. Such insurance to the date hereof has been maintained in full force and effect and not been canceled or changed, except to extend the maturity dates thereof. Neither Pihana nor any Pihana Subsidiary has received any notice or other communication regarding any actual or possible (i) cancellation or threatened termination of any insurance policy, (ii) refusal of any coverage or rejection of any claim under any insurance policy or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy.

SECTION 3A.20 *Restrictions on Business Activities*. There is no agreement, commitment, judgment, injunction, order or decree binding upon Pihana or any Pihana Subsidiary or to which Pihana or any Pihana Subsidiary is a party which has or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice material to Pihana or any Pihana Subsidiary, any acquisition of property by Pihana or any Pihana Subsidiary or the conduct of business by Pihana or any Pihana Subsidiary as currently conducted or as proposed to be conducted.

SECTION 3A.21 *Brokers*. Except for IRG Limited, acting through its relevant subsidiaries (*IRG*), no broker, finder or investment banker is entitled to any brokerage, finder s or other fee or commission in connection with the origination, negotiation or execution of this Agreement or the consummation of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Pihana or any Pihana Subsidiary. Pihana has heretofore furnished to Parent and STT Communications a complete and correct copy of all agreements between Pihana and IRG pursuant to which such advisor would be entitled to any payment in relation to the transactions contemplated by this Agreement. Further, any post-Closing obligation to IRG not included in the calculation of the Pihana Cash Balance or the Pihana Working Capital shall not exceed $500,000.

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SECTION 3A.22 *State Takeover Statutes*. The board of directors of Pihana has taken all action necessary to ensure that any restrictions on business combinations contained in the DGCL will not apply to the Merger, the Combination and the other transactions contemplated by this Agreement. No other fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulation or any anti-takeover provision in Pihana s certificate of incorporation or bylaws is, or at the Effective Time will be, applicable to Pihana, the shares of Pihana Stock, the Merger, the Combination or the other transactions contemplated by this Agreement.

SECTION 3A.23 *Customers and Suppliers*. Section 3A.23 of the Pihana Disclosure Letter contains (i) a list of the twenty largest customers of Pihana and the Pihana Subsidiaries, taken as a whole (the *Pihana Top 20 Customers*), based on monthly recurring revenue for the six month period ended August 30, 2002 and (ii) a list of customers that are expected, as of the date of this Agreement, to represent the Pihana Top 20 Customers based on monthly recurring revenue for the six months ending February 28, 2003. No customer listed on Section 3A.23 of the Pihana Disclosure Letter has, within the twelve months prior to the date hereof, cancelled or otherwise terminated, or made any unresolved threat to cancel or terminate, its relationship with Pihana or any Pihana Subsidiary, or decreased materially its usage of Pihana s or any Pihana Subsidiary s services or products. No material supplier of Pihana or any Pihana Subsidiary has cancelled or otherwise terminated any contract with Pihana prior to the expiration of the contract term, or made any threat to Pihana or any Pihana Subsidiary to cancel, reduce the supply or otherwise terminate its relationship with Pihana or any Pihana Subsidiary. Neither Pihana nor any Pihana Subsidiary has (i) materially breached (so as to provide a benefit to Pihana that was not intended by the parties) any material agreement with or (ii) engaged in any fraudulent conduct with respect to, any customer or supplier of Pihana or any Pihana Subsidiary.

SECTION 3A.24 *Accounts Receivable; Bank Accounts*. All accounts receivable reflected in the financial or accounting records of Pihana and the Pihana Subsidiaries that have arisen since the date of Pihana Reference Balance Sheet are valid receivables subject to no setoffs or counterclaims and are, to the knowledge of Pihana, current and collectible, net of a reserve for bad debts in an amount proportionate to the reserve shown on the Pihana Reference Balance Sheet. Section 3A.24 of the Pihana Disclosure Letter describes each account maintained by or for the benefit of Pihana or any Pihana Subsidiary at any bank or other financial institution.

SECTION 3A.25 *Powers of Attorney*. There are no outstanding powers of attorney executed on behalf of Pihana or any Pihana Subsidiary.

SECTION 3A.26 *Offers*. Pihana has suspended or terminated, and has the legal right to terminate or suspend, all negotiations and discussions of any acquisition, merger, consolidation or sale of all substantially all of the assets of Pihana and the Pihana Subsidiaries, taken as a whole, with parties other than Parent or STT Communications.

SECTION 3A.27 *Warranties*. No product or service manufactured, sold, leased, licensed or delivered by Pihana or any Pihana Subsidiary is subject to any guaranty, warranty, right of return, right of credit or other indemnity other than (i) the applicable standard terms and conditions of sale or lease of Pihana or the appropriate Pihana Subsidiary, which are set forth in Section 3A.27 of the Pihana Disclosure Letter and (ii) manufacturers warranties for which neither Pihana nor any Pihana Subsidiary has any liability. Section 3A.27 of the Pihana Disclosure Letter sets forth the aggregate expenses incurred by Pihana and the Pihana Subsidiaries in fulfilling their obligations under their guaranty, warranty, right of return and indemnity provisions during each of the fiscal years and the interim period covered by the Pihana Audited Financial Statements and the Pihana Interim Financial Statements and neither Pihana nor any Pihana Subsidiary knows of any reason why such expenses should significantly increase as a percentage of sales in the future.

SECTION 3A.28 *No Misstatements*. No representation or warranty made by Pihana in this Agreement, the Pihana Disclosure Letter or any certificate deliverable pursuant to the terms hereof contains or will contain any untrue statement of a material fact, or omits, or will omit, when taken as a whole, to state a material fact,

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necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

ARTICLE III-B

REPRESENTATIONS AND WARRANTIES OF STT COMMUNICATIONS AND i-STT

STT Communications and i-STT hereby jointly represent and warrant to Parent, Merger Sub and Pihana that the statements contained in this Article III-B are true and correct except as set forth in the disclosure letter delivered by STT Communications to Parent, SP Sub and Pihana concurrently with the execution of this Agreement (the *i-STT Disclosure Letter*). The i-STT Disclosure Letter shall be arranged according to specific sections in this Article III-B and any other section hereof where it is clear, upon a reading of such disclosure without any independent knowledge on the part of the reader regarding the matter disclosed, that the disclosure is intended to apply to such other section.

SECTION 3B.01 *Organization and Qualification*. STT Communications is a corporation duly organized, validly existing and in good standing under the laws of the Republic of Singapore (*Singapore Law*). i-STT is a corporation duly organized, validly existing and in good standing under Singapore Law and has all requisite corporate power and authority to own, lease and otherwise hold and operate its properties and other assets and to carry on its business as it is now being conducted and as currently proposed to be conducted, except where the failure to be so organized, existing or in good standing or to have such corporate power and authority has not had, and would not reasonably be expected to have, individually or in the aggregate, a i-STT Material Adverse Effect. i-STT is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not reasonably be expected to have, individually or in the aggregate; a i-STT Material Adverse Effect. Section 3B.01 of the i-STT Disclosure Letter sets forth each jurisdiction where i-STT is qualified or licensed as a foreign corporation and each other jurisdiction in which i-STT owns, uses, licenses or leases real property or has employees or engages independent contractors. The term *i-STT Material Adverse Effect* means any event, change, circumstance or effect that is, or would be reasonably likely to, have either individually or in the aggregate, a materially adverse effect on the business, operations, condition (financial or otherwise), assets (tangible or intangible), liabilities, properties, or results of operations of i-STT and the i-STT Subsidiaries (as defined in Section 3B.03(a)), taken as a whole, except for any such events, changes, circumstances or effects primarily resulting from or arising in connection with (i) any changes in general economic or business conditions of the markets in which i-STT and the i-STT Subsidiaries operate that do not disproportionately impact i-STT and the i-STT Subsidiaries taken as a whole, or (ii) any changes or events affecting the industry in which i-STT operates that do not disproportionately impact i-STT and the i-STT Subsidiaries, taken as a whole (it being understood that in any controversy concerning the applicability of the preceding exceptions, STT Communications shall have the burden of proof with respect to the elements of such exceptions).

SECTION 3B.02 *Certificate of Incorporation and Bylaws*. i-STT has heretofore made available to Parent and Pihana a complete and correct copy of (a) the memorandum of association and articles of association of i-STT including all amendments thereto, (b) the minute books containing all consents, actions and meeting of the stockholders of i-STT and i-STT s board of directors and any committees thereof, and (c) the stock transfer books of i-STT setting forth all issuances or transfers of record of any capital stock of i-STT. Such memorandum of association and articles of association are in full force and effect. Neither STT Communications nor i-STT is in violation of any of the provisions of their respective memorandum of association and articles of association. The corporate minute books, stock certificate books, stock registers and other corporate records of i-STT are complete and accurate, and the signatures appearing on all documents contained therein are the true or facsimile signatures of the persons purported to have signed the same.

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SECTION 3B.03 *i-STT Subsidiaries*.

(a) Section 3B.03(a) of the i-STT Disclosure Letter sets forth: (i) the name of each corporation, partnership, limited liability company, joint venture or other entity in which i-STT has, directly or indirectly, an equity interest representing 50% or more of the capital stock thereof or other equity interests therein (individually, a *i-STT Subsidiary* and, collectively, the *i-STT Subsidiaries*); (ii) the number and type of outstanding equity securities of each i-STT Subsidiary and a list of the holders thereof; (iii) the jurisdiction of organization of each i-STT Subsidiary; (iv) the name of the officers and directors of each i-STT Subsidiary; and (v) the jurisdictions in which each i-STT Subsidiary is qualified or holds licenses to do business as a foreign corporation.

(b) Each i-STT Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Each i-STT Subsidiary is duly qualified or licensed to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its business or the ownership or leasing of its properties requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing has not had, and could not reasonably be expected to have, individually or in the aggregate, a i-STT Material Adverse Effect. Each i-STT Subsidiary has all requisite power and authority to carry on its business as it is now being conducted and as currently proposed to be conducted and to own, lease and otherwise use the assets and properties owned and used by it. i-STT has delivered to the Parent and Pihana complete and accurate copies of the charter, bylaws or other organizational documents of each i-STT Subsidiary. No i-STT Subsidiary is in default under or in violation of any provision of its charter, bylaws or other organizational documents. All of the issued and outstanding shares of capital stock of each i-STT Subsidiary are duly authorized, validly issued, fully paid, nonassesable and free of preemptive rights. All shares of each i-STT Subsidiary are held of record or owned beneficially by either i-STT or another i-STT Subsidiary and are held or owned free and clear of any restriction on transfer (other than restrictions under applicable securities laws), claim, security interest, option, warrant, right, lien, call, commitment, equity or demand. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which i-STT or any i-STT Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of any i-STT Subsidiary. There are no outstanding stock appreciation, phantom stock or similar rights with respect to any i-STT Subsidiary. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of any i-STT Subsidiary.

(c) i-STT does not control, directly or indirectly, or have any direct or indirect equity participation or similar interest in any corporation, partnership, limited liability company, joint venture, trust or other business association which is not a i-STT Subsidiary. There are no contractual obligations of i-STT to provide funds to, or make any investment in (whether in the form of a loan, capital contribution or otherwise), any other person, other than as contemplated by this Agreement and the Securities Purchase Agreement (as defined in Section 7.01(g)(iv)).

SECTION 3B.04 *Capitalization*.

(a) The authorized capital stock of i-STT consists of 200,000,000 ordinary shares, par value One Singapore Dollar (S$1.00) per share (the *i-STT Stock*). As of the date hereof, 54,000,000 ordinary shares of i-STT Stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and nonassesable. As of the date hereof, the outstanding shares of i-STT Stock are owned beneficially and of record by STT Communications.

(b) There are no options, warrants or other rights, agreements, arrangements or commitments of any character, whether or not contingent, relating to the issued or unissued capital stock of i-STT or obligating i-STT to issue or sell any share of capital stock of, or other equity interest in, i-STT.

(c) i-STT does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of i-STT on any matter.

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(d) All of the securities offered, sold or issued by i-STT (i) have been offered, sold or issued in compliance with the requirements of all applicable securities laws and (ii) are not subject to any preemptive right, right of first refusal, right of first offer or right of rescission.

(e) i-STT has never repurchased, redeemed or otherwise reacquired any shares of capital stock or other securities of i-STT or any i-STT Subsidiary.

SECTION 3B.05 *Authority Relative to This Agreement*.

(a) STT Communications and i-STT have all necessary corporate power and authority to execute and deliver this Agreement, to perform their obligations hereunder and to consummate the Stock Purchase, the Combination and the other transactions contemplated by this Agreement. The execution and delivery of this Agreement by STT Communications and i-STT and the consummation by STT Communications and i-STT of the Stock Purchase, the Combination and the other transactions contemplated by this Agreement have been duly and validly authorized by all necessary corporate action and no other corporate proceedings on the part of STT Communications and i-STT are necessary to authorize this Agreement or to consummate the Stock Purchase, the Combination and the other transactions contemplated by this Agreement. This Agreement has been duly and validly executed and delivered by STT Communications and i-STT and, assuming the due authorization, execution and delivery by Parent, SP Sub and Pihana, constitutes a legal, valid and binding obligation of STT Communications and i-STT, enforceable against STT Communications and i-STT in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors rights generally and subject, as to enforceability, to the effect of general principles of equity.

(b) Without limiting the generality of the foregoing, the respective boards of directors of STT Communications and i-STT, at meetings duly called and held, or by written consents in lieu of meetings, have unanimously (i) determined that the Stock Purchase, the Combination and the other transactions contemplated hereby are advisable, fair to, and in the best interests of, STT Communications, i-STT and their respective stockholders, and (ii) approved and adopted the Stock Purchase, the Combination, this Agreement and the other transactions contemplated hereby in accordance with the provisions of Singapore Law and STT Communications and i-STT s charter documents.

SECTION 3B.06 *No Conflict; Required Filings and Consents*.

(a) The execution and delivery of this Agreement by STT Communications and i-STT do not, and the performance of the respective obligations under this Agreement by STT Communications and i-STT will not, (i) conflict with or violate the respective memorandum of association and articles of association of STT Communications and i-STT, (ii) assuming that all consents, approvals, authorizations and other actions described in Section 3B.06(b) have been obtained and all filings and obligations described in Section 3B.06(b) have been made or complied with, conflict with or violate in any material respect any Law applicable to STT Communications or i-STT or by which any property or asset of STT Communications, i-STT or any i-STT Subsidiary is bound or affected, or (iii) conflict with, result in any material breach of or constitute a material default (or an event which with notice or lapse of time or both would become a default) under, require consent, approval or notice under, give to others any right of termination, amendment, acceleration or cancellation of, require any payment under, or result in the creation of a lien or other encumbrance on any property or asset of STT Communications, i-STT or any i-STT Subsidiary pursuant to, any material permit, franchise or other instrument to which i-STT or any i-STT Subsidiary is a party or by which any property or asset of i-STT or any i-STT Subsidiary is bound or affected.

(b) The execution and delivery of this Agreement by STT Communications and i-STT do not, and the performance of the respective obligations under this Agreement by STT Communications and i-STT will not, require any consent, approval, order, permit, or authorization from, or registration, notification or filing with any Governmental Entity, except for such other consents, approvals, orders, permits, authorizations, registrations, notifications or filings, which if not obtained or made could not reasonably be expected,

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individually or in the aggregate, to prevent or materially delay the consummation of the transactions contemplated by this Agreement.

SECTION 3B.07 *Permits; Compliance*.

(a) i-STT and each i-STT Subsidiary is in possession of all material franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals and orders of any Governmental Entity necessary for i-STT and each i-STT Subsidiary to own, lease and otherwise hold and operate its properties and other assets and to carry on its business in all material respects as it is now being conducted and as currently proposed to be conducted (the *i-STT Permits*). All i-STT Permits are in full force and effect and will not be affected by the Closing and no suspension or cancellation of any i-STT Permit is pending or, to the knowledge of STT Communications, threatened. Neither STT Communications, i-STT nor any i-STT Subsidiary has received any notice or other communication from any Governmental Entity regarding (i) any actual or possible violation of or failure to comply with any material term or requirement of any i-STT Permit, or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any i-STT Permit.

(b) Neither i-STT nor any i-STT Subsidiary is in conflict with, or in default or violation of, in each case, in any material respect, (i) any Law applicable to i-STT or any i-STT Subsidiary or by which any material property or asset of i-STT or any i-STT Subsidiary is bound or affected, (ii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which i-STT or any i-STT Subsidiary is a party or by which i-STT or any i-STT Subsidiary or any material property or asset of i-STT or any i-STT Subsidiary is bound or affected, or (iii) any i-STT Permit.

SECTION 3B.08 *Financial Statements*.

(a) True and complete copies of (i) the audited consolidated balance sheets of i-STT and the i-STT Subsidiaries as of December 31, 2000 and 2001, and the related audited consolidated statements of operations, consolidated changes in stockholders equity and consolidated cash flows for the years then ended, together with the related notes thereto (collectively referred to herein as the *i-STT Audited Financial Statements*), and (ii) the unaudited consolidated balance sheet of i-STT and the i-STT Subsidiaries as of July 31, 2002 (the *i-STT Reference Balance Sheet*), and the related unaudited consolidated statements of operations, consolidated changes in stockholders equity and consolidated cash flows for the seven months ended July 31, 2002 (collectively referred to herein as the *i-STT Interim Financial Statements*), are attached as Section 3B.08(a) of the i-STT Disclosure Letter. The i-STT Audited Financial Statements and the i-STT Interim Financial Statements (including, in each case, any notes thereto) were prepared in accordance with international generally accepted accounting principles (*International GAAP*) applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by International GAAP) and each present fairly, in all material respects, the consolidated financial position of i-STT and the i-STT Subsidiaries as at the respective dates thereof and the consolidated results of operations for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which were not and are not expected, individually or in the aggregate, to be material).

(b) Except as set forth in Section 3B.08(b) of the i-STT Disclosure Letter or as contemplated by this Agreement, i-STT and the i-STT Subsidiaries do not have any debts, liabilities or obligations of any nature (whether known or unknown, accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, or as a guarantor or otherwise) (*i-STT Liabilities*), other than (i) i-STT Liabilities recorded or reserved against in the i-STT Reference Balance Sheet, or i-STT Liabilities in existence as of July 31, 2002 and not required by International GAAP to be recorded therein, (ii) current liabilities reflected in the i-STT Working Capital as shown on the i-STT Adjusted Calculation and incurred since July 31, 2002 in the ordinary course of business, or (iii) any other liabilities in an amount equal to or less than $100,000 individually or $500,000 in the aggregate which have been or are incurred in the ordinary course of business. Except as set forth in Section 3B.08(b) of the i-STT Disclosure Letter, as of the date of this Agreement, there are no outstanding warranty claims against i-STT.

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SECTION 3B.09 *Absence of Certain Changes or Events*. Since July 31, 2002, except as contemplated by or as disclosed in this Agreement, i-STT and the i-STT Subsidiaries have conducted their businesses only in the ordinary course and in a manner consistent with past practice and, since such date, there has not been any i-STT Material Adverse Effect.

SECTION 3B.10 *Absence of Litigation*. There is no litigation, suit, claim, action, proceeding or investigation pending or, to the knowledge of STT Communications or i-STT, threatened against STT Communications, i-STT or any i-STT Subsidiary, or any property or asset owned or used by STT Communications, i-STT or any i-STT Subsidiary or any person whose liability STT Communications, i-STT or any i-STT Subsidiary has or may have assumed, either contractually or by operation of Law, before any arbitrator or Governmental Entity that could reasonably be expected, to (i) in the case of i-STT and any i-STT Subsidiary impair the operations of i-STT or any i-STT Subsidiary as currently conducted, including, without limitation, any claim of infringement of any intellectual property right, and (ii) in the case of STT Communications, i-STT and any i-STT Subsidiary (a) impair the ability of STT Communications, i-STT or any i-STT Subsidiary to perform its obligations under this Agreement, or (b) prevent, delay or make illegal the consummation of the transactions contemplated by this Agreement (a *i-STT Legal Proceeding*). Neither STT Communications, i-STT nor any i-STT Subsidiary is a party to or has received any written notice or threat (written or otherwise) of a claim or dispute, that could reasonably be expected to result in a material i-STT Legal Proceeding. Neither i-STT nor any i-STT Subsidiary, the officers or directors thereof in their capacity as such, or any property or asset of i-STT or any i-STT Subsidiary is subject to any continuing order of, consent decree, settlement agreement or other similar written agreement with, or, to the knowledge of STT Communications or i-STT, continuing investigation by, any Governmental Entity, or any order, writ, judgment, injunction, decree, determination or award of any court, arbitrator or Governmental Entity. As of the date of this Agreement, neither STT Communications, i-STT nor any i-STT Subsidiary has any plans to initiate any i-STT Legal Proceeding against any third party.

SECTION 3B.11 *Employee Benefit Plans; Labor Matters*.

(a) Section 3B.11(a) of the i-STT Disclosure Letter lists all employee benefit policies, and all retirement savings or provident funds, disability or life insurance, fringe benefit, workmen compensation or insurance plans, and all employment contracts or agreements (whether formal or informal and whether in writing or not) to which i-STT or any i-STT Subsidiary is a party or which any current or former employee, officer or director of i-STT or any i-STT Subsidiary is entitled to, with respect to which i-STT or any i-STT Subsidiary has any obligation or which are maintained, contributed to or sponsored by i-STT or any i-STT Subsidiary whether by applicable Law or otherwise for the benefit of any current or former employee, officer or director of i-STT or any i-STT Subsidiary, and any employment agreements, offer letters, contracts, arrangements or understandings between i-STT or any i-STT Subsidiary and any employee of i-STT or any i-STT Subsidiary (whether legally enforceable or not, whether formal or informal and whether in writing or not) (each, a *i-STT Plan*, and collectively, the *i-STT Plans*).

(b) i-STT has made available to Parent a true and complete copy of each i-STT Plan (or a written summary where the i-STT Plan is not in writing), and any material correspondence with the Singapore Central Provident Fund Board, or the Director of the Economic and Finance Affairs Office of the Ministry of Finance of the Kingdom of Thailand with respect to each such i-STT Plan that was received by i-STT or any i-STT Subsidiary in the past twelve months. Neither i-STT nor any i-STT Subsidiary has an express or implied commitment, whether legally enforceable or not, (x) to create, incur a material liability with respect to, or cause to exist, any other material employee benefit plan, program or arrangement, (y) to enter into any contract or agreement to provide material amounts of compensation or benefits to any individual, or (z) to modify, change or terminate any i-STT Plan in a way that would materially increase the cost of providing benefits under the i-STT Plan, other than with respect to a modification, change or termination required by applicable Law.

(c) Except as provided in Section 3B.11(c) of the i-STT Disclosure Letter, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) materially increase any benefits otherwise payable under any i-STT Plan or other arrangement, (ii) result in the

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acceleration of the time of payment, vesting or funding of any benefits, or (iii) affect in any material adverse respects any i-STT Plan s current treatment under any Laws including any Tax or social contribution Law. Except as provided in Section 3B.11(c) of the i-STT Disclosure letter, no i-STT Plan provides, or reflects or represents any material liability to provide health, disability, or life insurance benefits to any person following termination of employment for any reason, except as may be required by applicable Law, and i-STT is not obligated to provide to any employee (either individually or to employees as a group) health, disability, or life insurance benefits following termination of employment, except to the extent required by Law.

(d) Except as would not reasonably be expected to have, individually or in the aggregate, a i-STT Material Adverse Effect, each i-STT Plan is now and always has been operated in all material respects in accordance with its terms and the requirements of all applicable Laws. Except as would not reasonably be expected to have, individually or in the aggregate, a i-STT Material Adverse Effect, each of i-STT and each i-STT Subsidiary has performed all obligations required to be performed by it under, is not in default under or in violation of, and has no knowledge of any default or violation by any party to, any i-STT Plan. No action, claim or proceeding is pending or, to the knowledge of i-STT, threatened with respect to any i-STT Plan and i-STT is not aware of any fact or event that exists that could be reasonably expected to give rise to any such action, claim or proceeding. Each i-STT Plan can be amended, terminated or otherwise discontinued at any time without material liability to Parent, i-STT or any of their affiliates (other than benefits already accrued, ordinary administration expenses, and the expenses associated with terminating the plan).

(e) Except as would not reasonably be expected to, individually or in the aggregate, have a i-STT Material Adverse Effect, all contributions, premiums or payments required to be paid to any i-STT Plan have been paid on or before their due dates. Except as would not reasonably be expected to, individually or in the aggregate, have a i-STT Material Adverse Effect, all such contributions have been fully deducted for income tax purposes and no such deduction has been challenged or disallowed by any Governmental Entity and i-STT is unaware of any fact or event that exists that could give rise to any such challenge or disallowance.

(f) Except as set forth in Section 3B.11(f) of the i-STT Disclosure Letter, (i) neither i-STT nor any i-STT Subsidiary is a party to any collective bargaining agreement or other labor union contract applicable to persons employed by i-STT or any i-STT Subsidiary or in i-STT s or any i-STT Subsidiary s business, and currently there are no organizational campaigns, petitions or other unionization activities seeking recognition of a collective bargaining unit that would reasonably affect i-STT or any i-STT Subsidiary; (ii) there are no strikes, slowdowns or work stoppages pending or, to the knowledge of i-STT, threatened between i-STT or any i-STT Subsidiary and any of its employees, and neither i-STT nor any i-STT Subsidiary has experienced any such strike, slowdown or work stoppage within the past three years; (iii) i-STT and each i-STT Subsidiary have not engaged in any unfair labor practice, and there are no unfair labor practice complaints pending against i-STT or any i-STT Subsidiary or any current union representation questions involving employees of i-STT or any i-STT Subsidiary; (iv) i-STT and each i-STT Subsidiary are currently in compliance in all material respects with all applicable Laws relating to the employment of labor, including those related to wages, hours, worker classification (including the proper classification of independent contractors and consultants), collective bargaining, workers compensation and the payment and withholding of Taxes and other sums as required by the appropriate Governmental Entity and has withheld and paid to the appropriate Governmental Entity or is holding for payment not yet due to such Governmental Entity all amounts required to be withheld from employees of i-STT or any i-STT Subsidiary and is not liable for any arrears of wages, Taxes, penalties or other sums for failure to comply with any of the foregoing; (v) i-STT and each i-STT Subsidiary has paid in full to all employees or adequately accrued for in accordance with International GAAP or other accounting principles and standards generally accepted in the jurisdiction of i-STT or the relevant i-STT Subsidiary, as the case may be, consistently applied all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees; and (vi) each employee of i-STT and each i-STT Subsidiary has all approvals,

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authorizations and papers necessary to work in his place of work in accordance with applicable Law, except in cases of clause (iii), (v) or (vi), for actions or inactions that would not reasonably be expected, individually or in the aggregate, to have a i-STT Material Adverse Effect.

(g) Section 3B.11(g) of the i-STT Disclosure Letter contains a true and complete list of (i) all individuals who serve as employees of or consultants to i-STT and each i-STT Subsidiary as of the date hereof, (ii) in the case of such employees, the position and total compensation payable to each such individual, and (iii) in the case of each such consultant, the consulting rate payable to such individual.

SECTION 3B.12 *Contracts*.

(a) Section 3B.12(a) of the i-STT Disclosure Letter lists (under the appropriate subsection) each of the following written or oral contracts and agreements of i-STT or any i-STT Subsidiary as of the date of this Agreement (such contracts and agreements being the *i-STT Material Contracts*):

(i) each contract and agreement for the purchase or lease of personal property with any supplier or for the furnishing of services to i-STT or any i-STT Subsidiary with payments greater than $100,000 per year;

(ii) all broker, exclusive dealing or exclusivity, distributor, dealer, manufacturer s representative, franchise, agency, sales promotion, market research, marketing, consulting and advertising contracts and agreements to which i-STT or any i-STT Subsidiary is a party or any other contract that compensates any person based on any sales by i-STT or any i-STT Subsidiary that is not cancelable (without penalty) upon 30 days notice;

(iii) all leases and subleases of real property;

(iv) all contracts and agreements relating to indebtedness for borrowed money of i-STT or any i-STT Subsidiary, including any contracts and agreements in which i-STT or any i-STT Subsidiary is a guarantor of indebtedness;

(v) all contracts and agreements with any Governmental Entity to which i-STT or any i-STT Subsidiary is a party;

(vi) all contracts containing confidentiality requirements (including all nondisclosure agreements);

(vii) all contracts and agreements between or among i-STT or any i-STT Subsidiary and STT Communications or subsidiaries of STT Communications (other than the i-STT Subsidiaries);

(viii) all contracts and agreements relating to the voting and any rights or obligations of a stockholder of i-STT or any i-STT Subsidiary;

(ix) all contracts to manufacture for, supply to or distribute to any third party any products or components;

(x) all contracts regarding the acquisition, issuance or transfer of any securities and each contract affecting or dealing with any securities of i-STT or any i-STT Subsidiary, including, without limitation, any restricted stock agreements or escrow agreements;

(xi) all contracts providing for indemnification by i-STT or any i-STT Subsidiary of any officer, director, employee or agent of i-STT or any i-STT Subsidiary;

(xii) all contracts related to or regarding the performance of consulting, advisory or similar services by any third party (other than employees);

(xiii) all other contracts that have a term of more than 60 days and that may not be terminated by i-STT or any i-STT Subsidiary, without penalty, within 30 days after the delivery of a termination notice by i-STT or any i-STT Subsidiary;

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(xiv) any agreement of i-STT or any i-STT Subsidiary that is terminable upon or prohibits assignment or a change of ownership or control of i-STT;

(xv) all other contracts and agreements, whether or not made in the ordinary course of business, that are reasonably expected to result in an exchange of consideration with an aggregate value greater than $100,000, during the year ending December 31, 2002 or 2003; and

(xvi) any agreement of guarantee, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any person other than software licenses or professional services contracts entered into in the ordinary course of business.

(b) Each i-STT Material Contract (i) is valid and binding on i-STT or a i-STT Subsidiary, as the case may be, and, on the other parties thereto, and is in full force and effect, and (ii) except as set forth on Section 3B.06 of the i-STT Disclosure Letter, upon consummation of the transactions contemplated by this Agreement, shall continue in full force and effect without penalty, right of termination that would not have otherwise existed but for the transactions contemplated by this Agreement, change to mutual terms or other adverse consequence. Neither i-STT nor any i-STT Subsidiary is in material breach or material violation of, or material default under, any i-STT Material Contract and, to the knowledge of STT Communications or i-STT, no other party to any i-STT Material Contract is in material breach or material violation thereof or default thereunder.

(c) i-STT has made available to Parent and Pihana accurate and complete copies of all i-STT Material Contracts identified in Section 3B.12(a) of the i-STT Disclosure Letter, including all amendments thereto. Section 3B.12(a) of the i-STT Disclosure Letter provides an accurate description of the terms of each i-STT Material Contract that is not in written form.

(d) Except as set forth in Section 3B.12(d) of the i-STT Disclosure Letter, to STT Communications or i-STT s knowledge, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or would be reasonably be expected to, (i) result in a material breach or material violation of, or material default under, any i-STT Material Contract, (ii) give any entity the right to declare a default, seek damages or exercise any other remedy under any i-STT Material Contract, (iii) give any entity the right to accelerate the maturity or performance of any i-STT Material Contract or (iv) give any entity the right to cancel, terminate or modify any i-STT Material Contract.

SECTION 3B.13 *Environmental Matters*. Neither i-STT nor any i-STT Subsidiary is in violation of any applicable statute, law or regulation of any applicable jurisdiction relating to the environment, and no material expenditures are or will be required in order to comply with any such statute, law or regulation.

SECTION 3B.14 *Intellectual Property*. To the best of STT Communications and i-STT s knowledge after reasonable inquiry, i-STT and the i-STT Subsidiaries have sufficient title and ownership of or license to all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for their businesses as now conducted without any conflict with or infringement of the rights of others, except for such items as have yet to be conceived or developed or that are expected to be available for licensing on reasonable terms from third parties. Section 3B.14 of the i-STT Disclosure Letter contains a complete list of licenses, registered copyrights and trademarks, patents, trademark and patent registrations or applications, as the case may be, of i-STT and the i-STT Subsidiaries (other than the i-STT trade name and trademarks that are to be assigned to STT Communications pursuant to Section 6.17, the *i-STT Intellectual Property*). Except in the ordinary course of business, to the knowledge of STT Communications and i-STT, there are no outstanding material options, licenses, or agreements of i-STT or any i-STT Subsidiary of any kind relating to the i-STT Intellectual Property. i-STT or the i-STT Subsidiaries are not bound by or party to any material options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other person or entity, except, in either case, for standard end-user, object code, internal-use software license and support/maintenance agreements. STT Communications, i-STT and the i-STT Subsidiaries have not received any

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communications alleging that either i-STT or the i-STT Subsidiaries have violated or, by conducting their businesses as proposed, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity. i-STT, STT Communications and the i-STT Subsidiaries are not aware that any employees of i-STT or any i-STT Subsidiary are obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of i-STT s and the i-STT Subsidiaries businesses. Neither the execution nor delivery of this Agreement, nor the carrying on of i-STT s and the i-STT Subsidiaries businesses by the employees, will, to the best of STT Communications , i-STT s and the i-STT Subsidiaries knowledge after reasonable inquiry, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

SECTION 3B.15 *Taxes.*

(a) All Tax returns, statements, reports, declarations and other forms and documents (including without limitation estimated Tax returns and reports and material information returns and reports) required to be filed with any Tax Authority (as defined below) on or before the Closing with respect to any Taxable (as defined below) period ending on or before the Closing, by or on behalf of i-STT and each i-STT Subsidiary (collectively, *i-STT Tax Returns* and individually, a *i-STT Tax Return*), have been or will be completed and filed when due (including any extensions of such due date) and all amounts shown due on such i-STT Tax Returns on or before the Effective Time have been or will be paid on or before such date (except to the extent that a reserve for Taxes has been reflected on the i-STT Interim Financial Statements in accordance with International GAAP). The i-STT Interim Financial Statements (i) fully accrue all actual and contingent liabilities for Taxes with respect to all periods through July 31, 2002 and i-STT has not and will not incur any Tax liability in excess of the amount reflected (excluding any amount thereof that reflects timing differences between the recognition of income for purposes of International GAAP and for Tax purposes) on the i-STT Reference Balance Sheet included in the i-STT Interim Financial Statements with respect to such periods, and (ii) properly accrues in accordance with International GAAP all material liabilities for Taxes payable after July 31, 2002, with respect to all transactions and events occurring on or prior to July 31, 2002. All information set forth in the notes to the i-STT Interim Financial Statements relating to Tax matters is true, complete and accurate in all material respects. i-STT has not incurred any material Tax liability since July 31, 2002 other than in the ordinary course of business and i-STT has made adequate provisions for all Taxes since that date in accordance with International GAAP on at least a quarterly basis. The adjusted basis of i-STT s assets exceed the sum of its liabilities. Neither i-STT nor the i-STT Subsidiaries nor their businesses, assets or operations are currently or have been subject to the jurisdiction of the U.S. taxing authorities.

(b) i-STT has withheld and paid to the applicable financial institution, company or Tax Authority all amounts required to be withheld. To the knowledge of STT Communications and i-STT, no i-STT Tax Returns filed with respect to Taxable years through the Taxable year ended December 31, 2001 have been examined and closed. i-STT (or any member of any affiliated or combined group of which i-STT has been a member) has not granted any extension or waiver of the limitation period applicable to any i-STT Tax Returns that is still in effect and there is no material claim, audit, action, suit, proceeding, or (to the knowledge of i-STT) investigation now pending or threatened against or with respect to i-STT in respect of any Tax or assessment. No notice of deficiency or similar document of any Tax Authority has been received by i-STT, and there are no liabilities for Taxes (including liabilities for interest, additions to Tax and penalties thereon and related expenses) with respect to the issues that have been raised (and are currently pending) by any Tax Authority that could, if determined adversely to i-STT, materially and adversely affect the liability of i-STT for Taxes. There are no liens for Taxes (other than for current Taxes not yet due and payable) upon the assets of i-STT. Section 3B.15(b) of the i-STT Disclosure Letter sets out the full and complete terms and conditions of any and all Tax exemption, Tax benefit, Tax incentive or other Tax-sparing agreement or order applicable to i-STT (whether under applicable Law or otherwise) and i-STT is in full compliance with all such terms and conditions of such Tax exemption, Tax benefit, Tax incentive or

other Tax-sparing agreement or order of a foreign government, and the consummation of the Merger will not have any adverse effect on the continued validity and effectiveness of any such Tax exemption or other Tax-sparing agreement or order. All material elections with respect to i-STT s Taxes made during the fiscal years ending December 31, 1999, 2000 and 2001 are reflected on i-STT s Tax Returns for such periods, copies of which have been provided to Parent. After the date of this Agreement, no material election with respect to Taxes will be made without the prior written consent of Parent, which consent will not be unreasonably withheld or delayed. i-STT is not a party to or bound by any Tax indemnity, Tax sharing or Tax allocation agreement that includes a party other than i-STT nor does i-STT owe any amount under any such agreement. i-STT has previously made available to Parent and i-STT true and correct copies of all income, franchise, and sales i-STT Tax Returns, and, as reasonably requested by Parent, prior to the date hereof, presently existing information statements and reports.

(c) In relation to stamp duty assessable or payable in Singapore or elsewhere in the world, as of the date of this Agreement and as at Closing, all documents in the enforcement of which i-STT may be interested have been duly stamped and no document belonging to i-STT now or at Closing which is subject to ad valorem stamp duty is or will be unstamped or insufficiently stamped; nor has any relief from such duty been improperly obtained, nor has any event occurred as a result of which any such duty from which i-STT has obtained relief, has become payable; and all stamp duty payable upon any transfer of shares in i-STT before Closing has been duly paid.

(d) In relation to goods and services tax and/or value-added or other similar tax, i-STT (i) has been duly registered and is a taxable person; (ii) has complied, in all respects, with all statutory requirements, orders, provisions, directions or conditions; (iii) maintains complete, correct and up to date records as is required by the applicable legislation; and (iv) has not been required by the relevant authorities of customs and excise to give security.

(e) i-STT has not paid nor, since the date of the i-STT Reference Balance Sheet, become liable to pay any penalty or interest under any Tax statute or legislation.

(f) As used in this Section 3B.15, the term i-STT means i-STT, the i-STT Subsidiaries and any entity included in, or required under International GAAP to be included in, any of the i-STT Audited Financial Statements or the i-STT Interim Financial Statements.

SECTION 3B.16 *Vote Required.* No vote of the STT Communications stockholders is required to consummate the Stock Purchase or the transactions contemplated by this Agreement.

SECTION 3B.17 *Assets; Absence of Liens and Encumbrances.*

(a) Except as set forth in Section 3B.17 of the i-STT Disclosure Letter, i-STT and each i-STT Subsidiary own, lease or have the legal right to use all of the assets, properties and rights of every kind, nature, character and description, including, without limitation, real property and personal property (other than intellectual property, which is covered by Section 3B.14), used in the conduct of the business of i-STT or such i-STT Subsidiary or otherwise owned or leased by i-STT or such i-STT Subsidiary and, with respect to contract rights, is a party to and enjoys the right to the benefits of all material contracts, agreements and other arrangements used by i-STT or such i-STT Subsidiary in or relating to the conduct of the business of i-STT and each i-STT Subsidiary (all such properties, assets and contract rights being the *i-STT Assets*). i-STT and each i-STT Subsidiary have good and marketable title to, in the case of real property i-STT Assets, or, in the case of leased or subleased i-STT Assets, valid and subsisting leasehold interests in, all the i-STT Assets, or, in the case of personal property, title to, free and clear of all Liens except for (x) Liens for current Taxes not yet due and payable, and (y) Liens that have arisen in the ordinary course of business and that do not, individually or in the aggregate, materially detract from the value, or materially interfere with the present or contemplated use, of the i-STT Assets subject thereto or affected thereby. The equipment of i-STT and the i-STT Subsidiaries used in the operations of their business is, taken as a whole, in good operating condition and repair, ordinary wear and tear excepted.

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(b) STT Communications owns all of the outstanding i-STT Stock and all securities convertible into i-STT Stock, beneficially and of record, free and clear of any Liens, claims restrictions, encumbrances, or proprietary interests of any third party. There are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments obligating STT Communications to issue, sell, deliver or transfer (including any right of conversion or exchange under any outstanding security or other instrument) any equity interest in the i-STT Stock. STT Communications has the absolute and unconditional right to sell, assign, transfer and deliver the i-STT Stock and any securities convertible into i-STT Stock in accordance with the terms of this Agreement.

SECTION 3B.18 *Owned Real Property*. i-STT and the i-STT Subsidiaries do not own any real property.

SECTION 3B.19 *Certain Interests*.

(a) Neither STT Communications nor any officer or director of each of STT Communications or any subsidiary of STT Communications, i-STT or any i-STT Subsidiary and, to the knowledge of STT Communications and i-STT, no immediate relative or spouse (or immediate relative of such spouse) who resides with, or is a dependent of, any such officer or director:

(i) has any direct or indirect financial interest in any creditor, competitor, supplier manufacturer, agent, representative, distributor or customer of i-STT or any i-STT Subsidiary; *provided, however*, that the ownership of securities representing no more than 1% of the outstanding voting power of any creditor, competitor, supplier manufacturer, agent, representative, distributor or customer, and which are listed on any national securities exchange or traded actively in the national over-the-counter market, shall not be deemed to be a financial interest as long as the person owning such securities has no other connection or relationship with such creditor, competitor, supplier, manufacturer, agent, representative, distributor or customer;

(ii) owns, directly or indirectly, in whole or in part, or has any other interest in, any tangible or intangible property that i-STT or any i-STT Subsidiary uses in the conduct of its business (except for any such ownership or interest resulting from the ownership of securities in a public company);

(iii) has any claim or cause of action against i-STT or any i-STT Subsidiary (other than claims arising out of employment agreements disclosed in the i-STT Disclosure Letter); or

(iv) has outstanding any indebtedness to i-STT or any i-STT Subsidiary.

(b) Except for the payment of employee compensation in the ordinary course of business, consistent with past practice, neither i-STT nor any i-STT Subsidiary has any liability or any other obligation of any nature whatsoever to any officer or director of STT Communications or any subsidiary of STT Communications, i-STT or any i-STT Subsidiary or, to the knowledge of STT Communications or i-STT, to any immediate relative or spouse (or immediate relative of such spouse) of any such officer or director.

SECTION 3B.20 *Insurance Policies*. Section 3B.20 of the i-STT Disclosure Letter sets forth (i) a true and complete list of all insurance policies to which i-STT or any i-STT Subsidiary is a party or is a beneficiary or named insured as of the date of this Agreement and (ii) any material claims made thereunder or made under any other insurance policy within the three years ended on the date of this Agreement. True and complete copies of all such policies have been made available to Parent and Pihana. All premiums due on such policies as of the date of this Agreement have been paid, and i-STT and each i-STT Subsidiary is otherwise in compliance with the terms of such policies. Neither i-STT nor any i-STT Subsidiary has failed to give any notice or present any claim under any such policy in a timely fashion, except where such failure would not prejudice i-STT s or any i-STT Subsidiary s ability to make a claim. Such insurance to the date hereof has been maintained in full force and effect and not been canceled or changed, except to extend the maturity dates thereof. Neither i-STT nor any i-STT Subsidiary has received any notice or other communication regarding any actual or possible (i) cancellation or threatened termination of any insurance policy, (ii) refusal of any coverage or rejection of any claim under any insurance policy or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy.

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SECTION 3B.21 *Restrictions on Business Activities*. There is no agreement, commitment, judgment, injunction, order or decree binding upon i-STT or any i-STT Subsidiary or to which i-STT or any i-STT Subsidiary is a party which has or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice material to i-STT or any i-STT Subsidiary, any acquisition of property by i-STT or any i-STT Subsidiary or the conduct of business by i-STT or any i-STT Subsidiary as currently conducted or as proposed to be conducted.

SECTION 3B.22 *Brokers*. No broker, finder or investment banker is entitled to any brokerage, finder s or other fee or commission in connection with the origination, negotiation or execution of this Agreement or the consummation of the transactions contemplated by this Agreement based upon arrangements made by or on behalf of STT Communications, i-STT or any i-STT Subsidiary. STT Communications has heretofore furnished to Parent and Pihana a complete and correct copy of all agreements between STT Communications and i-STT and any advisor pursuant to which such advisor would be entitled to any payment in relation to the transactions contemplated by this Agreement.

SECTION 3B.23 *Takeover Statutes*. The board of directors of i-STT has taken all action necessary to ensure that any restrictions on business combinations contained in Singapore Law will not apply to the Stock Purchase, the Combination and the other transactions contemplated by this Agreement.

SECTION 3B.24 *Customers and Suppliers*. Section 3B.24 of the i-STT Disclosure Letter contains a complete list of all customers that account for 1% or more of i-STT and the i-STT Subsidiaries (taken as a whole) monthly recurring revenue for August 2002. No customer listed on Section 3B.24 of the i-STT Disclosure Letter has, within the twelve months prior to the date hereof, cancelled or otherwise terminated, or made any unresolved threat to cancel or terminate, its relationship with i-STT or any i-STT Subsidiary, or decreased materially its usage of i-STT s or any i-STT Subsidiary s services or products. No material supplier of i-STT or any i-STT Subsidiary has cancelled or otherwise terminated any contract with i-STT prior to the expiration of the contract term, or made any threat to i-STT or any i-STT Subsidiary to cancel, reduce the supply or otherwise terminate its relationship with i-STT or any i-STT Subsidiary. Neither i-STT nor any i-STT Subsidiary has (i) materially breached (so as to provide a benefit to STT Communications or i-STT that was not intended by the parties) any material agreement with or (ii) engaged in any fraudulent conduct with respect to, any customer or supplier of i-STT or any i-STT Subsidiary.

SECTION 3B.25 *Accounts Receivable; Bank Accounts*. All accounts receivable reflected in the financial or accounting records of i-STT and the i-STT Subsidiaries that have arisen since the date of i-STT Reference Balance Sheet are valid receivables subject to no setoffs or counterclaims and are, to the knowledge of i-STT, current and collectible, net of a reserve for bad debts in an amount proportionate to the reserve shown on the i-STT Reference Balance Sheet. Section 3B.25 of the i-STT Disclosure Letter describes each account maintained by or for the benefit of i-STT or any i-STT Subsidiary at any bank or other financial institution.

SECTION 3B.26 *Powers of Attorney*. There are no outstanding powers of attorney executed on behalf of i-STT or any i-STT Subsidiary.

SECTION 3B.27 *Offers*. i-STT and STT Communications have each suspended or terminated, and has the legal right to terminate or suspend, all negotiations and discussions of any acquisition, merger, consolidation or sale of all substantially all of the assets of i-STT and the i-STT Subsidiaries, taken as a whole, with parties other than Parent and Pihana.

SECTION 3B.28 *Warranties*. No product or service manufactured, sold, leased, licensed or delivered by i-STT or any i-STT Subsidiary is subject to any guaranty, warranty, right of return, right of credit or other indemnity other than (i) the applicable standard terms and conditions of sale or lease of i-STT or the appropriate i-STT Subsidiary, which are set forth in Section 3B.28 of the i-STT Disclosure Letter and (ii) manufacturers warranties for which neither i-STT nor any i-STT Subsidiary has any liability. Section 3B.28 of the i-STT Disclosure Letter sets forth the aggregate expenses incurred by i-STT and the i-STT Subsidiaries in fulfilling

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their obligations under their guaranty, warranty, right of return and indemnity provisions during each of the fiscal years and the interim period covered by the i-STT Audited Financial Statements and the i-STT Interim Financial Statements and neither i-STT nor any i-STT Subsidiary knows of any reason why such expenses should significantly increase as a percentage of sales in the future.

SECTION 3B.29 *Inter-Company Obligations*.

(a) As of the date of this Agreement, there are no arrangements, contracts, agreements (written or oral), obligations (contingent or otherwise), accounts receivable or accounts payable between STT Communications, STT Communications officers and directors, STT Communications subsidiaries (other than i-STT and its subsidiaries), on the one hand, and i-STT or its subsidiaries on the other hand.

(b) Immediately following the Effective Time, except as provided in Section 3B.29(b) of the i-STT Disclosure Letter, there shall be no arrangements, contracts, agreements (written or oral), obligations (contingent or otherwise), accounts receivable or accounts payable between STT Communications or STT Communications subsidiaries (other than i-STT and its subsidiaries), on the one hand, and i-STT on the other hand, except for contracts or agreements, for the provision of goods or services or amounts payable or receivable under such contracts or agreements; provided that (i) any such payable or receivable has been outstanding for 30 days or less, (ii) such contracts or agreements were entered into in the ordinary course of business and (iii) all such contracts or agreements, if not listed in the i-STT Disclosure Letter, are identified to Parent in writing by STT Communications no less than five (5) business days prior to the Closing Date.

SECTION 3B.30 *No Misstatements*. No representation or warranty made by STT Communications or i-STT in this Agreement, the i-STT Disclosure Letter or any certificate deliverable pursuant to the terms hereof contains or will contain any untrue statement of a material fact, or omits, or will omit, when taken as a whole, to state a material fact, necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT, MERGER SUB AND SP SUB

Parent, Merger Sub and SP Sub hereby represent and warrant to STT Communications and Pihana that the statements contained in this Article IV are true and correct except as set forth in the disclosure letter delivered by Parent to STT Communications and Pihana concurrently with the execution of this Agreement (the *Parent Disclosure Letter*). The Parent Disclosure Letter shall be arranged according to specific sections in this Article IV and shall provide exceptions to, or otherwise qualify in reasonable detail, the corresponding section or other section of this Article IV and any other section hereof where it is clear, upon a reading of such disclosure without any independent knowledge on the part of the reader regarding the matter disclosed, that the disclosure is intended to apply to such other section.

SECTION 4.01 *Organization and Qualification*. Parent and each of the Parent Subsidiaries (as defined in Section 4.03) is a corporation duly incorporated, validly existing and in good standing under the laws of its jurisdiction of organization and has all requisite corporate power and authority to own, lease and otherwise hold and operate its properties and other assets and to carry on its business as it is now being conducted, except where the failure to be so organized, existing or in good standing or to have such corporate power and authority have not had, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect (as defined below). Parent and each of the Parent Subsidiaries is duly qualified or licensed as a foreign corporation to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed and in good standing has not had, and could not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. The term *Parent Material Adverse Effect* means any event, change, circumstance, or effect that is, or would be

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reasonably likely to have, either individually or in the aggregate, a materially adverse effect on the business, operations, condition (financial or otherwise), assets (tangible or intangible), liabilities, properties, or results of operations of Parent and the Parent Subsidiaries taken as a whole, except for any such events, changes, circumstances or effects primarily resulting from or arising in connection with (i) any changes in general economic or business conditions of the markets in which Parent and the Parent Subsidiaries operate that do not disproportionately impact Parent and the Parent Subsidiaries taken as a whole, (ii) any changes or events affecting the industry in which Parent and the Parent Subsidiaries operate that do not disproportionately impact Parent and the Parent Subsidiaries taken as a whole, (iii) in and of itself, any decline in the trading price of Parent Common Stock, (iv) in and of itself, any adverse change in the United States securities markets, or (v) in and of itself, any failure by Parent to meet the revenue or earnings predictions of equity analysts as reflected in the First Call consensus estimates prepared by an independent equity analyst, or any other revenue or earnings estimate by an independent person, or any other revenue or earnings prediction or expectation prepared by any independent equity analyst, for any period ending (or for which earnings are released) on or after the date of this Agreement and prior to the Closing Date, except to the extent such predictions, estimates or expectations wererederived from guidance provided by Parent (it being understood that in any controversy concerning the applicability of the preceding exceptions, Parent shall have the burden of proof with respect to the elements of such exceptions).

SECTION 4.02 *Certificate of Incorporation and Bylaws*. Parent has heretofore made available to i-STT and Pihana a complete and correct copy of (a) the certificate of incorporation and the bylaws of Parent including all amendments thereto, and (b) the minute books containing all consents, actions and meeting of the stockholders of Parent and Parent s board of directors and any committees thereof. Such certificate of incorporation and bylaws are in full force and effect. Parent is not in violation of any of the provisions of its certificate of incorporation or bylaws. The corporate minute books, stock certificate books, stock registers and other corporate records of Parent are complete and accurate, and the signatures appearing on all documents contained therein are the true or facsimile signatures of the persons purported to have signed the same.

SECTION 4.03 *Parent Subsidiaries*. (a) Each Subsidiary of Parent, including Merger Sub and SP Sub (individually, a *Parent Subsidiary* and, collectively, the *Parent Subsidiaries*), is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Each Parent Subsidiary is duly qualified or licensed to conduct business and is in good standing under the laws of each jurisdiction in which the nature of its business or the ownership or leasing of its properties requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing has not had, and would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Each Parent Subsidiary has all requisite power and authority to carry on its business as it is now being conducted and as currently proposed to be conducted and to own, lease and otherwise use the assets and properties owned and used by it. No Parent Subsidiary is in default under or in violation of any provision of its charter, Bylaws or other organizational documents. All of the issued and outstanding shares of capital stock of each Parent Subsidiary are duly authorized, validly issued, fully paid, nonassesable and free of preemptive rights. All shares of each Parent Subsidiary are held of record or owned beneficially by either Parent or another Parent Subsidiary and are held or owned free and clear of any restriction on transfer (other than restrictions under federal or state securities laws), claim, security interest, option, warrant, right, lien, call, commitment, equity or demand. There are no outstanding or authorized options, warrants, rights, agreements or commitments to which any Parent Subsidiary is a party or which are binding on any of them providing for the issuance, disposition or acquisition of any capital stock of any Parent Subsidiary. There are no outstanding stock appreciation, phantom stock or similar rights with respect to any Parent Subsidiary. There are no voting trusts, proxies or other agreements or understandings with respect to the voting of any capital stock of any Parent Subsidiary.

SECTION 4.04 *Capitalization*.

(a) The authorized capital stock of Parent consists of 300,000,000 shares of Parent Common Stock and 10,000,000 shares of Preferred Stock, par value $.001 per share (the *Preferred Stock*). As of September 30, 2002, (i) 98,892,711 shares of Common Stock were issued and outstanding (any change to the number of shares of Common Stock issued and outstanding between September 30, 2002 and the date of

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this Agreement is the result of the exercise of outstanding Parent Options), and (ii) 23,123,998 shares of Parent Common Stock were reserved for future issuance pursuant to outstanding, unexercised options to purchase Parent Common Stock. As of the date of this Agreement, (i) no shares of Preferred Stock were issued and outstanding and no shares of Preferred Stock were issued and held in the treasury of the Parent, and (ii) 4,389,189 shares of Parent Common Stock were reserved for issuance pursuant to outstanding, unexercised warrants to purchase Parent Common Stock (each, a *Parent Warrant* and collectively, the *Parent Warrants*).

(b) As of September 30, 2002, except for outstanding options referred to in clause (ii) of the second sentence of Section 4.04(a) and outstanding warrants referred to in clauses (ii) of the third sentence of Section 4.04(a) and otherwise as disclosed in the Parent SEC Reports (as defined below), there were no outstanding options, warrants, or other agreements relating to the issuance of capital stock of Parent or obligating Parent to issue or sell any shares of its capital stock. Parent has reserved 13,712,810 shares of Parent Common Stock for issuance under Parent s 1998 Stock Plan, 16,023,776 shares of Parent Common Stock for issuance under Parent s 2000 Equity Incentive Plan, 5,000,000 shares of Parent Common Stock for issuance under Parent s 2001 Supplemental Equity Incentive Plan, 2,200,000 shares of Parent Common Stock for issuance under Parent s Employee Stock Purchase Plan, and 300,000 shares of Parent Common Stock for issuance under Parent s 2000 Director Option Plan. Section 4.04(b) of the Parent Disclosure Letter accurately sets forth with respect to Parent Options that are outstanding as of September 30, 2002 and the aggregate number of Parent Options purchasable at each outstanding exercise price. No Parent Option will by its terms require an adjustment in connection with the Combination. Neither the consummation of transactions contemplated by this Agreement, nor any action taken or to be taken by Parent in connection with such transactions, will result in (i) any acceleration of exercisability or vesting, whether or not contingent on the occurrence of any event after consummation of the Combination, in favor of any optionee under any Parent Option; (ii) any additional benefits for any optionee under any Parent Option; or (iii) the inability of Parent after the Effective Time to exercise any right or benefit held by Parent prior to the Effective Time with respect to any shares of Parent Common Stock previously issued upon exercise of a Parent Option, including, without limitation, the right to repurchase an optionee s unvested shares on termination of such optionee s employment.

(c) Section 4.04(c) of the Parent Disclosure Letter sets forth, with respect to each Parent Warrant issued to any person: (i) the name of the holder of such Parent Warrant; (ii) the total number and type of shares of Parent Common Stock that are subject to such Parent Warrant; (iii) the exercise price per share of Parent Common Stock purchasable under such Parent Warrant; (iv) the total number of shares of Parent Stock with respect to which such warrant is immediately exercisable; (v) the vesting schedule for such Parent Warrant; and (vi) the term of such Parent Warrant.

(d) Parent does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of Parent on any matter.

(e) Except as set forth in the Parent SEC Filings, there are no stockholder agreements, voting trusts or other agreements or understandings to which Parent is a party, or of which Parent is aware, that (i) relate to the voting, registration or disposition of any securities of Parent, (ii) grant to any person or group of persons the right to elect, or designate or nominate for election, a director to the board of directors of Parent or (iii) grant to any person or group of persons information rights.

SECTION 4.05 *Authority Relative to This Agreement*.

(a) Each of Parent, Merger Sub and SP Sub has all necessary corporate power and authority to execute and deliver this Agreement, and, subject to obtaining the necessary approvals of the stockholders of Parent, to perform its obligations hereunder and to consummate the Merger, the Stock Purchase and the other transactions contemplated by this Agreement. The execution and delivery of this Agreement by each of Parent, Merger Sub and SP Sub and the consummation by each of Parent and Merger Sub of the Merger, SP Sub of the Stock Purchase and the other transactions contemplated by this Agreement have been duly

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and validly authorized by all necessary corporate action, and, subject to obtaining the necessary approvals of the stockholders of Parent, no other corporate proceedings on the part of Parent, Merger Sub or SP Sub are necessary to authorize this Agreement or to consummate the Stock Purchase, the Merger and the other transactions contemplated by this Agreement (other than with respect to the Merger, the filing and recordation contemplated by Section 1A.02 of appropriate merger documents as required by the DGCL). This Agreement has been duly and validly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery by Pihana, STT Communications and i-STT constitutes a legal, valid and binding obligation of each of Parent, Merger Sub and SP Sub, enforceable against each of Parent, Merger Sub and SP Sub in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors rights generally and subject, as to enforceability, to the effect of general principles of equity. The only vote of the stockholders of Parent required in order to consummate the transactions contemplated by this Agreement related to the Combination is the approval of this Agreement by a majority of the shares of Parent Common Stock present or represented by proxy at a special meeting of stockholders of Parent at which a quorum of fifty percent of the outstanding shares of the Parent Common Stock is present.

(b) Without limiting the generality of the foregoing, the board of directors of Parent, at a meeting duly called and held, has unanimously (i) determined that the Merger, the Combination and the other transactions contemplated hereby are advisable, fair to, and in the best interests of Parent and its stockholders, (ii) approved the Merger and the Combination, this Agreement and the other transactions contemplated hereby in accordance with the provisions of the DGCL and Parent s charter documents, (iii) directed that this Agreement be submitted to Parent stockholders for their adoption and (iv) resolved, as of the date of this Agreement, to recommend that Parent stockholders vote in favor of the adoption of this Agreement.

SECTION 4.06 *No Conflict; Required Filings and Consents.*

(a) The execution and delivery of this Agreement by each of Parent, Merger Sub and SP Sub do not, and the performance of this Agreement by each of Parent, Merger Sub and SP Sub will not, (i) conflict with or violate their respective organizational documents, (ii) assuming that all consents, approvals, authorizations and other actions described in Section 4.06(b) have been obtained and all filings and obligations described in Section 4.06(b) have been made or complied with, conflict with or violate in any material respect any Law applicable to Parent, Merger Sub or SP Sub or by which any property or asset of Parent, Merger Sub or SP Sub is bound or affected, or (iii) conflict with, result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or give to others any right of termination, amendment, acceleration or cancellation of, or result in the creation of a lien or other encumbrance on any property or asset of Parent, Merger Sub or SP Sub pursuant to, any material note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent, Merger Sub or SP Sub is a party, except, with respect to clauses (ii) and (iii), for any such conflicts, violations, breaches, defaults, or other occurrences that could not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) The execution and delivery of this Agreement by each of Parent, Merger Sub and SP Sub do not, and the performance of this Agreement by each of Parent, Merger Sub and SP Sub will not, require any consent, approval, order, authorization, registration or permit of, or filing with or notification to, any Governmental Entity, except (i) for the filing and recordation contemplated by Section 1A.02, (ii) for applicable requirements, if any, of the Securities Act, the Exchange Act of 1934, as amended (the Exchange Act), Federal and state securities laws and The Nasdaq National Market, and (iii) for such other consents, approvals, orders authorizations, registrations or permits, filings or notifications that if not obtained or made could not reasonably be expected, individually or in the aggregate, to prevent or materially delay the consummation of the transactions contemplated by this Agreement.

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SECTION 4.07 *Permits*.

(a) Parent and the Parent Subsidiaries possess all certificates, authorizations and permits issued by the appropriate federal, state, local or foreign regulatory authorities necessary to conduct their respective businesses as described in the Parent SEC Reports, except where the failure to possess such permits, individually or in the aggregate, are not reasonably likely to have or result in a Parent Material Adverse Effect (*Parent Permits*), and neither Parent nor any Parent Subsidiary has received any notice of proceedings relating to the revocation or modification of any Parent Permit.

(b) Neither Parent nor any Parent Subsidiary is in conflict with, or in default or violation of, in each case, in any material respect, (i) any Law applicable to Parent or any Parent Subsidiary or by which any material property or asset of Parent or any Parent Subsidiary is bound or affected, (ii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any Parent Subsidiary is a party or by which Parent or any Parent Subsidiary or any material property or asset of Parent or any Parent Subsidiary is bound or affected, or (iii) any Parent Permit.

SECTION 4.08 *Financial Statements; SEC Filings*

(a) Each of the consolidated financial statements (including, in each case, any notes thereto) contained in the Parent SEC Reports (the *Parent Financial Statements*) was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q promulgated by the SEC) and each presented fairly, in all material respects, the consolidated financial position of Parent and its consolidated subsidiaries as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which were not and are not expected, individually or in the aggregate, to have a Parent Material Adverse Effect).

(b) Neither Parent nor any of the Parent Subsidiaries has any liabilities (absolute, accrued, contingent or otherwise) of a nature required to be disclosed on a balance sheet or in the related notes to the consolidated financial statements prepared in accordance with GAAP which are, individually or in the aggregate, material to the business, results of operations or financial condition of Parent and the Parent Subsidiaries taken as a whole, except (i) liabilities recorded or reserved against in Parent s balance sheet as of June 30, 2002, or Parent Liabilities in existence as of June 30, 2002 and not required by GAAP to be recorded therein, (ii) current liabilities reflected in the Parent Working Capital as shown in the Parent Adjusted Calculation and incurred since June 30, 2002 in the ordinary course of business, or (iii) any other liabilities in an amount less than $100,000 individually or $500,000 in the aggregate which have been or are incurred in the ordinary course of business. Except as set forth in Section 4.08(b) of the Parent Disclosure Letter, as of the date of this Agreement, there are no outstanding warranty claims against Parent.

(c) Parent has filed all forms, reports and documents required to be filed by it with the Securities and Exchange Commission (the *SEC*) since January 1, 2001 through the date of this Agreement (collectively, the *Parent SEC Reports*). As of the respective dates they were filed (and if amended or superceded by a filing prior to the date of this Agreement, then on the date of such filing), (i) the Parent SEC Reports complied in all material respects with the requirements of the Securities Act of 1933, as amended (the *Securities Act*) or the Exchange Act, as the case may be, and (ii) none of the Parent SEC Reports contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

SECTION 4.09 *Absence of Certain Changes or Events*. Since June 30, 2002, there has not been: (i) any Parent Material Adverse Effect; (ii) any declaration, setting aside or payment of any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of Parent s or any of its subsidiaries capital stock; (iii) any split, combination or reclassification of any of Parent s or any of its subsidiaries capital stock; or

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(iv) any material change by Parent in its accounting methods, principles or practices, except as required by concurrent changes in GAAP.

SECTION 4.10 *Absence of Litigation*.

(a) There is no litigation, suit, claim, action, proceeding or investigation pending or, to the knowledge of Parent, threatened against Parent or any Parent Subsidiary, or any property or asset owned or used by Parent or any Parent Subsidiary or any person whose liability Parent or any Parent Subsidiary has or may have assumed, either contractually or by operation of Law, before any arbitrator or Governmental Entity (a *Parent Legal Proceeding*) that could reasonably be expected, if resolved adversely to Parent, to (i) impair the operations of Parent or any Parent Subsidiary as currently conducted, including, without limitation, any claim of infringement of any intellectual property right, (ii) impair the ability of Parent or any Parent Subsidiary to perform its obligations under this Agreement or (iii) prevent, delay or make illegal the consummation of the transactions contemplated by this Agreement. To Parent s knowledge, no event has occurred, and no claim, dispute or other condition or circumstance exists, that could reasonably be expected to give rise to or serve as a basis of the commencement of any Parent Legal Proceeding. None of Parent or any Parent Subsidiary, the officers or directors thereof in their capacity as such, or any property or asset of Parent or any Parent Subsidiary is subject to any continuing order of, consent decree, settlement agreement or other similar written agreement with, or, to the knowledge of Parent, continuing investigation by, any Governmental Entity, or any order, writ, judgment, injunction, decree, determination or award of any court, arbitrator or Governmental Entity. Neither Parent nor any Parent Subsidiary has any plans to initiate any Parent Legal Proceeding against any third party.

(b) Except as would not reasonably be expected to have a Parent Material Adverse Effect, neither Parent nor any Parent Subsidiary is in conflict with, or in default or violation of (i) any Law applicable to Parent or any Parent Subsidiary or by which any property or asset of Parent or any Parent Subsidiary is bound or affected or (ii) any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument or obligation to which Parent or any Parent Subsidiary is a party or by which Parent or any Parent Subsidiary or any property or asset of Parent or any Parent Subsidiary is bound or affected.

SECTION 4.11 *Contracts*. As of the date of this Agreement, all material agreements (as defined by Item 601 of Regulation S-K) to which Parent or any Parent Subsidiary is a party or to which the property or assets of Parent or any Parent Subsidiary are subject have been included as part of or specifically identified in the Parent SEC Reports to the extent required by the rule and regulations of the SEC. Neither Parent nor any Parent Subsidiary is a party to, or otherwise bound or affected by, contracts for which Parent or any Parent Subsidiary is required to recognize a loss under Statement of Financial Accounting Standards No. 5.

SECTION 4.12 *Environmental Matters*.

(a) To the best knowledge of Parent, Parent and each Parent Subsidiary (i) is in compliance in all material respects with all applicable Environmental Laws, (ii) holds all Environmental Permits necessary to conduct Parent s or each Parent Subsidiary s business and (iii) is in compliance with their respective Environmental Permits.

(b) To the best knowledge of Parent, neither Parent nor any Parent Subsidiary has released and, to the knowledge of Parent, no other person has released Hazardous Materials on any real property owned or leased by Parent or any Parent Subsidiary or, during their ownership or occupancy of such property, on any property formerly owned or leased by Parent or any Parent Subsidiary.

(c) Neither Parent nor any Parent Subsidiary has received any written request for information, or been notified that it is a potentially responsible party, under CERCLA or any similar Law of any state, locality or any other jurisdiction. Neither Parent nor any Parent Subsidiary has entered into or agreed to any consent decree or order or is subject to any judgment, decree or judicial order relating to compliance with Environmental Laws, Environmental Permits or the investigation, sampling, monitoring, treatment,

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remediation, removal or cleanup of Hazardous Materials and, to the knowledge of Parent, no investigation, litigation or other proceeding is pending or threatened in writing with respect thereto.

(d) None of the real property currently or formerly owned or leased by Parent or any Parent Subsidiary is listed or, to the knowledge of Parent, proposed to be listed on the National Priorities List under CERCLA, as updated through the date of this Agreement, or any similar list of sites in the United States or any other jurisdiction requiring investigation or cleanup.

SECTION 4.13 *Intellectual Property*. To the knowledge of Parent and the Parent Subsidiaries, Parent and the Parent Subsidiaries have sufficient title and ownership of or license to all patents, trademarks, service marks, trade names, copyrights, trade secrets, information, proprietary rights and processes necessary for their respective businesses as now conducted without any material conflict with or infringement of the rights of others, except (i) for such items as have yet to be conceived or developed or that are expected to be available for licensing on reasonable terms from third parties, or (ii) where the absence of such title, ownership, or license is not reasonably likely to result in a Parent Material Adverse Effect. Section 4.13 of the Parent Disclosure Letter contains a complete list of material licenses, registered copyrights, trademarks, patents, and trademark and patent registrations or applications, as the case may be, of Parent and the Parent Subsidiaries. Except in the ordinary course of business, to the knowledge of Parent, there are no outstanding material options, licenses, or agreements of the Parent or any Parent Subsidiary of any kind relating to the foregoing. Parent or the Parent Subsidiaries are not bound by or party to any material options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other person or entity, except, in either case, for standard end-user, object code, internal-use software license or support/maintenance agreements. Parent and the Parent Subsidiaries have not received any written communications alleging that they have violated or, by conducting their respective businesses as proposed, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity. Parent and the Parent Subsidiaries are not aware that any of their employees are obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of Parent s and the Parent s Subsidiaries respective businesses. Neither the execution nor delivery of this Agreement, nor the carrying on of Parent s and the Parent s Subsidiaries respective businesses by the employees, will, to the best of Parent s and the Parent s Subsidiaries knowledge, conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any material contract, covenant or instrument under which any of such employees is now obligated.

SECTION 4.14 *Taxes.*

(a) All Tax returns, statements, reports, declarations and other forms and documents (including without limitation estimated Tax returns and reports and material information returns and reports) required to be filed with any Tax Authority (as defined below) on or before the Closing with respect to any Taxable (as defined below) period ending on or before the Closing, by or on behalf of Parent or any Parent Subsidiary (collectively, *Parent Tax Returns* and individually, a *Parent Tax Return*), have been or will be completed and filed when due (including any extensions of such due date) and all amounts shown due on such Parent Tax Returns on or before the Effective Time have been or will be paid on or before such date (except to the extent that a reserve for Taxes has been reflected on the Parent Financial Statements in accordance with GAAP). The Parent Financial Statements (i) fully accrue all actual and contingent liabilities for Taxes (as defined below) with respect to all periods through June 30, 2002 and Parent has not and will not incur any Tax liability in excess of the amount reflected (excluding any amount thereof that reflects timing differences between the recognition of income for purposes of GAAP and for Tax purposes) on the Parent Financial Statements with respect to such periods, and (ii) properly accrues in accordance with GAAP all material liabilities for Taxes payable after June 30, 2002, with respect to all transactions and events occurring on or prior to such date. All information set forth in the notes to the Parent Financial Statements relating to Tax matters is true, complete and accurate in all material respects. Parent has not

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incurred any material Tax liability since June 30, 2002 other than in the ordinary course of business and Parent has made adequate provisions for all Taxes since that date in accordance with GAAP on at least a quarterly basis. Parent has withheld and paid to the applicable financial institution or Tax Authority all amounts required to be withheld. Parent is in full compliance with all the terms and conditions of any Tax exemption or other Tax-sparing agreement or order of a foreign government, and the consummation of the transactions contemplated herein (or any of them) will not have any adverse effect on the continued validity and effectiveness of any such Tax exemption or other Tax-sparing agreement or order. Parent has never been a party (either as a distributing corporation, a distributed corporation or otherwise) to any transaction intended to qualify under Section 355 of the Code or any corresponding provision of state Law. As used in this Section 4.14, the term Parent means Parent, the Parent Subsidiaries and any entity included in, or required under GAAP to be included in, any of the Parent Financial Statements.

(b) In relation to goods and services tax and/or value-added or other similar tax, Parent (i) has been duly registered and is a taxable person; (ii) has complied, in all respects, with all statutory requirements, orders, provisions, directions or conditions; (iii) maintains complete, correct and up to date records as is required by the applicable legislation; and (iv) has not been required by the relevant authorities of customs and excise to give security.

SECTION 4.15 *Vote Required*. The only vote of the holders of Parent Stock necessary to approve the issuance of shares of Parent Shares pursuant to this Agreement, the Merger, the Combination and the other transactions contemplated by this Agreement, is the affirmative vote of the holders of at least a majority of the outstanding shares of Parent Common Stock present at a duly convened meeting of Parent s stockholders at which a quorum is present.

SECTION 4.16 *Assets; Absence of Liens and Encumbrances*. Except as set forth in the Parent Disclosure Letter, Parent and the Parent Subsidiaries have good and marketable title to all properties and assets owned by them that are material to the operation of Parent s business, in each case free from Liens, encumbrances and defects that would materially affect the value thereof or materially interfere with the use made or to be made thereof by them; and Parent and the Parent Subsidiaries hold any leased real or personal property that are material to the operation of Parent s business under valid and enforceable leases with no exceptions that would materially interfere with the use made or to be made thereof by them.

SECTION 4.17 *Owned Real Property*. Parent and Parent Subsidiaries do not own any real property.

SECTION 4.18 *Certain Interests*. Except as set forth in the Parent SEC Reports, none of the officers or directors of Parent is presently a party to any transaction with Parent or any Parent Subsidiary (other than for services as employees, officers and directors), including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any officer or director or, to the knowledge of Parent, any entity in which any officer or director has a material interest.

SECTION 4.19 *Insurance Policies*. Parent maintains insurance with respect to its businesses, properties, officers, directors and employees customary with industry practices. True and complete copies of all such policies have been made available to STT Communications and Pihana. All premiums due as of the date of this Agreement on such policies have been paid, and Parent and each Parent Subsidiary is otherwise in compliance with the terms of such policies. Neither Parent nor any Parent Subsidiary has failed to give any notice or present any claim under any such policy in a timely fashion, except where such failure would not prejudice Parent s or any Parent Subsidiary s ability to make a claim. Such insurance to the date hereof has been maintained in full force and effect and not been canceled or changed, except to extend the maturity dates thereof. Neither Parent nor any Parent Subsidiary has received any notice or other communication regarding any actual or possible (i) cancellation or threatened termination of any insurance policy, (ii) refusal of any coverage or rejection of any claim under any insurance policy or (iii) material adjustment in the amount of the premiums payable with respect to any insurance policy.

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SECTION 4.20 *Restrictions on Business Activities*. There is no agreement, commitment, judgment, injunction, order or decree binding upon Parent or any Parent Subsidiary or to which Parent or any Parent Subsidiary is a party which has or could reasonably be expected to have the effect of prohibiting or materially impairing any business practice material to Parent or any Parent Subsidiary, any acquisition of property by Parent or any Parent Subsidiary or the conduct of business by Parent or any Parent Subsidiary as currently conducted or as proposed to be conducted.

SECTION 4.21 *Customers and Suppliers*. Section 4.21 of the Parent Disclosure Letter contains a complete list of all customers that accounted for 3% or more of Parent s and the Parent Subsidiaries (taken as a whole) monthly recurring revenue for September 2002. No customer, listed on Section 4.21 of the Parent Disclosure Letter has, within the past twelve months prior to the date hereof, cancelled or otherwise terminated, or made any unresolved threat to cancel or terminate, its relationship with Parent or any Parent Subsidiary, or decreased materially its usage of Parent s or any Parent Subsidiary s services or products. No material supplier of Parent or any Parent Subsidiary has cancelled or otherwise terminated any contract with Parent or any Parent Subsidiary prior to the expiration of the contract term, or made any threat to Parent or any Parent Subsidiary to cancel, reduce the supply or otherwise terminate its relationship with Parent or any Parent Subsidiary. Neither Parent nor any Parent Subsidiary has (i) materially breached (so as to provide a benefit to Parent that was not intended by the parties) any material agreement with or (ii) engaged in any fraudulent conduct with respect to, any customer or supplier of Parent or any Parent Subsidiary.

SECTION 4.22 *Brokers*. Except for Salomon Smith Barney Inc., no broker, finder or investment banker is entitled to any brokerage, finder s or other fee or commission in connection with the Combination or the other transactions contemplated by this Agreement based upon arrangements made by or on behalf of Parent, Merger Sub or SP Sub.

SECTION 4.23 *State Takeover Statutes*. The board of directors of Parent has taken all action necessary to ensure that any restrictions on business combinations contained in the DGCL will not apply to the Combination and the other transactions contemplated by this Agreement or to any actions that may be taken at any time or from time to time following the Effective Time by STT Communications or its subsidiaries or SP Sub. No other fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulation or any anti-takeover provision in Parent s certificate of incorporation or bylaws is, or at the Effective Time will be, applicable to Parent, STT Communications, i-STT, the shares of Parent Common Stock, the Combination or the other transactions contemplated by this Agreement.

SECTION 4.24 *Accounts Receivable*. All accounts receivable reflected in the financial or accounting records of Parent and the Parent Subsidiaries that have arisen since June 30, 2002 are valid receivables subject to no setoffs or counterclaims and are, to the knowledge of Parent, current and collectible net of a reserve for bad debts in an amount proportionate to the reserve shown on the Parent Financial Statements as of June 30, 2002.

SECTION 4.25 *Powers of Attorney*. There are no outstanding powers of attorney executed on behalf of Parent or any Parent Subsidiary.

SECTION 4.26 *Offers*. Between August 7, 2002 and the date of this Agreement, except as allowed in that certain Exclusivity Agreement among Pihana, Parent and i-STT, dated as of August 7, 2002 (as amended to date), Parent has suspended or terminated, and has the legal right to terminate or suspend, all negotiations and discussions of any acquisition, merger, consolidation or sale of all substantially all of the assets of Parent and the Parent Subsidiaries with parties other than STT Communications, i-STT and Pihana.

SECTION 4.27 *Books and Records*. The minute books and other similar records of Parent and each Parent Subsidiary provided to STT Communications and Pihana contain complete and accurate records of all actions taken at any meetings of Parent s or each Parent Subsidiary s stockholders, board of directors or any committee thereof and of all written consents executed in lieu of the holder of any such meeting. The books and records of Parent and each Parent Subsidiary have been maintained in accordance with good business and bookkeeping practices.

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SECTION 4.28 *No Misstatements*. No representation or warranty made by Parent, Merger Sub or SP Sub in this Agreement, the Parent Disclosure Letter or certificate delivered or deliverable pursuant to the terms hereof, contains or will contain, any untrue statement of a material fact, or omits, or will omit, when taken as a whole, to state a material fact, necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

SECTION 4.29 *Interim Operations of Merger Sub and SP Sub*. Merger Sub and SP Sub were formed by Parent solely for the purpose of engaging in the transactions contemplated by this Agreement, has engaged in no other business activities and has conducted its operations only as contemplated by this Agreement. Merger Sub and SP Sub have no liabilities and, except for a subscription agreement pursuant to which all of its authorized capital stock was issued to Parent, is not a party to any agreement other than this Agreement and agreements with respect to the appointment of registered agents and similar matters.

SECTION 4.30 *Valid Issuance of Parent Shares*. The shares of Parent Common Stock and Parent Preferred Stock to be issued pursuant to this Agreement will, when issued, be duly authorized, validly issued, fully paid and non-assessable.

SECTION 4.31 *European Operations*. Neither Parent nor the Parent Subsidiaries have any material obligations related to Parent s and the Parent s Subsidiaries operations in Europe.

SECTION 4.32 *Employee Benefit Plans.*

(a) None of the Parent Plans provides for the payment of separation, severance, termination or similar benefits to any person or obligates Parent or any Subsidiary of Parent to pay separation, severance, termination or similar-type benefits solely or partially as a result of any transaction contemplated by this Agreement or as a result of a change in ownership or control, within the meaning of such term under Section 280G of the Code. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any material payment (including, without limitation, severance, unemployment compensation, golden parachute, forgiveness of indebtedness or otherwise) becoming due under any Parent Plan, (ii) materially increase any benefits otherwise payable under any Parent Plan or other arrangement, (iii) result in the acceleration of the time of payment, vesting or funding of any benefits including, but not limited to, the acceleration of the vesting and exercisability of any Parent Option, or (iv) affect in any material adverse respects any Parent Plan s current treatment under any Laws including any Tax Law.

(b) For purposes of this Section 4.32, the term *Parent Plans* shall mean (i) all employee benefit plans (as defined in ERISA Section 3(3), and all bonus, stock option, stock purchase, stock appreciation right, restricted stock, phantom stock, incentive, deferred compensation, retiree medical, disability or life insurance, cafeteria benefit, dependent care, disability, director or employee loan, fringe benefit, sabbatical, supplemental retirement, severance or other benefit plans, programs or arrangements, and all employment, termination, severance or other contracts or agreements (whether formal or informal and whether in writing or not) to which Parent or any Subsidiary of Parent is a party, with respect to which Parent or any Subsidiary of Parent has any obligation or which are maintained, contributed to or sponsored by Parent or any Subsidiary of Parent for the benefit of any current or former employee, officer or director of Parent or any Subsidiary of Parent, and (ii) any employment agreements, offer letters or other contracts, arrangements or understandings between Parent or any Subsidiary of Parent and any employee of Parent or any Subsidiary of Parent (whether legally enforceable or not, whether formal or informal and whether in writing or not) including, without limitation, any contracts, arrangements or understandings relating to a sale of Parent (each, a *Parent Plan*, and collectively, the *Parent Plans*).

SECTION 4.33 *U.S. Real Property Holding Company*. Parent will not be a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) as of the time immediately following the consummation of all of the transactions contemplated by this Agreement to occur as of the Closing Date. Parent

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would not have incurred any indebtedness under that certain Syndicated Loan (as defined in Section 7.01(g)(iii) hereof) but for the construction and/or build-out of the various internet business exchange centers (*IBXs*) located in the United States that Parent currently owns and that were paid for by Parent in whole or in part on or after the date of the incurrence of such indebtedness. As of the Closing Date all amounts outstanding under such Syndicated Loan will be secured by such United States IBXs.

ARTICLE V

CONDUCT OF BUSINESSES PENDING THE MERGER

SECTION 5.01 *Conduct of Business by Pihana and the Pihana Subsidiaries Pending the Merger*. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, Pihana agrees, and shall cause each Pihana Subsidiary (except to the extent that each of Parent and STT Communications shall otherwise consent in writing) to carry on its business in the usual, regular and ordinary course and in substantially the same manner as previously conducted, to pay its debts and Taxes when due (subject to good faith disputes over such debts or Taxes), to pay or perform other obligations when due and, to the extent consistent with such business, to use all reasonable efforts consistent with past practices and policies to preserve intact its present business organization, keep available the services of its present officers and key employees and consultants and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses would be unimpaired at the Effective Time except as otherwise contemplated by this Agreement.

By way of amplification and not limitation, except as otherwise contemplated by this Agreement or as specifically set forth in Section 5.01 of the Pihana Disclosure Letter, neither Pihana nor any Pihana Subsidiary shall, between the date of this Agreement and the Effective Time, directly or indirectly, do, or propose to do, any of the following without the prior written consent (which consent, with respect to Sections 5.01(c), (i), (k), (m), (n), (p), (q), (s), (t), (w), and (y) (and with respect to such clauses to the extent covered by Section 5.01(z)) shall not be unreasonably withheld, conditioned or delayed) of each of Parent and STT Communications:

(a) amend or otherwise change its certificate of incorporation or bylaws or equivalent organizational documents;

(b) issue, sell, pledge, dispose of, grant, encumber, authorize or propose the issuance, sale, pledge, disposition, grant or encumbrance of any shares of its capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock or any other ownership interest (including, without limitation, any phantom interest), of Pihana or any Pihana Subsidiary, except pursuant to the terms of options, warrants or preferred stock outstanding on the date of this Agreement;

(c) sell, lease, license, pledge, grant, encumber or otherwise dispose of any of its properties or assets, except in the ordinary course of business, consistent with past practice;

(d) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock;

(e) split, combine, subdivide, redeem or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or purchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service by such party;

(f) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) all or substantially all of the assets of, or any equity interest (except in compromise of bona fide claims) in, any corporation, partnership, or other business organization;

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(g) institute or settle any Pihana Legal Proceeding;

(h) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person, or make any loans or advances (except pursuant to non-material negotiable instruments presented in the ordinary course of business and non-material surety and performance bonds and similar obligations entered into in the ordinary course of business);

(i) authorize any capital expenditure which causes its aggregate capital expenditures between July 1, 2002 and December 31, 2002 to exceed $1,750,000 and after December 31, 2002 any capital expenditure out of the ordinary cause of business;

(j) enter into any lease or contract for the purchase or sale of any real property;

(k) waive or release any material right or claim;

(l) increase, or agree to increase, the compensation payable, or to become payable, to its officers or employees, or grant any severance or termination pay to, or enter into any employment or severance agreement with, any of its directors, officers or other employees, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other Pihana Plan, agreement, trust, fund, policy or arrangement for the benefit of any director, officer or employee; *provided, however,* that the foregoing provisions of this subsection shall not apply to any amendments to employee benefit plans described in Section 3(3) of ERISA that may be required by Law;

(m) extend any offers of employment to potential employees, consultants or independent contractors or voluntarily terminate any existing employment relationships with any key employee or executive officer;

(n) amend or terminate any Pihana Material Contract, or enter into any contract that would be a Pihana Material Contract;

(o) enter into, amend or terminate any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 5.01;

(p) other than in the ordinary course of business consistent with past practice, enter into any licensing, distribution, OEM agreements, sponsorship, advertising, merchant program or other similar contracts, agreements or obligations that may not be cancelled without penalties by Pihana upon notice of 30 days or less;

(q) pay, discharge or satisfy any Pihana Liability, except in the ordinary course of business, consistent with past practice;

(r) take any action, with respect to accounting policies, principles or procedures, except as required by any Governmental Entity or a change in GAAP;

(s) make or change any Tax or accounting election, change any annual accounting period, adopt or change any accounting method, file any amended Pihana Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to Pihana or any Pihana Subsidiary, surrender any right to claim refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to Pihana or any Pihana Subsidiary, or take any other action or omit to take any action that would have the effect of increasing the Tax liability of Pihana or any Pihana Subsidiary or Parent;

(t) (i) sell, assign, lease, terminate, abandon, transfer, permit to be encumbered or otherwise dispose of or grant any security interest in and to any material intellectual property of Pihana, in whole or in part, (ii) grant any license with respect to any material intellectual property of Pihana, other than a license of software granted to customers of Pihana or any Pihana Subsidiary to whom Pihana or any Pihana Subsidiary licenses such software in the ordinary course of business, (iii) develop, create or invent any intellectual property jointly with any third party (other than an employee or consultant), or (iv) disclose, or allow to be

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disclosed, any confidential Pihana intellectual property, unless such Pihana intellectual property is subject to a confidentiality or non-disclosure covenant protecting against disclosure thereof;

(u) make (or become obligated to make) any bonus or severance payments to any of its officers or employees other than pursuant to Pihana Plans;

(v) fail to maintain its equipment and other assets in good working condition and repair according to the standards it has maintained up to the date of this Agreement, subject only to ordinary wear and tear;

(w) permit any insurance policy naming it as a beneficiary or a loss payable payee to be cancelled or terminated without notice to Parent and STT Communications;

(x) take, or agree in writing or otherwise to take, any action outside the ordinary course of business that would result in a material change of Pihana Working Capital;

(y) grant any retention bonuses to any employee payable after December 31, 2002; or

(z) take, or agree in writing or otherwise to take, any of the actions described in subsections (a) through (y) above, or any action which would reasonably be expected to cause the condition in Section 7.02(b) not to be satisfied.

SECTION 5.02 *Conduct of Business by i-STT and the i-STT Subsidiaries Pending the Merger*. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, i-STT agrees, and shall cause each i-STT Subsidiary (except to the extent that each of Parent and Pihana shall otherwise consent in writing), to carry on its business in the usual, regular and ordinary course and in substantially the same manner as previously conducted, to pay its debts and Taxes when due (subject to good faith disputes over such debts or Taxes), to pay or perform other obligations when due and, to the extent consistent with such business, to use all reasonable efforts consistent with past practices and policies to preserve intact its present business organization, keep available the services of its present officers and key employees and consultants and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses would be unimpaired at the Effective Time, except as otherwise contemplated by this Agreement.

By way of amplification and not limitation, except as otherwise contemplated by this Agreement, neither i-STT nor any i-STT Subsidiary shall, between the date of this Agreement and the Effective Time, directly or indirectly, do, or propose to do, any of the following without the prior written consent, which consent, with respect to Sections 5.02(c), (h), (j), (k), (l), (p), (q), (t) and (u), and with respect to such clauses to the extent covered by Section 5.02(u) shall not be unreasonably withheld, conditioned or delayed) of each of Parent and Pihana:

(a) amend or otherwise change its certificate of incorporation or bylaws or equivalent organizational documents;

(b) issue, sell, pledge, dispose of, grant, encumber, authorize or propose the issuance, sale, pledge, disposition, grant or encumbrance of any shares of its capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock or any other ownership interest (including, without limitation, any phantom interest), of i-STT or any i-STT Subsidiary, except in respect of the conversion of an outstanding loan from STT Communications;

(c) sell, lease, license, pledge, grant, encumber or otherwise dispose of any of its properties or assets, except in the ordinary course of business, consistent with past practice;

(d) declare, set aside, make or pay any dividend or other distribution, payable in cash, stock, property or otherwise, with respect to any of its capital stock;

(e) split, combine, subdivide, redeem or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or purchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former

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employees, directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service by such party;

(f) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) all or substantially all of the assets of, or any equity interest (except in compromise of bona fide claims) in, any corporation, partnership, or other business organization;

(g) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person, or make any loans or advances (except pursuant to non-material negotiable instruments presented in the ordinary course of business and non material surety and performance bonds and similar obligations entered into in the ordinary course of business);

(h) authorize any capital expenditure not included in its capital budget;

(i) enter into any lease or contract for the purchase or sale of any real property;

(j) increase, or agree to increase, the compensation payable, or to become payable, to its officers, or grant any severance or termination pay to, or enter into any employment or severance agreement with, any of its directors or officers, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other i-STT Plan, agreement, trust, fund, policy or arrangement for the benefit of any director or officer; *provided, however*, that the foregoing provisions of this subsection shall not apply to any amendments to employee benefit plans that may be required by Law;

(k) extend any offers of employment to potential executive officers or voluntarily terminate any existing employment relationships with any key employee or executive officer;

(l) amend or terminate any i-STT Material Contract, or enter into any contract that would be a i-STT Material Contract;

(m) enter into, amend or terminate any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 5.02;

(n) except as necessary to affect reconciliation to GAAP, take any action, with respect to accounting policies, principles or procedures, except as required by any Governmental Entity or a change in GAAP;

(o) make or change any Tax or accounting election, change any annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to i-STT or any i-STT Subsidiary, surrender any right to claim refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to i-STT or any i-STT Subsidiary;

(p) except in the ordinary course of business, (i) sell, assign, lease, terminate, abandon, transfer, permit to be encumbered or otherwise dispose of or grant any security interest in and to any material intellectual property of i-STT, in whole or in part, (ii) grant any license with respect to any material intellectual property of i-STT, other than a license of software granted to customers of i-STT or any i-STT Subsidiary to whom i-STT or any i-STT Subsidiary licenses such software in the ordinary course of business, (iii) develop, create or invent any intellectual property jointly with any third party (other then an employee or consultant), or (iv) disclose, or allow to be disclosed, any confidential i-STT intellectual property, unless such i-STT intellectual property is subject to a confidentiality or non-disclosure covenant protecting against disclosure thereof;

(q) make (or become obligated to make) any bonus or severance payments to any of its executive officers other than pursuant to i-STT Plans;

(r) fail to maintain its equipment and other assets in good working condition and repair according to the standards it has maintained up to the date of this Agreement, subject only to ordinary wear and tear;

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(s) permit any insurance policy naming it as a beneficiary or a loss payable payee to be cancelled or terminated without notice to Parent;

(t) take, or agree in writing or otherwise to take, any action outside the ordinary course of business that would result in a material change to i-STT Working Capital; or

(u) take, or agree in writing or otherwise to take, any of the actions described in subsections (a) through (t) above, or any action which would reasonably be expected to cause the condition in Section 7.03(b) not to be satisfied.

SECTION 5.03 *Conduct of Business by Parent Pending the Merger*. Except as otherwise contemplated by this Agreement, or as specifically set forth in Section 5.03 of the Parent Disclosure Letter, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, Parent shall not do any of the following and shall not permit its subsidiaries to do any of the following, except to the extent that each of Pihana and i-STT shall otherwise consent in writing, which consent, with respect to Sections 5.03(e), (j), (k), (n), and (o) (and with respect to such clauses to the extent covered by Section 5.03(p)), shall not be unreasonably withheld, conditioned or delayed:

(a) declare, set aside or pay any dividends on or make any other distributions in cash or property in respect of any capital stock;

(b) cause, permit or propose any amendments to its certificate of incorporation or bylaws or equivalent organizational documents (or similar governing instruments of any of its subsidiaries), except as contemplated by this Agreement;

(c) issue, sell, pledge, dispose of, grant, encumber, authorize or propose the issuance, sale, pledge, disposition, grant or encumbrance of any shares of its capital stock of any class, or any options, warrants, convertible securities or other rights of any kind to acquire any shares of such capital stock or any other ownership interest (including, without limitation, any phantom interest), of Parent or any Parent Subsidiary, except pursuant to the terms of options, warrants or preferred stock outstanding on the date of this Agreement;

(d) take any action, with respect to accounting policies, principles or procedures, except as required by any Governmental Entity or a change in GAAP;

(e) sell, lease, license, pledge, grant, encumber or otherwise dispose of any of its properties or assets, except in the ordinary course of business, consistent with past practice;

(f) except as contemplated by this Agreement, split, combine, subdivide, redeem or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or purchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service by such party;

(g) acquire (including, without limitation, by merger, consolidation, or acquisition of stock or assets) all or substantially all of the assets of, or any equity interest (except in compromise of bona fide claims) in, any corporation, partnership, or other business organization;

(h) incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person, or make any loans or advances (except pursuant to non-material negotiable instruments presented in the ordinary course of business and non-material surety and performance bonds and similar obligations entered into in the ordinary course of business);

(i) enter into any lease or contract for the purchase or sale of any real property;

(j) increase, or agree to increase, the compensation payable, or to become payable, to its officers, or grant any severance or termination pay to, or enter into any employment or severance agreement with any

of its directors, or officers, or establish, adopt, enter into or amend any material collective bargaining, bonus, profit sharing, thrift, compensation, stock option, restricted stock, pension, retirement, deferred compensation, employment, termination, severance or other Parent Plan (as defined in Section 6.04(b)), agreement, trust, fund, policy or arrangement for the benefit of any director or officer; provided, however, that the foregoing provisions of this subsection shall not apply to any amendments to employee benefit plans described in Section 3(3) of ERISA that may be required by law;

(k) extend any offers of employment to potential executive officers or terminate any existing employment relationships with any key employee or executive officers, except pursuant to Parent Plans;

(l) amend any material contract, or enter into, amend or terminate any contract, agreement, commitment or arrangement that, if fully performed, would not be permitted under this Section 5.03;

(m) make (or become obligated to make) any bonus or severance payments to any of its executive officers other than with respect to Parent Plans;

(n) authorize any capital expenditure not included in its capital budget;

(o) take, or agree in writing or otherwise to take, any action outside the ordinary course of business that would result in a material change to Parent Working Capital; or

(p) agree in writing or otherwise to take any of the actions described in Section 5.03(a) through (o) above, or any action which would reasonably be expected to cause the condition in Section 7.03(b) not to be satisfied.

SECTION 5.04 *Litigation*. Each Party shall give prompt notice to each other Party in writing promptly after learning of any claim, action, suit, arbitration, mediation, proceeding or investigation by or before any court, arbitrator or arbitration panel, board or other Governmental Entity initiated by it or against it, or known by it to be threatened against such Party, or any of such Party s officers, directors, employees or stockholders in their capacity as such.

SECTION 5.05 *Notification of Certain Matters*. Each Party shall give prompt notice to each other Party of (i) the occurrence, or non-occurrence, of any event the occurrence, or non-occurrence, of which would be reasonably expected to cause (x) any representation or warranty contained in this Agreement to be untrue or inaccurate or (y) any covenant, condition or agreement contained in this Agreement not to be complied with or satisfied; and (ii) any failure or inability of such Party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however,* that the delivery of any notice pursuant to this Section 5.05 shall not limit or otherwise affect the remedies available hereunder to the Parties receiving such notice. The Parties acknowledge that reliance shall not be an element of any claim or cause of action by any Party for misrepresentation or breach of a representation, warranty or covenant under this Agreement.

ARTICLE VI

ADDITIONAL AGREEMENTS

SECTION 6.01 *Proxy Statement*.

(a) As promptly as practicable after the execution of this Agreement, (i) the Parties shall prepare and Parent shall file with the SEC a proxy statement (together with any amendments thereof or supplements thereto, the *Proxy Statement*) relating to the meeting of the Parent stockholders (the *Parent Stockholders Meeting*) to be held to consider (i) approval of this Agreement and (ii) a reverse split of the Parent Common Stock. Each of Parent, STT Communications and Pihana shall use commercially reasonable efforts to cause the Proxy Statement to be cleared for mailing as promptly as practicable. Each Party shall furnish all information concerning itself as the other may reasonably request in connection with such actions and the

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preparation of the Proxy Statement. As promptly as practicable after the Proxy Statement shall have been cleared for mailing, Parent shall mail or cause to be mailed the Proxy Statement to its stockholders.

(b) Except as provided in this Section 6.01(b), the Proxy Statement shall, subject to the fiduciary duties of the Board of Directors of Parent, include the recommendation of the board of directors of Parent to the stockholders of Parent to vote in favor of the approval of this Agreement (the *Parent Board Recommendation*) and approval of the reverse split of the Parent Common Stock and neither the board of directors of Parent nor any committee thereof shall, subject to the next sentence of this Section 6.01(b), withdraw or modify, or propose or resolve to withdraw or modify, in each case in a manner adverse to Pihana or STT Communications, the Parent Board Recommendation. Prior to the time of the Parent Stockholders Meeting, Parent s board of directors may:

(i) (x) approve or recommend a Superior Proposal (as defined in Section 6.12(d)), or (y) enter into an agreement with respect to a Superior Proposal, in each case at any time after the third business day following STT Communications and Pihana s receipt of written notice from Parent advising STT Communications and Pihana that the board of directors of Parent has received a Superior Proposal which it intends to accept, specifying the material terms and conditions of such Superior Proposal, identifying the person making such Superior Proposal, but only if Parent shall have negotiated in good faith with STT Communications and Pihana to proceed with the transactions contemplated herein on adjusted terms that return at least equivalent value to Parent s stockholders and debt holders as the Superior Proposal; provided, however, if Parent, STT Communications and Pihana are unable to agree to an acceptable adjustment within such three (3) business day period, Parent shall have no further obligation to negotiate such adjustment.

(ii) withdraw or modify its approval or recommendation in favor of the approval of this Agreement and the transactions contemplated herein if Parent s board of directors concludes in good faith, after consultation with its outside counsel, that the withdrawal or modification of such recommendation is consistent with Parent s board of directors fiduciary duties (including its duty of candor) to the Parent Stockholders.

(c) No amendment or supplement to the Proxy Statement will be made by any Party without the approval of the other party (such approval not to be unreasonably withheld or delayed). Each Party will advise the other Parties, promptly after it receives notice thereof, of the time the SEC has issued formal comments to the Proxy Statement, of the time at which the Proxy Statement has been cleared for mailing or any supplement or amendment has been filed, of the issuance of any stop order with the Proxy Statement or of any request by the SEC for amendment of the Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information.

(d) The information supplied by any Party for inclusion in the Proxy Statement shall not, at (i) any time the Proxy Statement is mailed to the stockholders of Parent, and (ii) the time of the Parent Stockholders Meeting, contain any untrue statement of a material fact or fail to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. If, at any time prior to the Effective Time, any event or circumstance relating to any Party, or its respective officers or directors, that should be set forth in an amendment or a supplement to the Proxy Statement is discovered by any Party, such Party shall promptly inform each other Party. All documents that Parent is responsible for filing with the SEC in connection with the Combination or the other transactions contemplated by this Agreement will comply as to form and substance in all material respects with the applicable requirements of the Securities Act and the Exchange Act.

SECTION 6.02 *Access to Information; Confidentiality*.

(a) From the date of this Agreement to the Effective Time, each Party shall: (i) provide to each other Party (and its officers, directors, employees, accountants, consultants, legal counsel, advisors, agents and other representatives (collectively, *Representatives*)) access at reasonable times upon prior notice to the

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directors, officers, employees, agents, properties, offices and other facilities of such Party and such Party s subsidiaries and to the books and records thereof and (ii) furnish promptly such information concerning the business, properties, contracts, assets, liabilities, personnel and other aspects of such Party and such Party s subsidiaries as the requesting Party or its Representatives may reasonably request.

(b) The Parties shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under (i) the Non-Disclosure Letter, dated March 27, 2002 (the *Pihana Non-Disclosure Letter*), between Pihana and Parent and (ii) that certain letter agreement, dated June 17, 2002 (the *Parent Non-Disclosure Letter*), between i-STT and Parent.

SECTION 6.03 *Stockholder Meeting*. Parent shall call and hold the Parent Stockholders Meeting as promptly as practicable after the date hereof for the purpose of voting to approve this Agreement and a reverse split of the Parent Common Stock, pursuant to the Proxy Statement, and Parent shall use all reasonable efforts to hold the Parent Stockholders Meeting as soon as practicable after the date on which the Proxy Statement is cleared for mailing. Nothing herein shall prevent Parent from adjourning or postponing the Parent Stockholders Meeting if there are insufficient shares of Parent Common Stock necessary to conduct business at the Parent Stockholders Meeting. Parent, subject to its rights under Section 6.01(b) to recommend a Superior Proposal or withdraw or modify its recommendation to the Parent Stockholders, shall use commercially reasonable efforts to solicit from its stockholders proxies in favor of the approval of this Agreement pursuant to the Proxy Statement and shall take all other action necessary or advisable to secure the vote or consent of stockholders required by the DGCL or applicable stock exchange requirements to obtain such approval.

SECTION 6.04 *Employee Benefits Matters*.

(a) Parent shall take such reasonable actions as are necessary to allow all employees of Pihana, i-STT and their respective subsidiaries after the Effective Time (*Continuing Employees*) to participate in the health, welfare and other benefit programs of Parent or alternative benefits programs in the aggregate that are substantially equivalent to those applicable to employees of Parent in similar functions and positions on similar terms, provided that employees in countries outside the United States shall participate in benefit programs that are substantially equivalent to those applicable to employees of Parent in the same country.

(b) From and after the Effective Time, Parent shall take such reasonable actions as are necessary to grant each employee (Transferred Participants) of Pihana, i-STT and their respective subsidiaries credit for all service (to the same extent as service with Parent is taken into account with respect to similarly situated employees of Parent) with Pihana or i-STT or their respective subsidiaries (as the case may be) prior to the Effective Time for (i) eligibility and vesting purposes and (ii) for purposes of vacation accrual after the Effective Time as if such service with Pihana or i-STT or their respective subsidiaries was service with Parent. Parent and Pihana or i-STT or their respective subsidiaries agree that where applicable with respect to any medical or dental benefit plan of Parent, Parent shall waive any pre-existing condition exclusion and actively-at-work requirements (provided, however, that no such waiver shall apply to a pre-existing condition of any Transferred Participant who was, as of the Effective Time, excluded from participation in a plan by virtue of such pre-existing condition) and provided that any covered expenses incurred on or before the Effective Time by an employee or an employee s covered dependents shall be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the Effective Time to the same extent as such expenses are taken into account for the benefit of similarly situated employees of Parent to the extent permitted by the applicable Parent Plan.

(c) By giving Pihana written notice not less than three business days prior to the Closing Date, Parent may request that Pihana take all necessary corporate action to terminate its 401(k) plan (the *401(k) Plan*) effective as of the date immediately prior to the Closing Date, but contingent on the Closing. If Parent provides such notice to Pihana, Parent shall receive from Pihana evidence that Pihana s board of directors has adopted resolutions to terminate the 401(k) Plan (the form and substance of which resolutions shall be subject to review and approval of Parent), effective as of the date immediately preceding the Closing Date.

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(d) Pihana and, as applicable, its ERISA Affiliates each agree to terminate any and all group severance, separation or salary continuation plans, programs or arrangements immediately prior to Closing. Parent shall receive from Pihana evidence that the plans, programs or arrangements of Pihana and, as applicable, each ERISA Affiliate have been terminated pursuant to resolutions adopted by of each such entity s board of directors (the form and substance of which resolutions shall be subject to review and approval of the Parent), effective as of the day immediately preceding the Closing Date but contingent on the Closing.

(e) With respect to all stock purchase, stock option and stock award agreements (including any restricted stock, stock purchase, stock option or stock award agreement under the Pihana Stock Plan) between Pihana or i-STT and any of their current or former employees, directors, consultants or founders effective as of the Effective Time, any and all rights of repurchase under each such agreement shall be assigned to Parent (or to such other entity as Parent shall designate) by virtue of the Combination and without any further action on the part of Pihana, such assignment to be effective as of the Effective Time.

(f) Parent and i-STT will mutually determine which i-STT Plans (excluding those plans administered by STT Communications or for the benefit of its or its affiliates employees), if any, will be maintained by Parent following the Closing.

SECTION 6.05 *Further Action; Consents; Filings*.

(a) Upon the terms and subject to the conditions hereof, each Party hereto shall use commercially reasonable efforts to (i) take, or cause to be taken, all appropriate action and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the Combination, Merger and Stock Purchase and the other transactions contemplated by this Agreement, (ii) satisfy, or cause to be satisfied, the conditions to its and each Party s obligations to consummate the Combination, Merger and Stock Purchase, as applicable, which are set forth in Article VII, including, but not limited to, executing all documents and instruments, and taking all other actions, which are contemplated to be so executed or taken by such Party under any of the conditions set forth in Article VII, (iii) obtain from any Governmental Entity or any other person all consents, licenses, permits, waivers, approvals, authorizations or orders required to be obtained or made by any Party or any of their subsidiaries in connection with the authorization, execution and delivery of this Agreement and the consummation of the Combination and the other transactions contemplated by this Agreement and (iv) make all necessary filings, and thereafter make any other required submission, with respect to this Agreement, the Combination and the other transactions contemplated by this Agreement required under applicable Law. The Parties hereto shall cooperate with each other in connection with the making of all such filings, including by providing copies of all such documents to the non-filing Party and its advisors prior to filing and, if requested, by accepting all reasonable additions, deletions or changes suggested in connection therewith.

(b) From the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement, each Party shall promptly notify each other Party in writing of any pending or, to the knowledge of such Party, threatened action, proceeding or investigation by any Governmental Entity or any other person (i) challenging or seeking material damages in connection with this Agreement or the transactions contemplated hereunder or (ii) seeking to restrain or prohibit the consummation of the Combination or the transactions contemplated hereunder or otherwise limit the right of Parent or its subsidiaries to own or operate all or any portion of the business, assets or properties of Pihana or i-STT.

SECTION 6.06 *No Public Announcement*. The initial press release relating to this Agreement shall be a joint press release the text of which has been agreed to by each Party. Thereafter, unless otherwise required by applicable Law or stock exchange or trading system listing agreement, no Party shall issue any press release or otherwise make any public statements with respect to this Agreement, the Combination or any of the other transactions contemplated by this Agreement without the prior written consent of each other Party. In the case of disclosure required by applicable Law, each Party will, to the extent possible, provide for a prior review of such disclosure by the other Parties.

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SECTION 6.07 *Indemnification of Officers and Directors*.

(a) For a period of six years from and after the Closing Date, Parent, the Pihana Stockholders (until the R&W Termination Date) (as defined herein) and the Surviving Corporation agree to indemnify (including advancement of expenses) and hold harmless all past and present officers and directors of Pihana to the same extent such persons are indemnified by Pihana, as of the date of this Agreement pursuant to Pihana s certificate of incorporation or bylaws, employment agreements, indemnification agreements identified on the Pihana Disclosure Letter, or under applicable Law for acts or omissions which occurred at or prior to the Effective Time. Pihana represents to Parent that no claim for indemnification has been made by any director or officer of Pihana and, to the knowledge of Pihana, no basis exists for any such claim for indemnification.

(b) For a period of six years from and after the Closing Date, Parent (until the R&W Termination Date) (as defined herein) and the Surviving Corporation agree to indemnify (including advancement of expenses) and hold harmless all past and present officers and directors of i-STT to the same extent such persons are indemnified by i-STT, as of the date of this Agreement pursuant to i-STT s certificate of incorporation or bylaws, employment agreements, indemnification agreements identified on the i-STT Disclosure Letter, or under applicable Law for acts or omissions which occurred at or prior to the Effective Time. STT Communications and i-STT represents to Parent that no claim for indemnification has been made by any director or officer of i-STT and, to the knowledge of i-STT and STT Communications, no basis exists for any such claim for indemnification.

(c) The provisions of this Section 6.07 are intended for the benefit of, and shall be enforceable by, all past and present officers and directors of Pihana and i-STT and his or her heirs and representatives. The rights of all past and present officers and directors of Pihana and i-STT under this Section 6.07 are in addition to, and not in substitution for, any other rights to indemnification or contribution that any such person may have by contract, applicable Law or otherwise. If any past or present officer or director shall be forced to commence an action to enforce his of her rights under this Section 6.07, Parent shall reimburse the costs of such suit provided such officer or director is the prevailing party in such suit.

SECTION 6.08 *WARN Act*. The Parties agree to consult with each other on the need for and timing of notices pursuant to the Worker Adjustment and Retraining Notification Act, as amended (the *WARN Act*) (or any similar Federal, state or local regulation), which requires employers to give advance notice of defined types of employment loss. Prior to the Closing, Pihana agrees that, if reasonably requested by Parent, it shall, on behalf of Parent, Merger Sub and SP Sub, issue such notices as are required under the WARN Act (or any similar Federal, state or local regulation) to its employees when requested by Parent in order to comply with the applicable provisions of the WARN Act or any similarly applicable state or local law. Any such request by Parent shall be given by Parent in time to permit Pihana to issue notices sufficiently in advance of any lay-off or closing of any offices so that neither Parent nor any subsidiary of Parent shall be liable under the WARN Act for any penalty or payment in lieu of notice to any employee or Governmental Entity. Parent and Pihana shall cooperate in the preparation and giving of such notices, and no such notices shall be given without the approval of Parent, except with respect to actions contemplated by Section 7.02 hereof.

SECTION 6.09 *Conversion Schedule*. Section 6.09 of the Pihana Disclosure Letter is a schedule prepared by Pihana (the *Preliminary Conversion Schedule*) showing the number of shares of Parent Common Stock to be issued to each holder of shares of Pihana Stock and each holder of rights to acquire capital stock of Pihana, including the number of shares of Parent Common Stock to be deposited in the Escrow Fund, as of the execution of this Agreement as if the Effective Time and the exchange of shares pursuant to the Merger had occurred as of the date of the Reference Balance Sheet. Pihana and the Pihana Stockholders Representative shall prepare a final schedule as of the Effective Time (the *Final Conversion Schedule*), and an officer of Pihana shall certify the Final Conversion Schedule and deliver such schedule to Parent at Closing.

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SECTION 6.10 *Market Standoff.*

(a) No holder of Parent Merger Shares or Parent Stock Purchase Shares (each a *Holder*) shall, for a period of six months following the Closing, without the prior written consent of Parent, offer sell, contract to sell, pledge or otherwise dispose of, (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition (whether by actual disposition or effective economic disposition due to cash settlement or otherwise) by such Holder, any affiliate of such Holder or any person in privity with such Holder or any affiliate of such Holder) directly or indirectly, including by participation in the filing of a registration statement with the SEC in respect of, establish or increase a put equivalent position or liquidate or decrease a call equivalent position within the meaning of Section 16 of the Exchange Act with respect to, any shares of capital stock of Parent or any securities convertible into, or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction. Nothing in this Agreement shall restrict or limit the investment banking, lending, broker-dealer or asset management activities of any Holder or any affiliate of any Holder.

(b) Section 6.10(a) shall not apply to (i) any pledge of shares of Parent capital stock made pursuant to a bona fide loan transaction that creates a mere security interest, (ii) any transfer to the ancestors, descendants or spouse or to trusts for the benefits of such persons; (iii) any transfer to partners, members, wholly-owned subsidiaries or shareholders of such Holder; (iv) any bona fide gift; or (v) any transfer to employees, former employees or consultants of STT Communications to any stock incentive or option plan that STT Communications may establish for their benefit or in substitution for options of STT Communications outstanding as of the Closing Date; provided that (A) the transferring Holder shall inform Parent of such pledge, transfer or gift prior to effecting it and (B) the pledgee, transferee or donee shall furnish Parent with a written agreement to be bound by and comply with all provisions of Section 6.10.

SECTION 6.11 *Parent Board of Directors.* The board of directors of Parent will take all actions necessary such that, as of the Effective Time, the Parent board of directors and all committees thereof shall be constituted as contemplated in the Governance Agreement, substantially in the form attached hereto as *Exhibit D*.

SECTION 6.12 *No Solicitation of Transactions*.

Until the Closing Date,

(a) No Party will, directly or indirectly, and each Party will instruct its Representatives not to, directly or indirectly, solicit, initiate or encourage (including by means of furnishing nonpublic information), or take any other action to facilitate, any inquiries or the making of any proposal or offer (including, without limitation, any proposal or offer to its stockholders) that constitutes, or may reasonably be expected to lead to, any Competing Transaction (as defined below), or enter into or maintain or continue discussions or negotiate with any person or entity in furtherance of such inquiries or to obtain a Competing Transaction, or agree to or endorse any Competing Transaction, or authorize or permit any of its Representatives to take any such action. Each Party shall immediately notify each other Party if any proposal or offer, or any inquiry or contact with any person with respect thereto, regarding a Competing Transaction is made, and such Party shall immediately inform each other Party as to the material details of any such proposal, offer, inquiry or contact, including, without limitation, the identity of the party making any such proposal, offer, inquiry or contact, and, if in writing, promptly deliver or cause to be delivered to each other Party a copy of such proposal, offer, inquiry or contact and any other written material relating thereto. Each Party immediately shall cease and cause to be terminated all existing discussions or negotiations with any parties conducted heretofore with respect to a Competing Transaction. No Party shall release any third party from, or waive any provision of, any confidentiality or standstill agreement to which it is a party.

(b) Notwithstanding anything to the contrary in Section 6.12(a), Parent s board of directors may furnish information to, and enter into discussions with, a person who has made an unsolicited, written, bona fide proposal or offer regarding a Competing Transaction if Parent s board of directors has (i) reasonably

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concluded after consultation with outside legal counsel and a financial advisor of internationally recognized reputation that such proposal or offer constitutes a Superior Proposal (as defined below), (ii) reasonably concluded, after consultation with its outside legal counsel, that, in light of such Superior Proposal, failing to furnish such information or entering into discussions would be inconsistent with its fiduciary obligations to Parent s stockholders under applicable Law, and (iii) provided written notice to each of STT Communications and Pihana of its intent to furnish information or enter into discussions with such person; *provided, however*, that Parent s board of directors shall furnish to each other Party all information provided to the person who has made the Superior Proposal to the extent that such information has not been previously provided to such Parties and shall keep each of STT Communications and Pihana reasonably informed as to the status of any discussions regarding such Superior Proposal.

(c) A *Competing Transaction* means any of the following involving Pihana, i-STT or Parent (other than the Merger, the Stock Purchase, the Combination and the other transactions contemplated by this Agreement): (i) a merger, consolidation, share exchange, business combination or other similar transaction; (ii) any sale, lease, exchange, mortgage, pledge, transfer or other disposition of 15% or more of the assets of a Party and such Party s subsidiaries, taken as a whole; (iii) a tender offer or exchange offer for, or any offer to purchase directly from a Party, 15% or more of the outstanding voting securities of a Party; *provided, however* that transactions related to the conversion of the Senior Notes and the Syndicated Loan described in Sections 7.01(g)(ii) and (iii) shall not be Competing Transactions for purposes of Section 6.12(a); (iv) any solicitation in opposition to adoption by Parent s stockholders of this Agreement; or (v) any liquidation, dissolution, recapitalization or other significant corporate reorganization of a Party.

(d) A *Superior Proposal* means an unsolicited written bona fide offer made by a third party to consummate a Competing Transaction (changing the 15% thresholds to 50%) on terms (including conditions to consummation of the contemplated transaction) that the board of directors of Parent determines, in its good faith reasonable judgment, to be more favorable to Parent s stockholders and/or debt holders (to the extent they are owed a legal duty) from a financial point of view than the terms of the Combination (taken as a whole).

(e) Nothing contained in this Agreement shall prohibit Parent or its board of directors from taking and disclosing to its stockholders a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act or otherwise complying with its duty of candor to the stockholders of Parent.

SECTION 6.13 *Exculpation among Parties*. Each Party has reviewed all documents, records and information relating to (i) this Agreement and the transactions contemplated herein, and (ii) each other Party, which each such Party has desired to review in connection with its decision to enter into this Agreement and to consummate the transactions contemplated hereby. Each Party has relied solely on its own knowledge, judgment, experience, due diligence and any other review or analysis (or that of its advisors) necessary for such Party to make the decision whether to enter into this Agreement and to consummate the transactions contemplated hereby, and such Party has not relied upon (x) any representation or warranty other than the representations and warranties of each other Party set forth in this Agreement or (y) any knowledge, experience, due diligence or any other review or analysis of any other Party (or any other Party s advisors).

SECTION 6.14 *Tax Treatment of Merger*. The Merger is intended to constitute a taxable acquisition of the stock of Pihana (and not a reorganization under Section 368 of the Code or part of a transaction described in Section 351 of the Code) for United States federal income tax purposes and for purposes of corresponding applicable state and local tax Laws. Parent shall report the acquisition in a manner consistent with this intent.

SECTION 6.15 *Tax Treatment of Stock Purchase*. The Stock Purchase is intended to constitute a taxable acquisition of the stock of i-STT (and not a reorganization under Section 368 of the Code or part of a transaction described in Section 351 of the Code) for United States federal income tax purposes and for purposes of corresponding applicable state and local tax Laws. Parent shall report the acquisition in a manner consistent with this intent.

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SECTION 6.16 *Structure of Transaction*. The Parties agree to use commercially reasonable efforts to take, at the Closing, all actions necessary to implement the transactions contemplated by this Agreement and the other agreements referenced herein, including but not limited to reorganizing the corporate holding structure of i-STT and Parent in order to effect the grant of security interests contemplated by the Security Documents (as defined in the Securities Purchase Agreement) and to provide for organizational and tax efficiencies post-Closing. Without limiting the generality of the foregoing, the Parties agree (i) that the subsidiaries of Pihana located in Singapore will, as of Closing, become wholly-owned subsidiaries of i-STT, and all equity interests, assets, liabilities, obligations and commitments of or relating to the operations of Pihana s businesses outside of Singapore will be transferred or removed therefrom and (ii) that i-STT Nation Ltd. will be reorganized as described in Schedule 3B.03 of the i-STT Disclosure Letter.

SECTION 6.17 *i-STT Name and Marks*. As of the Closing Date, i-STT will execute and deliver to STT Communications such instruments of assignment or transfer in a form to be mutually agreed upon by Parent, i-STT and STT Communications, as are reasonably necessary to transfer to STT Communications all rights of ownership and use with respect to the trade name i-STT and all trademarks (whether registered or unregistered) and trademark applications which include or incorporate i-STT or graphical variances thereof (the *Retained Name and Marks*), as indicated on Section 3B.14 of the i-STT Disclosure Letter. Notwithstanding the foregoing, STT Communications will grant to Parent and i-STT a royalty-free, worldwide, fully paid-up right and license, in a form to be mutually agreed upon by Parent, i-STT and STT Communications, to use the Retained Name and Marks in connection with Parent s and i-STT s businesses for the purpose of transitioning i-STT s service to the Parent brand for a commercially reasonable transition period, not to exceed one year following the Closing Date. It is agreed by the parties that the Retained Name and Marks will only be used in connection with the i-STT business as it is currently conducted.

SECTION 6.18 *Nasdaq Listing*. Prior to Closing, Parent will seek to have Nasdaq review the material features of the Combination and related transactions (including the transactions contemplated by the Securities Purchase Agreement), and prior to and following Closing, Parent will use all commercially reasonable efforts to ensure that Parent Common Stock shall remain listed on The Nasdaq National Market or The Nasdaq SmallCap Market as contemplated by Section 7.01(j) (and, if the Parent Common Stock is listed on The Nasdaq SmallCap Market, Parent shall use all commercially reasonable efforts to obtain a re-listing of Parent Common Stock on The Nasdaq National Market).

SECTION 6.19 *United States Real Property Interests*.

(a) At all times from and after the date hereof until such time as neither STT Communications nor its affiliates hold the capital stock or debt securities of Parent received by STT Communications in connection with the consummation of the transactions contemplated in this Agreement (or the capital stock of Parent received upon the conversion of any such securities), and provided that STT Communications has not explicitly in writing waived its rights under this Section 6.19, Parent shall use all commercially reasonable efforts to ensure that such securities do not at any time constitute United States real property interests under Section 897(c) of the Code, including but not limited to (i) a sale-leaseback transaction with respect to all real property interests of Parent and its subsidiaries or (ii) the formation of a holding company organized under the laws of the Republic of Singapore which would issue shares of its capital stock in exchange for all outstanding stock of Parent, the submission of such a transaction to the stockholders of Parent for their approval, the consummation of such an exchange and the exchange of the debt securities held by STT Communications for similar securities of the holding company, in any case if required so that STT Communications and its affiliates do not hold United States real property interests under Section 897(c) of the Code, provided, in each case, that the taking of such action is commercially reasonable for Parent and its shareholders**.**

(b) Parent shall cooperate with STT Communications in all facets of review, planning and implementation with respect to the matters set forth in subsection (a) above. Without limiting the generality of the foregoing, Parent (i) shall provide, and shall cause its accountants and advisors to provide, STT

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Communications and its accountants and advisors with all information reasonably requested by STT Communications which may be relevant to a determination of whether STT Communications is a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) under the then-existing state of facts or under alternative actions which may be taken in accordance with subsection (a) above, and (ii) shall undertake to obtain from time to time, if and as requested by STT Communications, at Parent s cost and expense, a valuation, prepared by an independent valuation firm of national reputation, of all real property interests, wherever located, which are used or held for use in a trade or business, within the meaning of Section 897(c) of the Code, owned by Parent and its subsidiaries; provided, however, that Parent shall only bear the cost and expense of any such valuation undertaken once per calendar year, and that the costs and expense of any such valuations undertaken more often than once per year shall be paid by STT Communications.

SECTION 6.20 *Release of Guarantees*. Parent shall cooperate with STT Communications and use reasonable best efforts to obtain the release of STT Communications, prior to the Closing (or, if such release is not obtained prior to the Closing, following the Closing) from the guarantees set forth as items 4 and 5 in Schedule 3B.29 of the i-STT Disclosure Letter, including without limitation by obtaining replacement guarantees of i-STT, if commercially reasonable to do so.

SECTION 6.21 *Cash Balance, Working Capital and Total Other Liabilities*. Parent, STT Communications and Pihana will negotiate in good faith to determine the amounts to be included in Schedules 2C.02(h)(iv), 7.04(f) and 7.04(g) of the Parent Disclosure Letter, Schedules 2B.02(h)(iv), 7.03(h) and 7.03(i) of the i-STT Disclosure Letter and Schedules 2A.02(h)(iii), 7.02(m), 7.02(n) and 7.02(o) of the Pihana Disclosure Letter with respect to Cash Balance, Working Capital and Total Other Liabilities amounts for January 2003, February 2003 and March 2003 with the objective of determining such amounts within 30 days of the date of this Agreement. Such amounts shall be determined in a method consistent with the determination of the amounts set forth in such disclosure letters as of the date of this Agreement.

ARTICLE VII

CONDITIONS TO THE MERGER

SECTION 7.01 *Conditions to the Obligations of Each Party*. The respective obligations of each Party to consummate the Combination are subject to the satisfaction or waiver of the following conditions:

(a) *Stockholder Approval*. This Agreement shall have been approved and adopted by the requisite affirmative vote of the stockholders of (i) Pihana in accordance with the DGCL, Pihana s certificate of incorporation and bylaws and (ii) Parent in accordance with the DGCL, Parent s certificate of incorporation and bylaws, and the rules of The Nasdaq National Market.

(b) *No Order*. No Governmental Entity or court of competent jurisdiction located or having jurisdiction in the United States shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, decree, judgment, injunction or other order, whether temporary, preliminary or permanent (each an *Order*) which is then in effect and has the effect of making the Merger, the Stock Purchase or the Combination illegal or otherwise prohibiting consummation of the Merger, the Stock Purchase or the Combination.

(c) *No Restraints*. There shall not be pending or threatened any suit, action, investigation or proceeding to which a Governmental Entity is a party (i) seeking to restrain or prohibit the consummation of the Merger, the Stock Purchase or the Combination or any of the other transactions contemplated by this Agreement or seeking to obtain from Parent or Pihana any damages that are material or (ii) seeking to prohibit or limit the ownership or operation by Parent of any portion of the respective i-STT or Pihana businesses or assets.

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(d) *Post-Closing Board of Directors and Management*. Parent shall have taken all corporate action required such that, immediately following the Closing, Parent s board of directors shall be constituted in accordance with the Governance Agreement and Parent s Bylaws, and senior management (including the head of Parent s Asia/Pacific Region) shall be constituted with the persons mutually agreed by Parent and STT Communications.

(e) *Bankruptcy*. No Party shall have voluntarily or involuntarily commenced any proceeding seeking any bankruptcy reorganization, arrangement, compensation, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation.

(f) *Waiver of Anti-takeover Provisions*. Parent s board of directors shall have taken all necessary steps to effect the waiver of any anti-takeover restrictions applicable to the Combination or to any transactions that may be undertaken at any time or from time to time following the Effective Time by STT Communications or its affiliates, including without limitation Section 203 of the DGCL.

(g) *Simultaneous Closings*. The following shall be set to occur simultaneous with the Closing:

(i) *Combination.* Each of the Merger and the Stock Purchase;

(ii) *Parent s Senior Notes*. Parent s repurchase or exchange of Parent s 13% Senior Notes, due 2007 (the *Senior Notes*) on terms (including amendment of the indenture) substantially in accordance with those set forth on Exhibit E such that (i) the remaining aggregate principal amount thereof is less than $22.3 million, and (ii) no more than $2,392,000 is paid in interest to the holders of Senior Notes in respect of the interest payment due December 1, 2002;

(iii) *Parent s Syndicated Loan*. Execution of an amendment to the Amended and Restated Credit and Guaranty Agreement, dated as of September 30, 2001 as amended on July 31, 2002 (the *Syndicated Loan*) on terms substantially in accordance with those set forth on Exhibit F and no more than $7.5 million in cash is used to reduce the aggregate principal amount thereof (excluding any matching interest payments tied to the outstanding Senior Notes); and

(iv) *Convertible Secured Notes*. Consummation of the transactions contemplated by the Securities Purchase Agreement attached hereto as Exhibit G (the *Securities Purchase Agreement*), including the issuance of convertible secured promissory notes (the *Notes*) and attached warrants.

(h) *Governance Agreement*. The Governance Agreement shall have been executed by each party listed on the signature pages thereto and delivered to Parent and STT Communications and the Pihana Stockholders Representative and such agreement shall remain in full force and effect.

(i) *Escrow Agreement*. Parent, i-STT and the Pihana Stockholders Representative shall have entered into the Escrow Agreement and the Escrow Agreement shall be in full force and effect.

(j) *Nasdaq Listing*. Shares of Parent Common Stock (including the shares issuable pursuant to this Agreement (and upon conversion of the Parent Preferred Stock) shall be listed on either The Nasdaq National Market or The Nasdaq SmallCap Market; provided, however, that if Parent Common Stock shall be listed on The Nasdaq National Market as of the Closing, Parent shall not have received notice from Nasdaq indicating that it may be delisted (unless all issues raised by such notice have been resolved to the satisfaction of Nasdaq as of Closing, as indicated in writing from Nasdaq); and provided further, that if Parent Common Stock shall be listed on The Nasdaq SmallCap Market as of the Closing, (i) Nasdaq shall not have withdrawn its interpretive position that would enable Parent to re-list the Parent Common Stock on The Nasdaq National Market without any condition based on trading price of Parent Common Stock other than a condition of having a minimum trading price of $1.00 per share, (ii) Nasdaq shall not have advised Parent that it fails to meet, or potentially may fail to meet, any other condition to re-listing of Parent Common Stock on The Nasdaq National Market and (iii) Parent shall have completed, or shall be in a position to complete, immediately following Closing, a reverse stock split which, based upon the bid price of Parent Common Stock immediately prior to Closing, will result in such bid price being above $1.00 per share immediately following Closing.

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(k) *Strategic Plan*. Parent and STT Communications shall have agreed upon the terms of a mutually acceptable management financial model and management structure with respect to the post-Closing operations of Parent.

SECTION 7.02 *Conditions to the Obligations of Parent, Merger Sub, SP Sub and STT Communications to Consummate the Merger*. The obligations of Parent, Merger Sub, SP Sub and STT Communications to consummate the Merger with Pihana are subject to the satisfaction or waiver of the following additional conditions:

(a) *Representations and Warranties*. Each of the representations and warranties made by Pihana in this Agreement that are qualified as to materiality or Pihana Material Adverse Effect, or any similar standard or qualification, shall be true and correct in all respects, and each of the representations and warranties made by Pihana in this Agreement that are not qualified as to materiality or Pihana Material Adverse Effect, or any similar standard or qualification, shall be true and correct in all material respects, in each case as of the Effective Time with the same force and effect as if made on and as of the Effective Time, except that those representations and warranties that address matters only as of a particular date shall remain true and correct as of such date, and Parent and STT Communications shall have received a certificate of the chief executive officer of Pihana to that effect.

(b) *No Pihana Material Adverse Effect*. No event or events shall have occurred, or could be reasonably likely to occur, which, individually or in the aggregate, have, or would be reasonably expected to have, a Pihana Material Adverse Effect.

(c) *Agreements and Covenants*. Pihana shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Effective Time and Parent and STT Communications shall have received a certificate of the Chief Executive Officer of Pihana to that effect.

(d) *Termination of Pihana Leases*. In addition to the lease terminations described in Sections 7.02(s), 7.02(t) and 7.02(u), Pihana shall have provided written confirmation of termination of its office lease in San Francisco.

(e) *Approvals.* Pihana shall have received, each in form and substance reasonably satisfactory to Parent and STT Communications, all authorizations, consents, orders and approvals (i) required by any Governmental Entity or official, if any, (ii) set forth in Section 7.02(c) of the Pihana Disclosure Letter or (iii) the failure of which to obtain would have, or could reasonably be expected to have, a Pihana Material Adverse Effect.

(f) *Appraisal Rights*. Holders of no more than three percent (3%) of the voting power represented by the outstanding shares of Pihana Stock shall have exercised, nor shall they have a continued right to exercise, appraisal rights under the DGCL with respect to any aspect of the Combination.

(g) *Termination of Employee Plans*. No later than 10 days prior to the Closing Parent will notify Pihana of which Pihana Plans are to be terminated in connection with the Closing. Except as set forth in Section 7.02(g) of the Pihana Disclosure Letter, Pihana shall have terminated the applicable Pihana Plans prior to Closing, and Pihana shall have provided Parent with evidence, reasonably satisfactory to Parent, as to the termination of such Pihana Plans.

(h) *Secretary s Certificate*. Parent and STT Communications shall have received (i) a certificate executed by the secretary of Pihana attaching and certifying as to matters customary for a transaction of this type, including the true and correct copies of Pihana s current certificate of incorporation and bylaws and copies of the resolutions of Pihana s board of directors and Pihana Stockholders approving and adopting this Agreement and the transactions relating hereto.

(i) *Estoppel Certificate*. Parent and STT Communications shall have received an estoppel certificate, dated as of a date not more than five days prior to the Closing Date and in form and content

reasonably satisfactory to Parent, executed by the parties listed in Section 7.02(i) of the Pihana Disclosure Letter.

(j) *FIRPTA Compliance*. Pihana shall, prior to the Closing Date, provide Parent with a properly executed Foreign Investment in Real Property Tax Act of 1980 (*FIRPTA*) Notification Letter, in form and substance satisfactory to Parent, which states that shares of capital stock of Pihana do not constitute United States real property interests under Section 897(c) of the Code, for purposes of satisfying Parent s obligations under Treasury Regulation Section 1.1445-2(c)(3). In addition, simultaneously with delivery of such Notification Letter, Pihana shall have provided to Parent, as agent for Pihana, a form of notice to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2) along with written authorization for Parent to deliver such notice form to the Internal Revenue Service on behalf of Pihana upon the consummation of the Merger.

(k) *Termination of Pihana s Agreements*. Parent and STT Communications shall have been furnished with evidence reasonably satisfactory to them that all co-sale, voting, registration, first refusal, first offer, preemptive, board observation or informational or operational rights or covenants granted by Pihana that were in effect prior to the Closing, and not otherwise contemplated by this Agreement, shall have no further substantive effect.

(l) *Board Resignations*. Pihana shall have received written letters of resignation from each of the current members of the board of directors of Pihana and each Pihana Subsidiary, in each case effective at the Effective Time, if and as contemplated by the strategic plan exchanged by the Parties on the date of this Agreement.

(m) *Pihana Cash Balance Compliance*. The Pihana Cash Balance on the Final Pihana Certificate shall equal or exceed the applicable amount specified as the Closing Cash Schedule set forth in Section 7.02(m) of the Pihana Disclosure Letter.

(n) *Pihana Working Capital Compliance*. The Pihana Working Capital on the Final Pihana Certificate shall equal or exceed the applicable amount specified in Section 7.02(n) of the Pihana Disclosure Letter.

(o) *Pihana Total Other Liabilities Compliance*. The Pihana Total Other Liabilities on the Final Pihana Certificate shall be less than the applicable amount specified in Section 7.02(o) of the Pihana Disclosure Letter.

(p) *Pihana Stock Plan*. The Pihana Stock Plan shall be terminated, and each outstanding Pihana Option shall be have been exercised immediately prior to the Effective Time or shall have terminated as a result of the Merger.

(q) *Parachute Payments*. Pihana shall provide evidence satisfactory to STT Communications that Pihana has properly withheld all applicable withholding taxes for any payments, forgiveness of indebtedness and any other value accruing to any employee who received, on or prior to the Closing Date, any such payment, forgiveness of indebtedness or other accrued value that may be deemed an Excess Parachute Payment within the meaning of Section 280G of the Code.

(r) *Divestiture of Korean Operations*. Pihana shall have divested itself of its Korean operations and Pihana shall not have any remaining ownership interest, liabilities or other obligations related to any aspect of such Korean operations.

(s) *Hawaiian Operations*. With respect to its Hawaiian operations and as further described in Section 7.02(s) of the Pihana Disclosure Letter, Pihana shall have (i) effected a reduction in force, (ii) terminated, or obtained the right to terminate, its headquarters lease on or prior to the 180th day following the Closing Date and (iii) deducted from the Pihana Cash Balance and Pihana Working Capital all liabilities associated with such reduction in force (including any severance, repatriation or employment-related payments) and any net liabilities that will exist on or after the 181st day following the Closing Date.

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(t) *Los Angeles Operations*. With respect to its Los Angeles operations and as further described in Section 7.02(t) of the Pihana Disclosure Letter, Pihana shall have (i) effected a reduction in force, (ii) terminated, or obtained the right to terminate, the lease for the second floor of the Los Angeles data center and (iii) deducted from the Pihana Cash Balance and Pihana Working Capital all net liabilities associated with such reduction in force (including any severance, repatriation or employment-related payments) and lease option and termination.

(u) *Singapore Operations*. With respect to its Singapore sales office and as further described in Section 7.02(u) of the Pihana Disclosure Letter, Pihana shall have (i) effected a reduction in force, (ii) terminated its lease and (iii) deducted from the Pihana Cash Balance and Pihana Working Capital all net liabilities associated with such reduction in force (including any severance, repatriation or employment-related payments) and lease termination.

SECTION 7.03 *Conditions to the Obligations of Parent, Merger Sub, SP Sub and Pihana to Consummate Stock Purchase*. The obligations of Parent, Merger Sub, SP Sub and Pihana to consummate the Stock Purchase with STT Communications are subject to the satisfaction or waiver of the following additional conditions:

(a) *Representations and Warranties*. Each of the representations and warranties made by STT Communications and i-STT in this Agreement that are qualified as to materiality or i-STT Material Adverse Effect, or any similar standard or qualification, shall be true and correct in all respects, and each of the representations and warranties made by STT Communications and i-STT in this Agreement that are not qualified as to materiality or i-STT Material Adverse Effect, or any similar standard or qualification, shall be true and correct in all material respects, in each case as of the Effective Time with the same force and effect as if made on and as of the Effective Time, except that those representations and warranties that address matters only as of a particular date shall remain true and correct as of such date, and Parent and Pihana shall have received a certificate of the chief executive officer of i-STT to that effect.

(b) *No i-STT Material Adverse Effect*. No event or events shall have occurred, or could be reasonably likely to occur, which, individually or in the aggregate, have, or would be reasonably expected to have, a i-STT Material Adverse Effect.

(c) *Agreements and Covenants*. i-STT shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Effective Time and Parent and Pihana shall have received a certificate of the chief executive officer of i-STT to that effect.

(d) *Approvals*. i-STT shall have received, each in form and substance reasonably satisfactory to Parent and Pihana, all authorizations, consents, orders and approvals (i) required by any Governmental Entity or official, if any, (ii) set forth in Section 7.03(d) of the i-STT Disclosure Letter or (iii) the failure of which to obtain would have, or could reasonably be expected to have, a i-STT Material Adverse Effect.

(e) *Transition Services Agreement*. STT Communications and Parent shall have executed a mutually satisfactory Transition Services Agreement under which, for a period of at least 180 days following the Closing Date, STT Communications shall provide to i-STT certain administrative services in the areas of human resources, payroll, legal, corporate secretarial, tax advisory, treasury, general management and insurance, and i-STT shall provide to STT Communications certain administrative services in the areas of finance software, and accounting for other small subsidiaries of STT Communications, with all of the foregoing services to be reimbursed at cost plus five percent (5%).

(f) *Secretary s Certificate*. Parent and Pihana shall have received a certificate executed by the secretary of i-STT attaching and certifying as to matters customary for a transaction of this type, including, without limitation, the true and correct copies of i-STT s current certificate of incorporation and bylaws and copies of the resolutions of i-STT s board of directors and i-STT Stockholders approving and adopting this Agreement and the transactions relating hereto.

(g) *Board and Officer Resignations*. i-STT shall have received written letters of resignation from each of the current members of the board of directors of i-STT and each i-STT Subsidiary, and the officers

to be mutually agreed upon by the Parties, in each case effective at the Effective Time, if and as contemplated by the strategic plan exchanged by the Parties on the date of this Agreement.

(h) *i-STT s Working Capital Compliance*. The i-STT Working Capital on the Final i-STT Certificate shall equal or exceed the amount specified on Section 7.03(h) of the i-STT Disclosure Letter.

(i) *i-STT Total Other Liabilities Compliance*. The i-STT Total Other Liabilities on the Final i-STT Certificate shall be less than the amount specified in Section 7.03(i) of the i-STT Disclosure Letter.

SECTION 7.04 *Conditions to the Obligations of Pihana, i-STT and STT Communications*. The obligations of Pihana, i-STT and STT Communications to consummate the Combination with Parent are subject to the satisfaction or waiver of the following additional conditions:

(a) *Representations and Warranties*. Each of the representations and warranties made by Parent, Merger Sub and SP Sub in this Agreement that are qualified as to materiality or Parent Material Adverse Effect, or any similar standard or qualification, shall be true and correct, and each of the representations and warranties made by Parent, Merger Sub and SP Sub in this Agreement that are not qualified as to materiality or Parent Material Adverse Effect, or any similar standard or qualification, shall be true and correct in all material respects, in each case as of the Effective Time with the same force and effect as if made on and as of the Effective Time, except that those representations and warranties which address matters only as of a particular date shall remain true and correct as of such date, and Pihana and STT Communications shall have received a certificate of a duly authorized officer of Parent to that effect.

(b) *No Parent Material Adverse Effect*. No event or events shall have occurred, or be reasonably likely to occur, which, individually or in the aggregate, have, or could have, a Parent Material Adverse Effect.

(c) *Agreements and Covenants*. Each of Parent, Merger Sub and SP Sub shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by it on or prior to the Effective Time, and Pihana and STT Communications shall have received a certificate of a duly authorized officer of Parent to that effect.

(d) *Approvals.* Parent shall have received, each in form and substance reasonably satisfactory to Pihana and STT Communications, all authorizations, consents, orders and approvals (i) required by any Governmental Entity or official, if any, (ii) set forth in Section 7.04(d) of the Parent Disclosure Letter or (iii) the failure of which to obtain would have, or could reasonably be expected to have, a Parent Material Adverse Effect.

(e) *Secretary s Certificate*. Pihana and STT Communications shall have received a certificate executed by the secretary of Parent attaching and certifying as to matters customary for a transaction of this type, including, without limitation, the true and correct copies of Parent s current certificate of incorporation and bylaws and copies of the resolutions of Parent s board of directors and Parent s stockholders approving and adopting this Agreement and the transactions relating hereto.

(f) *Parent Working Capital Compliance*. Parent s Working Capital on the Final Parent Certificate shall equal or exceed the amount specified on Section 7.04(f) of the Parent Disclosure Letter.

(g) *Parent Total Other Liabilities Compliance*. Parent s Total Other Liabilities on the Final Parent Certificate shall be less than the amount specified on Section 7.04(g) of the Parent Disclosure Letter.

(h) *iStar Lease*. The Ground Lease by and between iStar San Jose, LLC and Parent, dated as of June 21, 2000, as modified on September 20, 2001 and May 20, 2002, shall have been modified on terms substantially in accordance with those set forth in *Exhibit H*.

(i) *No Defaults*. Except as contemplated by Section 7.01(g)(ii), neither Parent nor any ParentSubsidiary shall have (A) failed to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (as such term is defined in the Securities Purchase Agreement) in an individual principal amount of $250,000 or more or with an aggregate principal amount of

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$1.0 million or more, in each case beyond the grace period, if any, provided therefor or (B) breached or defaulted with respect to any other material term of one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (A) above or any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness.

(j) *Property Valuation*. Parent shall have obtained and delivered to STT Communications a valuation, prepared by an independent valuation firm or accounting firmof national reputation, of (i) all real property interests, wherever located, within the meaning of Section 897 of the Code, owned by Parent or its subsidiaries and (ii) United States real property interest (as defined in Section 897(c)(1) of the Code) owned by Pihana and its subsidiaries, and such valuation shall support a conclusion that as of the Closing Date, after giving effect to the transactions contemplated by this Agreement, Parent will not be a United States real property holding corporation (as defined in Section 897(c)(2) of the Code). Pihana shall cooperate with Parent in all facets of review, planning and implementation with respect to the matters set forth in this Section 7.04(j).

SECTION 7.05 *Operation of Closing Conditions*. The operative provisions for the matters described in this Section 7.05 are found in Sections 7.01, 7.02, 7.03 and 7.04 (collectively, the *Closing Conditions*) and Articles VIII. The Closing Conditions shall operate as follows:

(a) Any Party may waive one or more Closing Conditions (in such Party s sole discretion), to its obligations; *provided, however*, that Section 7.01(g)(ii) may be waived on behalf of all Parties only by two of the following three parties: (i) Parent, (ii) STT Communications, and (iii) Pihana.

(b) The failure of any Party to satisfy a Closing Condition to be satisfied by such Party contained in Section 7.01, 7.02, 7.03 or 7.04, as the case may be, shall not relieve such Party from its obligation to consummate the Merger, the Stock Purchase and/or the Combination if the other Parties have satisfied their Closing Conditions.

(c) If one Party elects not to consummate the Combination because one or more of the Closing Conditions to its obligations is not satisfied, the other Parties may (but neither shall be required to) consummate the Merger or the Stock Purchase, as applicable, or any other transaction on such terms as they may mutually agree.

(d) If the Closing Conditions to the obligations of any Party or Parties are not satisfied because of the failure of another Party (the *Failing Party*) to satisfy Closing Conditions which relate to the performance or status of the Failing Party, the Parties other than the Failing Party may (but shall not be required to) elect to consummate the Merger or Stock Purchase, as applicable, or any other transaction on such terms as they may mutually agree.

ARTICLE VIII

TERMINATION, AMENDMENT AND WAIVER

SECTION 8.01 *Termination*. This Agreement may be terminated and the Merger, the Stock Purchase and the other transactions contemplated by this Agreement may be abandoned notwithstanding any requisite approval and adoption of this Agreement and the transactions contemplated by this Agreement, as follows:

(a) by mutual written consent duly authorized by the boards of directors of each Party;

(b) by any Party if the Effective Time shall not have occurred on or before January 31, 2003 (the *Termination Date*); provided, however, that in the event that the Effective Time shall not have occurred on or before January 31, 2003 solely as a result of the failure to obtain all regulatory approvals required to consummate the Merger, the Stock Purchase and the other transactions contemplated by this Agreement (including but not limited to the SEC clearing the Proxy Statement for mailing), the Termination Date shall be extended for two successive 30 calendar day periods (provided that in no event will the Termination Date

be extended beyond March 31, 2003); *provided, further however*, that the right to terminate this Agreement under this Section 8.01(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before the Termination Date;

(c) by any Party upon the issuance of any Order which is final and nonappealable which would (i) prevent such Party from consummating the Merger, the Stock Purchase or the Combination, (ii) prohibit Parent s ownership or operation of any portion of the business of Pihana or i-STT or (iii) compel Parent following the Closing to dispose of or hold separate, as a result of the Merger, the Stock Purchase or the Combination, any portion of the business or assets of i-STT, Pihana or Parent;

(d) by Parent upon a breach of any material representation, warranty, covenant or agreement on the part of Pihana or STT Communications or i-STT set forth in this Agreement, or if any representation or warranty of Pihana or STT Communications or i-STT shall have become untrue, in either case such that the conditions set forth in Sections 7.02(a) and 7.02(b), with respect to Pihana, or Sections 7.03(a) and 7.03(b) with respect to STT Communications and i-STT, would not be satisfied (*Parent Terminating Breach*); *provided, however*, that, if such Parent Terminating Breach is curable by Pihana or STT Communications and i-STT, as the case may be, through the exercise of its best efforts and for so long as Pihana or STT Communications and i-STT, as the case may be, continues to exercise such best efforts, Parent may not terminate this Agreement under this Section 8.01(d) unless such breach is not cured within 30 days after notice thereof is provided by Parent to Pihana or i-STT, as the case may be (but no cure period is required for a breach which, by its nature, cannot be cured);

(e) by i-STT upon a breach of any material representation, warranty, covenant or agreement on the part of Parent, Merger Sub, SP Sub, or Pihana set forth in this Agreement, such that the conditions set forth in Sections 7.04(a) and 7.04(b) with respect to Parent, Merger Sub and SP Sub, or Section 7.02(a) and 7.02(b) with respect to Pihana, would not be satisfied (*i-STT Terminating Breach*); *provided, however*, that, if such i-STT Terminating Breach is curable by Parent or Pihana, as the case may be, through the exercise of its best efforts and for so long as Parent or Pihana, as the case may be, continues to exercise such best efforts, STT Communications may not terminate this Agreement under this Section 8.01(e) unless such breach is not cured within 30 days after notice thereof is provided by STT Communications or i-STT to Parent or Pihana, as the case may be (but no cure period is required for a breach which, by its nature, cannot be cured);

(f) by Pihana upon a breach of any material representation, warranty, covenant or agreement on the part of Parent, Merger Sub, SP Sub, STT Communications or i-STT set forth in this Agreement, such that the conditions set forth in Sections 7.04(a) and 7.04(b) with respect to Parent, Merger Sub and SP Sub, or Sections 7.03(a) and 7.03(b) with respect to STT Communications and i-STT, would not be satisfied (*Pihana Terminating Breach*); *provided, however*, that, if such Pihana Terminating Breach is curable by Parent or i-STT, as the case may be, through the exercise of its best efforts and for so long as Parent or i-STT, as the case may be, continues to exercise such best efforts, Pihana may not terminate this Agreement under this Section 8.01(f) unless such breach is not cured within 30 days after notice thereof is provided by Pihana to Parent or STT Communications or i-STT, as the case may be (but no cure period is required for a breach which, by its nature, cannot be cured);

(g) by STT Communications and/or Pihana if (i) the board of directors of Parent withdraws, or modifies its recommendation to vote in favor (whether or not permitted by this Agreement) of this Agreement and the transactions contemplated hereby, (ii) the board of directors of Parent shall have recommended (whether or not permitted by this Agreement) to the stockholders of Parent a Competing Transaction, or (iii) a tender offer or exchange offer for 15% or more of the outstanding shares of Parent Stock is commenced, and the board of directors of Parent fails, within five (5) business days, to recommend against acceptance of such tender offer or exchange offer by its stockholders (including by taking no position with respect to the acceptance of such tender offer or exchange offer by its stockholders);

(h) automatically if this Agreement shall fail to receive the requisite vote for approval at the Parent Stockholders Meeting; and

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(i) by Parent, STT Communications or Pihana, if Parent enters into one or more agreements with a third party with respect to a Superior Proposal as permitted by Section 6.01(b)(i)(y).

SECTION 8.02 *Effect of Termination*. In the event of termination of this Agreement pursuant to Section 8.01, this Agreement shall forthwith become void and there shall be no liability under this Agreement on the part of Parent, Merger Sub, SP Sub, Pihana, i-STT or STT Communications or any of their respective officers or directors, and all rights and obligations of each party hereto shall cease; *provided, however*, that with respect to terminations pursuant to Sections 8.01(g), (h), and (i), Section 8.05 shall survive termination of this Agreement; and *provided, further*, that (i) Section 6.02(b), Section 6.06, Section 8.02 and Article X shall remain in full force and effect and survive any termination of this Agreement and (ii) nothing herein shall relieve any party from liability for the willful breach of any of their representations or warranties or the breach of any of their covenants or agreements set forth in this Agreement; provided, however, that as to clause (ii), Parent s liability shall be limited to the amount set forth in Section 8.05(b) or Section 8.05(c) in circumstances when such sections apply.

SECTION 8.03 *Amendment.* This Agreement may be amended by the Parties by action taken by or on behalf of their respective boards of directors at any time prior to the Effective Time. This Agreement may not be amended except by an instrument in writing signed by the Parties who remain a Party to this Agreement.

SECTION 8.04 *Waiver*. At any time prior to the Effective Time, any Party hereto may (a) extend the time for the performance of any obligation or other act of any other Party hereto, (b) waive any inaccuracy in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any agreement or condition contained herein, provided that such extension or waiver shall not bind any other Party to whom the obligation is owed or for whose benefit the representations, warranties, agreements or conditions have been made or given. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the Party or Parties to be bound thereby.

SECTION 8.05 *Expenses*.

(a) Except as set forth in this Section 8.05, all Expenses (as defined below) incurred in connection with this Agreement, the Merger, the Stock Purchase, the Combination and the other transactions contemplated by this Agreement shall be paid by the Party incurring such expenses, whether or not the Merger, the Stock Purchase or any other transaction is consummated, except that Parent shall pay all printing costs, filing fees and costs of mailing the Proxy Statement and all SEC regulatory filing fees incurred in connection with the Proxy Statement (*Registration Expenses*); provided, however, that for purposes of Section 7.04 or Article II of this Agreement, such Registration Expenses shall not, (i) to the extent paid prior to the Closing Date, be deducted from the Parent Cash Balance (for purposes of either the Parent Cash Balance or Parent Working Capital tests) or (ii) to the extent not paid prior to the Closing Date, be included in the Parent Net Liabilities or Parent Working Capital (for purposes of either the Parent Net Liabilities or Parent Working Capital tests). *Expenses* as used in this Agreement shall include all reasonable out-of-pocket expenses (including, without limitation, all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a party hereto and its affiliates) incurred by a Party or on its behalf in connection with or related to the authorization, preparation, negotiation, execution and performance of this Agreement, the preparation, printing, filing and mailing of the Proxy Statement, the solicitation of stockholder approval, the filing of any required notices under applicable Laws and regulations and all other matters related to the closing of the Merger, the Stock Purchase and the other transactions contemplated by this Agreement.

(b) Parent agrees that it shall pay to each of STT Communications and Pihana $1,300,000 if STT Communications or Pihana shall terminate this Agreement pursuant to Section 8.01(g) or (i);

(c) If this Agreement shall terminate pursuant to Section 8.01(h) hereof, Parent shall pay each of STT Communications and Pihana up to $750,000 to cover reasonable Expenses; provided, however, if within twelve (12) months of the date of the termination of this Agreement pursuant to Section 8.01(h), Parent shall consummate a Competing Transaction or shall have entered into a definitive agreement relating to such

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Competing Transaction, Parent shall pay each of STT Communications and Pihana $1,300,000, less any Expenses previously paid to STT Communications or Pihana, as the case may be, pursuant to this Section 8.05(c).

(d) Except as otherwise required by Section 8.01, any payment required to be made to STT Communications or Pihana, or both, pursuant to Section 8.05(b) or (c) shall be made not later than five business days after delivery to Parent of notice of demand for payment and, with respect to Section 8.05(c), an itemization setting forth in reasonable detail all Expenses of the demanding Party, and shall be made by wire transfer of immediately available funds to an account designated by the demanding Party.

(e) In the event that Parent shall fail to pay the amounts due to STT Communications and Pihana pursuant to Sections 8.05(b) or (c) when due, Parent shall pay each of STT Communications and Pihana (and the term Expenses shall be deemed to include) the costs and expenses actually incurred or accrued by the Party or Parties seeking payment (including, without limitation, fees and expenses of counsel) in connection with the collection under and enforcement of this Section 8.05, together with interest on such amounts and unpaid Expenses, commencing on the date that such amounts and Expenses became due, at a rate equal to the rate of interest publicly announced by Citibank, N.A., from time to time, in The City of New York, as such bank s prime rate.

(f) Parent, STT Communications and Pihana agree that the agreements contained in Sections 8.05(b) and (c) above are an integral part of the transactions contemplated by this Agreement and constitute liquidated damages and not a penalty.

ARTICLE IX

INDEMNIFICATION

SECTION 9.01 *Survival of Representations and Warranties*.

(a) The representations and warranties of each Party contained in this Agreement shall survive the Effective Time until 5:00 p.m. California time on the first anniversary of the Closing (the *R&W Termination Date*), other than the representation contained in Section 4.33 which shall survive until the expiration of the applicable statute of limitations. Neither the period of survival nor the liability of Parent, the Pihana Stockholders and STT Communications, with respect to (i) Parent s, Merger Sub s and SP Sub s representations and warranties, (ii) Pihana s representations and warranties, and (iii) STT Communications and i-STT s representations and warranties, respectively, shall be affected by any investigation made at any time (whether before or after the Effective Time) by or on behalf of Pihana, STT Communications or the Pihana Stockholders or by any actual, implied or constructive knowledge or notice of any facts or circumstances that Parent, STT Communications or the Pihana Stockholders may have as a result of any such investigation. The Parties agree that reliance shall not be an element of any claim for misrepresentation or indemnification under this Agreement. If written notice of a claim has been given prior to the expiration of the applicable representations and warranties by a party hereto to another party hereto, then the relevant representations and warranties shall survive as to such claim until such claim has been finally resolved.

(b) The Parties agree that any payment required to be made by such Party under Sections 9.02, 9.03 or 9.04, as applicable, shall be made in shares of Parent Common Stock or, in the case of payments made under Section 9.02, in cash to the extent provided in the Escrow Agreement or, in the case of Section 9.03(a)(iv), in cash. The number of shares of Parent Common Stock to be paid (or, to the extent provided in the Escrow Agreement, the amount of cash having an equivalent value to such number of such shares) shall be equal to the quotient obtained by dividing (x) the dollar amount of the indemnifiable Parent Loss (as defined in Section 9.04), i-STT Loss (as defined in Section 9.03) or Pihana Loss (as defined in Section 9.02), as the case may be, pursuant to Section 9.05 by (y) the average closing sale price of Parent Common Stock in trading on the Nasdaq stock market over the 30 consecutive trading days ending on and including the trading day prior to the date of such payment (the *Indemnity Stock Price*).

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(c) STT Communications, Pihana and the Pihana Stockholders Representative agree that any claim for indemnification made by them against Parent under this Article IX shall be made solely through STT Communications and the Pihana Stockholders Representative, as the case may be, and that any and all actions with respect to the rights of STT Communications and the Pihana Indemnified Parties under this Article IX and the Escrow Agreement shall be exercised solely through STT Communications and the Pihana Stockholders Representative, as applicable.

(d) Following the Effective Time, the indemnification provided for in this Article IX shall be the exclusive remedy for any breach of a representation, warranty or covenant made by any Party to this Agreement, except with respect to claims based on fraud or willful misrepresentation or misconduct.

SECTION 9.02 *Indemnification by Pihana Stockholders*.

(a) After the Effective Time, Parent and its affiliates (including, after the Effective Time, the Surviving Corporation, but excluding STT Communications), officers, directors, employees, agents, successors and assigns (collectively, the *Pihana Indemnified Parties*), as the case may be, shall be indemnified and held harmless by the Escrow Fund, for any and all losses, liabilities, damages of any kind, claims, costs, expenses, fines, fees, deficiencies, interest, awards, judgments, amounts paid in settlement and penalties (including, without limitation, reasonable attorneys , consultants and experts fees and expenses and other costs reasonably incurred in defending, investigating or settling claims) suffered, incurred, or paid by Parent (including, without limitation, in connection with any action brought or otherwise initiated by Parent), as the case may be, (collectively, *Pihana Losses*), adjusted for any insurance recovery but not for any tax deduction relating thereto, arising out of or resulting from:

(i) any inaccuracy or breach of any representation or warranty made by Pihana in this Agreement;

(ii) the breach of any covenant or agreement made by Pihana in this Agreement;

(iii) in the event that any Pihana Stockholder properly exercises appraisal rights under applicable Law, the amount, if any, by which the fair market value (determined in accordance with applicable Law) of the Dissenting Shares exceeds the amount such Pihana Stockholder was otherwise entitled to receive pursuant to Article II-A of this Agreement;

(iv) any cost, loss or other expense (including the value of any Tax deduction lost) as a result of the application of Section 280G of the Code to any of the transactions contemplated by this Agreement plus any necessary gross up amount;

(v) any cost, loss or other expense related to:

(A) Pihana s divestiture of its Korean operations as required by Section 7.02(r);

(B) With respect to Pihana s Hawaiian operations, the reduction in force and net liabilities that exist on or after the 181st day following the Closing Date as contemplated by Section 7.02(s);

(C) Termination of employment of the Pihana employees listed on Section 9.02(u) of the Pihana Disclosure Letter;

(D) With respect to its Los Angeles operations, the reduction in force and lease option or termination required by Section 7.02(t); and

(E) With respect to its Singapore operations, the reduction in force and lease termination required by Section 7.02(u).

(vi) any cost, loss or other expense incurred by Parent related to the indemnity provided for in Section 6.07 for acts or omissions prior to the Effective Time and not related to this Agreement or the transactions contemplated hereby;

(vii) any cost, loss or other expense related to the termination or failure of termination of that certain Amended and Restated Voting Agreement dated as of October 10, 2000 by and among Pihana,

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the Management Stockholders, the Series A Investors, the Series B Investors, the Other Stockholders and the Class B Common Holders (as such terms are defined therein).

(b) As used herein, Pihana Losses (i) are not limited to matters asserted by third parties, but include losses incurred or sustained by a Pihana Indemnified Party in the absence of claims by third parties and (ii) shall not include any portion of any Loss for which a liability or reserve is recorded in the Pihana Closing Balance Sheet, as finally adjusted.

(c) Notwithstanding anything to the contrary contained in this Agreement, except with respect claims based on common law fraud or willful misrepresentation or misconduct:

(i) the maximum aggregate amount of indemnifiable Pihana Losses arising out of or resulting from the causes enumerated in Section 9.02(a) that may be recovered from Pihana Stockholders shall not exceed the Pihana Escrow Shares (or the equivalent value in cash deposited pursuant to the Escrow Agreement of such shares determined by the Indemnity Stock Price at the date(s) of payment and serving as security for the payment of the indemnifiable Pihana Losses) (the *Maximum Pihana Indemnity*); and

(ii) no indemnification payment by the Escrow Fund with respect to any indemnifiable Pihana Losses otherwise payable under Section 9.02(a)(i) shall be payable until such time as all such indemnifiable Pihana Losses incurred by a Pihana Indemnified Party, which shall include Pihana Losses incurred by such Pihana Indemnified Party s officers, directors, employees, agents, successors and assigns, shall aggregate to more than $400,000, after which time Pihana Stockholders shall be liable up to the balance of the Maximum Pihana Indemnity for all indemnifiable Pihana Losses (including the first $400,000) to such Indemnified Party, which shall include Pihana Losses incurred by such Pihana Indemnified Party s officers, directors, employees, agents, successors and assigns.

SECTION 9.03 *Indemnification by i-STT.*

(a) After the Effective Time, Parent and its affiliates (including, after the Effective Time, the Surviving Corporation), officers, directors, employees, agents, successors and assigns (collectively, the *i-STT Indemnified Parties*), as the case may be, shall be indemnified and held harmless by STT Communications, jointly and severally, for any and all losses, liabilities, damages of any kind, claims, costs, expenses, fines, fees, deficiencies, interest, awards, judgments, amounts paid in settlement and penalties (including, without limitation, reasonable attorneys , consultants and experts fees and expenses and other costs reasonably incurred in defending, investigating or settling claims) suffered, incurred or paid by Parent (including, without limitation, in connection with any action brought or otherwise initiated by Parent), as the case may be (collectively, *i-STT Losses*), adjusted for any insurance recovery but not for any tax deduction relating thereto, arising out of or resulting from:

(i) any inaccuracy or breach of any representation or warranty made by STT Communications or i-STT in this Agreement;

(ii) the breach of any covenant or agreement made by STT Communications or i-STT in this Agreement;

(iii) any cost, loss or other expense incurred by Parent related to the indemnity provided for in Section 6.07 for acts or omissions prior to the Effective Time and not related to this Agreement or the transactions contemplated hereby; and

(iv) any cost, loss or other expense in excess of $25,000 incurred by Parent relating to the divestiture or liquidation of or compliance with requirements to contribute committed capital to i-STT s subsidiary in China, provided that Parent shall use its commercially reasonable efforts to mitigate any such expenses, including if necessary by liquidating such subsidiary on or prior to March 1, 2004.

(b) As used herein, i-STT Losses (i) are not limited to matters asserted by third parties, but include Losses incurred or sustained by a i-STT Indemnified Party in the absence of claims by third parties, and

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(ii) shall not include any portion of any Loss for which an adjustment is made in the i-STT Closing Balance Sheet, as finally adjusted.

(c) Notwithstanding anything to the contrary contained in this Agreement, except with respect to claims based on common law fraud or willful misrepresentation or misconduct:

(i) the maximum aggregate amount of indemnifiable i-STT Losses arising out of or resulting from the causes enumerated in Section 9.03(a) (other than the cash indemnity provided for in Section 9.03(a)(iv) which may be up to the full amount of the i-STT Loss related thereto) that may be recovered from STT Communications shall not exceed the i-STT Escrow Shares (the *Maximum i-STT Stock Indemnity*); and

(ii) no indemnification payment by STT Communications with respect to any indemnifiable i-STT Losses otherwise payable under Section 9.03(a)(i) shall be payable until such time as all such indemnifiable i-STT Losses incurred by a i-STT Indemnified Party, which shall include i-STT Losses incurred by such i-STT Indemnified Party s officers, directors, employees, agents, successors and assigns, shall aggregate to more than $400,000, after which time STT Communications shall be liable in up to the balance of the Maximum i-STT Stock Indemnity for all indemnifiable i-STT Losses (including the first $400,000) to such i-STT Indemnified Party, which shall include i-STT Losses incurred by such i-STT Indemnified Party s officers, directors, employees, agents, successors and assigns.

SECTION 9.04 *Indemnification by Parent*.

(a) After the Effective Time, STT Communications and Pihana Stockholders and their respective affiliates, officers, directors, employees, agents, successors and assigns (collectively, the *Parent Indemnified Parties*) shall be indemnified and held harmless by Parent for any and all losses, liabilities, damages of any kind, claims, costs, expenses, fines, fees, deficiencies, interest, awards, judgments, amounts paid in settlement and penalties (including, without limitation, reasonable attorneys , consultants and experts fees and expenses and other costs reasonably incurred in defending, investigating or settling claims) suffered, incurred or paid by STT Communications or the Pihana Stockholders (including, without limitation, in connection with any action brought or otherwise initiated by STT Communications or the Pihana Stockholders), as the case may be (collectively, *Parent Losses*), adjusted for any insurance recovery but not for any tax deduction relating thereto, arising out of or resulting from:

(i) any inaccuracy or breach of any representation or warranty made by Parent in this Agreement; or

(ii) the breach of any covenant or agreement made by Parent in this Agreement.

(b) As used herein, Parent Losses (i) are not limited to matters asserted by third parties, but include Losses incurred or sustained by a Parent Indemnified Party in the absence of claims by third parties, and (ii) shall not include any portion of any Loss for which an adjustment is made in the Parent Closing Balance Sheet, as finally adjusted.

(c) Notwithstanding anything to the contrary contained in this Agreement, except with respect to claims based on fraud or willful misrepresentation or misconduct:

(i) the maximum aggregate amount of indemnifiable Parent Losses arising out of or resulting from the causes enumerated in Section 9.04(a) (other than indemnity for any breach of the representation contained in Section 4.33, which may be up to the full amount of the Parent Losses related thereto) that may be recovered from Parent shall not exceed (x) with respect to Pihana, the number of Pihana Escrow Shares and (y) with respect to STT Communications, the number of the i-STT Escrow Shares (the *Maximum Parent Indemnity*); and

(ii) no indemnification payment by Parent with respect to any indemnifiable Parent Losses otherwise payable under Section 9.04(a)(i) shall be payable until such time as all such indemnifiable

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Parent Losses incurred by a Parent Indemnified Party seeking indemnification shall aggregate to more than $400,000, after which time Parent shall be liable to such Parent Indemnified Party in full for all indemnifiable Parent Losses (including the first $400,000) to such Parent Indemnified Party.

SECTION 9.05 *Indemnification Procedures*.

(a) Definitions. For purposes of this Section 9.05, a party against which indemnification may be sought is referred to as the *Indemnifying Party* and the party which may be entitled to indemnification is referred to as the *Indemnified Party*.

(b) Third Party Claims.

(i) The obligations and liabilities of Indemnifying Parties under this Article IX with respect to Pihana Losses, i-STT Losses and Parent Losses, as the case may be, (generically, *Losses*) arising from actual or threatened claims or demands by any third party which are subject to the indemnification provided for in this Article IX (*Third Party Claims*) shall be governed by and contingent upon the following additional terms and conditions: if an Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within 90 days of the receipt by the Indemnified Party of such notice; *provided, however*, that the failure to provide such notice shall not release an Indemnifying Party from any of its obligations under this Article IX except to the extent that such Indemnifying Party is materially prejudiced by such failure. The notice of claim shall describe in reasonable detail the facts known to the Indemnified Party giving rise to such indemnification claim, and the amount or good faith estimate of the amount arising therefrom.

(ii) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim through counsel of its choice (such counsel to be reasonably acceptable to the Indemnified Party) if it gives notice of its intention to do so to the Indemnified Party within ten days of the receipt of such notice from the Indemnified Party; *provided, however*, that the Indemnifying Party shall not have the right to assume the defense of the Third Party Claim if (i) any such claim seeks, in addition to or in lieu of monetary losses, any injunctive or other equitable relief, (ii) the Indemnifying Party fails to provide reasonable assurance to the Indemnified Party of the adequacy of the Escrow Fund, the Maximum Parent Indemnity or the Maximum i-STT Stock Indemnity, as applicable, to provide indemnification in accordance with the provisions of this Agreement and the Escrow Agreement with respect to such proceeding, or (iii) there is reasonably likely to exist a conflict of interest that would make it impermissible under the applicable rules of professional conduct (in the judgment of the Indemnified Party, based on the advice of counsel) for the same counsel to represent both the Indemnified Party and the Indemnifying Party; *provided further*, that if by reason of the Third Party Claim a Lien, attachment, garnishment, execution or other encumbrance is placed upon any of the property or assets of such Indemnified Party, the Indemnifying Party, if it desires to exercise its right to assume such defense of the Third Party Claim, furnish a satisfactory indemnity bond to obtain the prompt release of such Lien, attachment, garnishment, execution or other encumbrance. If the Indemnifying Party assumes the defense of a Third Party Claim, it will conduct the defense actively, diligently and at its own expense, and it will hold all Indemnified Parties harmless from and against all Losses caused by or arising out of any settlement thereof. The Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party s expense, all witnesses (but no amount shall be included for internal costs), pertinent records, materials and information in the Indemnified Party s possession or under the Indemnified Party s control relating thereto as is reasonably requested by the Indemnifying Party. Except with the written consent of the Indemnified Party (not to be unreasonably withheld), the Indemnifying Party will not, in the defense of a Third Party Claim, consent to the entry of any judgment or enter into any settlement (i) which does not include as an unconditional term thereof the giving to the Indemnified Party by the third party of a

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release from all liability with respect to such suit, claim, action, or proceeding; (ii) unless there is no finding or admission of (A) any violation of Law by the Indemnified Party (or any affiliate thereof), (B) any liability on the part of the Indemnified Party (or any affiliate thereof) or (C) any violation of the rights of any person and no effect on any other claims of a similar nature that may be made by the same third party against the Indemnified Party (or any affiliate thereof); or (iii) which exceeds the then current Indemnity Stock Price of the Pihana Escrow Shares remaining in the Escrow Fund or the i-STT Escrow Shares, as applicable.

(iii) In the event that the Indemnifying Party fails or elects not to assume the defense of an Indemnified Party against such Third Party Claim which the Indemnifying Party had the right to assume pursuant to Section 9.05(b)(ii), the Indemnified Party shall have the right, at the expense of the Indemnifying Party, to defend or prosecute such claim in any manner as it may reasonably deem appropriate and may settle such claim after giving written notice thereof to the Indemnifying Party, on such terms as such Indemnified Party may deem appropriate, and the Indemnified Party may seek prompt reimbursement from the Escrow Fund, Parent or STT Communications, as the case may be, for any Losses incurred in connection with such settlement. If no settlement of such Third Party Claim is made, the Indemnified Party may seek prompt reimbursement from the Escrow Fund, Parent or STT Communications, as the case may be, for any Losses arising out of any judgment rendered with respect to such claim. Any Losses for which an Indemnified Party is entitled to indemnification hereunder shall be promptly paid as suffered or incurred and invoiced. If the Indemnifying Party does not elect to assume the defense of a Third Party Claim which it has the right to assume hereunder, the Indemnified Party shall have no obligation to do so.

(iv) In the event that the Indemnifying Party is not entitled to assume the defense of the Indemnified Party against such Third Party Claim pursuant to Section 9.05(b)(ii), the Indemnified Party shall have the right, at the expense of the Indemnifying Party, to defend or prosecute such claim and consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim in any manner it may reasonably deem appropriate after giving written notice thereof to the Indemnifying Party, and the Indemnified Party may seek prompt reimbursement from the Escrow Fund, Parent or STT Communications, as the case may be, for any Losses incurred in connection with such judgment or settlement. In such case, the Indemnified Party shall conduct the defense of the Third Party Claim actively and diligently, and the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party s expense, all such witnesses, records, materials and information in the Indemnifying Party s possession or under the Indemnifying Party s control relating thereto as is reasonably requested by the Indemnified Party. If no settlement of such Third Party Claim is made, the Indemnified Party may seek prompt reimbursement from the Escrow Fund, Parent or STT Communications, as the case may be, for any Losses arising out of any judgment rendered with respect to such claim. Any Losses for which an Indemnified Party is entitled to indemnification hereunder shall be promptly paid as suffered or incurred and invoiced.

(c) Mechanics of Indemnity. All claims for indemnity under this Article IX, other than claims by Parent against the Escrow Fund which claims shall be made in accordance with Section 9.05(d) below, shall be made in accordance with the provisions of this Section 9.05(c).

(i) At any time on or prior to the R&W Termination Date (except with respect to any i-STT Loss resulting from the events described in Section 9.03(a)(iv) or any Parent Loss resulting from a breach of the representation contained in Section 4.33, which may be recovered in full at any time after the Closing), an Indemnified Party may deliver to Parent or STT Communications, as the case may be, a certificate executed by such Indemnified Party or an authorized officer of such Indemnified Party (an *Indemnity Certificate*), which Indemnity Certificate shall:

(A) state that such Indemnified Party has suffered, incurred or paid a Loss for which it is entitled to indemnification, compensation or reimbursement under this Article IX of this Agreement (an *Indemnity Claim*);

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(B) state the aggregate amount of such Indemnity Claim (the *Indemnity Amount*); and

(C) specify in reasonable detail the nature and amount of each individual Indemnity Claim to the extent then known or a good faith estimate of such amount.

(ii) If the Indemnifying Party shall object to any amount claimed in connection with any Indemnity Claim specified in any Indemnity Certificate, the Indemnifying Party shall, within 15 business days after delivery by the Indemnified Party to the Indemnifying Party of such Indemnity Certificate (the *Response Period*), deliver to the Indemnified Party a certificate, executed by the Indemnifying Party (an *Objection Certificate*), which shall specify in reasonable detail (i) each such amount to which the Indemnifying Party objects and (ii) the nature and basis for each such objection.

(iii) If the Indemnified Party shall not have received an Objection Certificate objecting to the amount claimed with respect to an Indemnity Claim prior to the expiration of the applicable Response Period, the Indemnifying Party shall be deemed to have agreed to the Indemnity Certificate and to have acknowledged the correctness of the Indemnity Amount claimed with respect to such Indemnity Claim, or if the Indemnified Party shall have received an Objection Certificate pursuant to Section 9.05(c)(iv) below prior to the expiration of the Response Period with respect to an Indemnity Claim as to which any portion of the Indemnity Amount claimed is not objected to, the Indemnifying Party shall be deemed to have agreed to that portion of the Indemnity Certificate and to have acknowledged the correctness of that portion of the Indemnity Amount claimed as to which no objection is raised in the Objection Certificate, and, in either case, the Indemnifying Party shall (i) with respect to STT Communications, promptly thereafter forward to the Transfer Agent for further transfer out of the i-STT Escrow Shares or (ii) with respect to Parent, direct the Transfer Agent to issue to the Indemnified Party such number of shares of Parent Common Stock equal to the lesser of (x) the Indemnity Amount (or the portion of the Indemnity Amount not objected to in an Objection Certificate) divided by the Indemnity Stock Price and (y) the number of shares of Parent Common Stock then remaining in the Maximum i-STT Liability or Maximum Parent Liability, as the case may be, with respect to such Indemnified Party.

(iv) If the Indemnified Party shall have received within the applicable Response Period an Objection Certificate contesting the amount claimed with respect to any Indemnity Claim specified in the Indemnify Certificate (a *Contested Claim*), the amount so contested (the *Contested Amount*) shall not be paid by the Indemnifying Party, except in accordance with any of the following:

(A) written agreement executed by the Indemnified Party and the Indemnifying Party, or

(B) if the Indemnified Party and the Indemnifying Party are unable to resolve any such Contested Claim within 60 days after delivery of the Objection Certificate, the settlement of such Contested Claim by a binding arbitration proceeding which shall take place in accordance with Section 10.09 hereof.

(v) After (i) the execution of a written agreement pursuant to Section 9.05(c)(iv)(a) of this Agreement, or (ii) the final arbitration decision pursuant to Section 9.05(c)(iv)(b) of this Agreement, the Indemnifying Party shall (x) if STT Communications, promptly forward to, and (y) if Parent, promptly provide instructions to, the Transfer Agent as soon as administratively practicable for further transfer or issuance, as the case may be, to the Indemnified Party such number of shares of Parent Common Stock equal to the lesser of (x) that number of shares of Parent Common Stock specified in such written agreement or arbitration decision, as the case may be (or, if not so specified in the written agreement, decision, award, settlement or arbitration decision, the number of shares of Parent Common Stock (or, with respect to STT Communications, Parent Preferred Stock on an as converted to Common Stock basis, equal to the dollar amount set forth in the written agreement or arbitration decision, as the case may be, divided by the Indemnity Stock Price) and (y) the number of shares of Common Stock then remaining in the Maximum i-STT Liability (assuming all shares of Parent Preferred Stock are converted to Parent Common Stock) or Maximum Parent Liability, as the case may be, with respect to such Indemnified Party. Notwithstanding the foregoing, if the written agreement or final arbitration

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decision relates to an i-STT Loss described in Section 9.03(a)(iv), STT Communications shall promptly remit to Parent the dollar amount specified in such written agreement or arbitration decision, as the case may be.

(vi) Notwithstanding the limitations set forth in Section 9.05(c)(i) of this Agreement, following the Termination Date, the Indemnified Parties shall be entitled to assert claims against Parent, the Escrow Fund and/or STT Communications with respect to all Losses that were included in determining the Reserved Amount (as defined below). For purposes of this Agreement, the *Reserved Amount* shall be equal to the aggregate dollar value of all amounts claimed and unpaid in all Indemnify Certificates delivered to an Indemnifying Party prior to the R&W Termination Date which claims or amounts shall not have been resolved on or prior to the R&W Termination Date.

(vii) If, on the R&W Termination Date, the Reserved Amount is less than the product of (x) the number of shares of Parent Common Stock then remaining in the Maximum i-STT Liability (as summary all shares of Parent Preferred Stockholder converted to Parent Common Stock) or Maximum Parent Liability, as the case may be, with respect to such Indemnified Party and (y) the Indemnity Stock Price, then promptly after the R&W Termination Date, Parent shall remove the legend described in Section 1B.04 with respect to such number of i-STT Escrow Shares (rounded up to the nearest whole share) equal to (A) the total number of remaining i-STT Escrow Shares minus (B) the quotient obtained by dividing the Reserved Amount by the Indemnity Stock Price, if any.

(d) Parent Claims. Claims by Parent against the Escrow Fund shall be made in accordance with the Escrow Agreement. STT Communications agrees to use reasonable good faith efforts to resolve any Contested Claims (as defined in the Escrow Agreement) with the Stockholders Representative as contemplated in the Escrow Agreement prior to the submission of any such matter to arbitration as contemplated in the Escrow Agreement, provided that, any such resolution shall be subject to Parent s approval (which approval shall not be unreasonably withheld).

SECTION 9.06 *Pihana Stockholders Representative*.

(a) Jane Dietze (such person and any successor or successors being the *Pihana Stockholders Representative*) shall act as the representative of Pihana Stockholders, and shall be authorized to act on behalf of Pihana Stockholders and to take any and all actions required or permitted to be taken by the Pihana Stockholders Representative under this Agreement with respect to any claims (including the settlement thereof) made by a Pihana Stockholder for indemnification pursuant to this Article IX and with respect to any actions to be taken by the Pihana Stockholders Representative pursuant to the terms of the Escrow Agreement (including, without limitation, the exercise of the power to (i) authorize the delivery of Pihana Escrow Shares to a Pihana Stockholder in satisfaction of claims by a Pihana Stockholder, (ii) agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to any claims for indemnification and (iii) take all actions necessary in the judgment of the Pihana Stockholders Representative for the accomplishment of the foregoing). In all matters relating to this Article IX, the Pihana Stockholders Representative shall be the only party entitled to assert the rights of Pihana Stockholders, and the Pihana Stockholders Representative shall perform all of the obligations of Pihana Stockholders hereunder. The Pihana Indemnified Parties shall be entitled to rely on all statements, representations and decisions of the Pihana Stockholders Representative.

(b) Pihana Stockholders shall be bound by all actions taken by the Pihana Stockholders Representative in his, her or its capacity thereof, except for any action that conflicts with the limitations set forth in subsection (d) below. The Pihana Stockholders Representative shall promptly, and in any event within five business days, provide written notice to Pihana Stockholders of any action taken on behalf of them by the Pihana Stockholders Representative pursuant to the authority delegated to the Pihana Stockholders Representative under this Section 9.06. The Pihana Stockholders Representative shall at all times act in his, her or its capacity as Pihana Stockholders Representative in a manner that the Pihana Stockholders Representative believes to be in the best interest of Pihana Stockholders. Neither the Pihana Stockholders Representative nor any of his agents or employees, if any, shall be liable to any person for

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any error of judgment, or any action taken, suffered or omitted to be taken under this Agreement or the Escrow Agreement, except in the case of losses arising primarily from his bad faith or willful misconduct. The Pihana Stockholders Representative may consult with legal counsel, independent public accountants and other experts selected by him or her. The Pihana Stockholders Representative shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the Escrow Agreement. As to any matters not expressly provided for in this Agreement or the Escrow Agreement, the Pihana Stockholders Representative shall not exercise any discretion or take any action.

(c) Each Pihana Stockholder shall indemnify and hold harmless and reimburse the Pihana Stockholders Representative from and against such Pihana Stockholder s ratable share of any and all liabilities, losses, damages, claims, costs or expenses suffered or incurred by the Pihana Stockholders Representative arising out of or resulting from any action taken or omitted to be taken by the Pihana Stockholders Representative under this Agreement or the Escrow Agreement, other than such liabilities, losses, damages, claims, costs or expenses primarily arising out of or resulting from the Pihana Stockholders Representative s bad faith or willful misconduct. The Pihana s Stockholders Representative shall not be required to take any action under this Agreement unless he, she or it has received undertakings from the Pihana Stockholders to reimburse any out-of-pocket costs or other expenses incurred by the Pihana Stockholders Representative in connection with his duties under this Agreement. Inaction on the part of the Stockholders Representative shall not effect the rights of STT Communications and Parent under this Agreement. Any inaction by the Stockholders Representative pursuant to the preceding sentence shall not effect the rights of STT Communications or Parent under this Article IX.

(d) Notwithstanding anything to the contrary herein or in the Escrow Agreement, the Pihana Stockholders Representative is not authorized to, and shall not, accept on behalf of any Pihana Stockholder any consideration to which such Pihana Stockholder is entitled under this Agreement and the Pihana Stockholders Representative shall not in any manner exercise, or seek to exercise, any voting power whatsoever with respect to shares of capital stock of Pihana or Parent now or hereafter owned of record or beneficially by any Pihana Stockholder unless the Pihana Stockholders Representative is expressly authorized to do so in a writing signed by such Pihana Stockholder.

ARTICLE X

GENERAL PROVISIONS

SECTION 10.01 *Notices*. All notices, requests, claims, demands and other communications required or permitted hereunder shall be in writing and shall be deemed effectively given or made (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, if not, then on the next business day, or (iii) the second business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.01):

(a) if to Parent or Merger Sub:

Equinix, Inc.
2450 Bayshore Parkway
Mountain View, CA 94043-1107
Facsimile No.: (650) 316-6900
Attention: General Counsel

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with a copy (which shall constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
155 Constitution Drive
Menlo Park, California 94025
Facsimile No.: (650) 321-2800
Attention: Scott C. Dettmer
Christopher D. Dillon

(b) if to Pihana:

Pihana Pacific, Inc.
1901-02 19/F Li Po Chun Chambers
Hong Kong SAR, People s Republic of China
Facsimile No.: (852) 2970 5882
Attention: Chief Financial Officer

with a copy (which shall constitute notice) to:

Brobeck Phleger & Harrison LLP
550 South Hope Street
Los Angeles, CA 90071
Facsimile No.: (213) 745-3345
Attention: Richard S. Chernicoff

(c) if to STT Communications:

Chief Financial Officer
General Counsel
STT Communications Ltd.
51 Cuppage Road
#10-11/17
Starhub Centre
Singapore 229469
Facsimile No.: (65) 6720 7277

with a copy (which shall not constitute notice) to:

Tan Aye See
Assistant Vice President Legal
STT Communications Ltd.
51 Cuppage Road
#10-11/17
Starhub Centre
Singapore 229469
Facsimile No.: (65) 6720 7277

with a copy (which shall constitute notice) to:

Latham & Watkins
135 Commonwealth Drive
Menlo Park, CA 94025
Facsimile No.: (650) 463-2600
Attention: Robert Koenig
Michael Sturrock

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(d) if to the Pihana Stockholders Representative:

Jane Dietze
201 North Union Street
Suite 300
Alexandria, Virginia 22314
Facsimile No.: (703) 519-5870

with a copy (which shall constitute notice) to:

Brobeck Phleger & Harrison LLP
550 South Hope Street
Los Angeles, CA 90071
Facsimile No.: (213) 745-3345
Attention: Richard S. Chernicoff

SECTION 10.02 *Certain Definitions*. (a) As used in this Agreement, the following terms shall have the following meanings:

(a) *affiliate* of a specified person means a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such specified person.

(b) *beneficial owner* with respect to any shares means a person who shall be deemed to be the beneficial owner of such shares (i) which such person or any of its affiliates or associates (as such term is defined in Rule 12b-2 promulgated under the Exchange Act) beneficially owns, directly or indirectly, (ii) which such person or any of its affiliates or associates has, directly or indirectly, (A) the right to acquire (whether such right is exercisable immediately or subject only to the passage of time or the occurrence of one or more specified events), pursuant to any agreement, arrangement or understanding or upon the exercise of consideration rights, exchange rights, warrants or options, or otherwise, or (B) the right to vote pursuant to any agreement, arrangement or understanding, or (iii) which are beneficially owned, directly or indirectly, by any other persons with whom such person or any of its affiliates or associates or person with whom such person or any of its affiliates or associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of any shares.

(c) *business day* means any day on which banks are not required or authorized to close in New York, New York, San Francisco, California or Singapore.

(d) *Code* means the United States Internal Revenue Code of 1986, as amended.

(e) *control* (including the terms controlled by and under common control with) means the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, as trustee or executor, by contract or credit arrangement or otherwise.

(f) *person* means an individual, corporation, partnership, limited partnership, syndicate, person (including, without limitation, a person as defined in Section 13(d)(3) of the Exchange Act), trust, association or entity or government, political subdivision, agency or instrumentality of a government.

(g) *subsidiary* or *subsidiaries* of any person means any corporation, partnership, joint venture or other legal entity of which such person (either alone or through or together with any other subsidiary) owns, directly or indirectly, more than 50% of the stock or other equity interests, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

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(h) The following terms shall have the meanings defined for such terms in the Sections of this Agreement set forth below:

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SECTION 10.03 *Severability*. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the fullest extent possible.

SECTION 10.04 *Assignment; Binding Effect; Benefit*. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the Parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other Parties. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the Parties or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

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SECTION 10.05 *Incorporation of Exhibits*. The i-STT Disclosure Letter, the Pihana Disclosure Letter, the Parent Disclosure Letter, the Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein and made a part hereof for all purposes as if fully set forth herein.

SECTION 10.06 *Specific Performance*. The Parties agree that irreparable damage would occur in the event any provision of this Agreement was not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof in addition to any other remedy at law or in equity. Nothing in this section shall entitle any Party to circumvent the requirement in Section 10.09 to first seek any such remedy through binding arbitration.

SECTION 10.07 *Governing Law*. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts executed in and to be performed in that state without regard to any conflicts of laws.

SECTION 10.08 *Waiver of Jury Trial*. Each of the parties hereto hereby irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

SECTION 10.09 *Arbitration of Disputes*.

(a) Except as provided in Article II, all disputes, controversies or claims (whether in contract, tort or otherwise) arising out of, relating to or otherwise by virtue of, this Agreement, breach of this Agreement or the transactions contemplated by this Agreement shall be finally settled under the Rules of Arbitration (except as set forth below) of the London Court of International Arbitration (as amended from time to time, the *LCIA Rules*).

(b) The arbitration shall be seated in London, England, in the English language and shall be the exclusive forum for resolving such disputes, controversies or claims. The arbitrator shall have the power to order hearings and meetings to be held in such place or places as he or she deems in the interests of reducing the total cost to the parties of the arbitration.

(c) The arbitration shall be held before a single arbitrator. Each party to the arbitration shall submit a list of three proposed arbitrators, who each meet the criteria set forth in Section 10.09(d) within ten business days of service of the request for arbitration on the last respondent. The LCIA Court (as referred to in the LCIA Rules) shall select from among such nominations, with any person nominated by more than one party to the arbitration being per se the nominee of each party.

(d) The arbitrator shall have practiced the field of law that is principally the subject of such dispute, controversy or claim in the State of Delaware for at least ten years. The arbitrator may be of the same nationality as any party. The arbitrator shall have the power to order equitable remedies and not just the payment of monies. Notwithstanding the LCIA Rules, no party shall have the right to seek a court order of interim or conservatory measures, other than a court order confirming and enforcing an arbitral award of interim or conservatory measures. The arbitrator may hear and rule on dispositive motions as part of the arbitration proceeding (e.g. motions for summary judgment on the pleadings, summary judgment and partial summary judgment).

(e) All timetables and deadlines for the conduct of the arbitration shall be set in accordance with the rules as then interpreted and applicable in the Court of Chancery of the State of Delaware of and for the County of New Castle. The Arbitrator shall not have the power to abridge such time deadline requirements.

(f) Discovery shall be permitted to the extent, and under the conditions, then in effect in the Court of Chancery of the State of Delaware of and for the County of New Castle. The arbitrator may appoint an expert only with the consent of all of the parties to the arbitration. Testimony of witnesses may be challenged to the extent, and under the conditions, then in effect in the Court of Chancery of the State of Delaware of and for the County of New Castle.

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(g) All deposits required under the LCIA Rules shall be paid equally by all parties to the arbitration. Each party shall to the arbitration shall pay its own costs and expenses (including, but not limited to, attorney s fees) in connection with the arbitration.

(h) The award rendered by the arbitrator shall be executory, final and binding on the parties. The award rendered by the arbitrator may be entered into any court having jurisdiction, or application may be made to such court for judicial acceptance of the award and an order of enforcement, as the case may be. Such court proceeding shall disclose only the minimum amount of information concerning the arbitration as is required to obtain such acceptance or order.

SECTION 10.10 *Construction and Interpretation*.

(a) For purposes of this Agreement, whenever the context requires, the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.

(b) Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against any party, whether under any rule of construction or otherwise. No party to this Agreement shall be considered the draftsman. The parties acknowledge and agree that this Agreement has been reviewed, negotiated, and accepted by all parties and their attorneys and shall be construed and interpreted according to the ordinary meaning of the words used so as fairly to accomplish the purposes and intentions of all parties hereto.

(c) As used in this Agreement, the words include and including, and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words without limitation.

(d) Except as otherwise indicated, all references in this Agreement to Articles, Sections, Schedules and Exhibits are intended to refer to an Article or Section of, or Schedule or Exhibit to, this Agreement.

(e) Except as otherwise indicated, all references (i) to any agreement (including this Agreement), contract or Law are to such agreement, contract or Law as amended, modified, supplemented or replaced from time to time, and (ii) to any Governmental Entity include any successor to that Governmental Entity.

SECTION 10.11 *Further Assurances*. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

SECTION 10.12 *Headings*. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 10.13 *Counterparts*. This Agreement may be executed and delivered (including by facsimile transmission) in two or more counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

SECTION 10.14 *Entire Agreement*. This Agreement (including the Exhibits, the Schedules, the i-STT Disclosure Letter, the Pihana Disclosure Letter and the Parent Disclosure Letter) and the Pihana Non-Disclosure Letter and the Parent Non-Disclosure Letter constitute the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings among the Parties with respect thereto. No addition to or modification of any provision of this Agreement shall be binding upon any party hereto unless made in writing and signed by all Parties.

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IN WITNESS WHEREOF, each of Parent, Merger Sub, SP Sub, STT Communications, i-STT, Pihana and the Pihana Stockholders Representative has executed or has caused this Agreement to be executed by its duly authorized officer as of the date first written above.

EQUINIX, INC.

By: /s/ Peter F. Van Camp

Name: Peter F. Van Camp
Title: Chief Executive Officer

EAGLE PANTHER ACQUISITION CORP.

By: /s/ Philip J. Koen

Name: Philip J. Koen
Title: President

EAGLE JAGUAR ACQUISITION CORP.

By: /s/ Philip J. Koen

Name: Philip J. Koen
Title: President

STT COMMUNICATIONS LTD

By: /s/ Jean Mandeville

Name: Jean Mandeville
Title: Chief Financial Officer

i-STT PTE LTD

By: /s/ Tay Kiong Hong

Name: Tay Kiong Hong
Title: Chief Operating Officer

PIHANA PACIFIC, INC.

By: /s/ Brett Lay

Name: Brett Lay
Title: CFO

STOCKHOLDERS REPRESENTATIVE

/s/ Jane Dietze

Jane Dietze, solely as Pihana Stockholders Representative

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Annex B

[LETTERHEAD OF SALOMON SMITH BARNEY INC.]

October 2, 2002

The Board of Directors
Equinix, Inc.
2450 Bayshore Parkway
Mountain View, California 94043

Members of the Board:

You have requested our opinion as to the fairness, from a financial point of view, to Equinix, Inc. (Equinix) of the Aggregate Consideration (as defined below) set forth in the Combination Agreement, dated as of October 2, 2002 (the Combination Agreement), among Equinix, Eagle Panther Acquisition Corp. (Merger Sub) and Eagle Jaguar Acquisition Corp. (Acquisition Sub), both wholly owned subsidiaries of Equinix, Pihana Pacific, Inc. (Pihana), STT Communications Ltd (STT Communications), i-STT Pte Ltd, a wholly owned subsidiary of STT (i-STT), and Jane Dietze, as representative of the stockholders of Pihana. As more fully described in the Combination Agreement, (i) Merger Sub will be merged with and into Pihana (the Merger) pursuant to which all outstanding shares of Series A Preferred Stock, par value $0.001 per share, of Pihana and Series B-1 Preferred Stock, par value $0.001 per share, of Pihana will be converted into the right to receive aggregate consideration of $10,000 in cash and that number of shares of the common stock, par value $0.001 per share, of Equinix (Equinix Common Stock) representing 22.5% of the Fully Diluted Share Amount (as defined below) (such cash and stock consideration, collectively, the Aggregate Merger Consideration), subject to certain adjustments as specified in the Combination Agreement, and (ii) Acquisition Sub will purchase from STT Communications or one of its subsidiaries all outstanding shares of the capital stock of i-STT (the Stock Purchase) for aggregate consideration of $10,000 in cash and that number of shares of Equinix Common Stock and Series A Convertible Preferred Stock, par value $0.001 per share, of Equinix (Equinix Series A Preferred Stock) representing 27.5% of the Fully Diluted Share Amount (such cash and stock consideration, collectively, the Aggregate Stock Purchase Consideration and, together with the Aggregate Merger Consideration, the Aggregate Consideration), subject to certain adjustments as specified in the Combination Agreement. The term Fully Diluted Share Amount is defined in the Combination Agreement as the number, as of the effective time of the Merger after giving effect to the Senior Note Exchange (as defined below) but without giving effect to the Investment (as defined below), of outstanding shares of Equinix Common Stock and shares of Equinix Common Stock subject to options and warrants to purchase such shares at an exercise price per share equal to or less than $2.00, as adjusted for the assumed net exercise of such options and warrants and after giving effect to any anti-dilutive adjustments as a result of the Merger and Stock Purchase.

Representatives of Equinix have advised us that, in connection with the Merger and Stock Purchase, Equinix will undergo a capital restructuring in a series of related transactions involving the (i) issuance to STT Communications of $30 million aggregate principal amount of 14% Series A-1 Convertible Secured Notes due 2007 of Equinix (Equinix Series A-1 Notes) and attached warrants (Equinix Series B Warrants) to purchase shares of Series B Convertible Preferred Stock, par value $0.001 per share, of Equinix (Equinix Series B Preferred Stock and, together with the Equinix Common Stock, Equinix Series A Preferred Stock, Equinix Series A-1 Notes and Equinix Series B Warrants, the Equinix Securities) in exchange for $30 million in cash (such issuance, the Investment), (ii) repurchase or exchange of 13% Senior Notes due 2007 of Equinix (Equinix Senior Notes) for a combination of cash of approximately $15.5 million in the aggregate and shares of Equinix Common Stock such that the remaining aggregate principal amount of Equinix Senior Notes is less than $22.3 million and the interest payment due December 1, 2002 with respect thereto will be no more than $2,392,000 (the Senior Note Exchange) and (iii) modification of Equinix s senior secured credit facility in exchange for a prepayment of a portion of the aggregate principal amount thereunder in the amount of up to

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The Board of Directors
Equinix, Inc.
October 2, 2002
Page 2

$7.5 million (such modification, together with the Investment and Senior Note Exchange, the Related Transactions and, the Merger, Stock Purchase and Related Transactions, collectively, the Transactions).

In arriving at our opinion, we reviewed the Combination Agreement and certain related documents and held discussions with certain senior officers, directors and other representatives and advisors of Equinix and certain senior officers and other representatives and advisors of Pihana and i-STT concerning the businesses, operations and prospects of Equinix, Pihana and i-STT. We examined certain publicly available business and financial information relating to Equinix and certain business and financial information relating to Pihana and i-STT as well as certain financial forecasts, estimates and other information and data relating to Equinix, Pihana and i-STT which were provided to or otherwise discussed with us by the respective managements of Equinix, Pihana and i-STT, including certain operational benefits anticipated by the management of Equinix to result from the Transactions. We reviewed the financial terms of the Transactions as set forth in the Combination Agreement and related documents or as otherwise described to us by representatives of Equinix in relation to, among other things: current and historical market prices and trading volumes of Equinix Common Stock; historical and projected earnings and other operating data of Equinix, Pihana and i-STT; and the capitalization and financial condition of Equinix, Pihana and i-STT, including the liquidity needs of, and capital resources available to, Equinix. We analyzed the estimated present value of the unlevered, after-tax free cash flows of Equinix using certain assumptions of the future financial performance of Equinix before and after giving effect to the Transactions provided to or discussed with us by the management of Equinix. We considered, to the extent publicly available, the financial terms of certain bankruptcy transactions effected which we considered relevant and reviewed certain financial, stock market and other publicly available information relating to the businesses of other companies whose operations we considered relevant in evaluating those of Equinix. We also evaluated the potential pro forma financial impact of the Transactions on Equinix. In connection with our engagement, we were requested to solicit, and we held discussions with, certain third parties regarding a possible investment in, or strategic transaction with, Equinix. In addition to the foregoing, we conducted such other analyses and examinations and considered such other financial, economic and market criteria as we deemed appropriate in arriving at our opinion.

In rendering our opinion, we have assumed and relied, without independent verification, upon the accuracy and completeness of all financial and other information and data publicly available or furnished to or otherwise reviewed by or discussed with us. With respect to financial forecasts, estimates and other information and data relating to Equinix, Pihana and i-STT provided to or otherwise discussed with us, we have been advised by the managements of Equinix, Pihana and i-STT that such forecasts, estimates and other information and data were reasonably prepared on bases reflecting the best currently available estimates and judgments of the managements of Equinix, Pihana and i-STT as to the future financial performance of Equinix, Pihana and i-STT, the pro forma capital structure of Equinix and the other matters covered thereby and have assumed, with your consent, that the financial results reflected in such forecasts, estimates and other information and data will be realized in the amounts and at the times projected. We have assumed, with your consent, that the Transactions will be consummated in accordance with their respective terms, without waiver, modification or amendment of any material term, condition or agreement and that, in the course of obtaining the necessary regulatory and third party approvals and consents for the Transactions, no delay, limitation, restriction or condition will be imposed that would have an adverse effect on Equinix, Pihana or i-STT or the contemplated benefits to Equinix of the Transactions. We are not expressing any opinion as to what the value of the Equinix Securities actually will be when issued or the prices at which the Equinix Securities will trade or otherwise be transferable at any time. We have not made or been provided with an independent evaluation or appraisal of the assets or liabilities (contingent or otherwise) of Equinix, Pihana or i-STT nor have we made any physical inspection of the properties or assets of Equinix, Pihana or i-STT. Representatives of Equinix have advised us, and at your direction we have assumed, that the Related Transactions will not occur in the absence of the Merger and Stock

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Purchase. Representatives of Equinix also have advised us and, at your direction we have assumed, that, given Equinix s financial condition and near-term prospects, including, without limitation, its financial ability to satisfy its outstanding obligations and working capital requirements, and the results of the business strategies and financial alternatives explored to date by Equinix, Equinix s most likely available alternatives are (a) to commence bankruptcy or similar proceedings or (b) to effect the Transactions. Accordingly, with your consent, our evaluation of the Aggregate Consideration for purposes of our opinion has been based on a comparison of the estimated per share value of Equinix Common Stock before and after giving effect to the Transactions. Our opinion does not address any other aspect of the Transactions, nor does our opinion address the relative merits of the Transactions as compared to any alternative business strategies or financial alternatives that might exist for Equinix or the effect of any other transaction in which Equinix might engage. Our opinion is necessarily based upon information available to us, and financial, stock market and other conditions and circumstances existing and disclosed to us, as of the date hereof.

Salomon Smith Barney Inc. has acted as financial advisor to Equinix in connection with the proposed Merger and Stock Purchase and will receive a fee for such services, a significant portion of which is contingent upon the consummation of the Merger and Stock Purchase and a portion of which is payable upon delivery of this opinion. We also have provided services to Equinix in connection with the proposed Investment and will receive a fee for such services. As you are aware, one of our affiliates engaged in the commercial lending business is a significant creditor under Equinix s senior secured credit facility which is proposed to be modified in connection with the Transactions. We also have acted as joint book-running lead arranger, and one of our affiliates is the administrative agent, for such facility, for which services we and such affiliate have received, and will receive, customary fees. We and our affiliates in the past have provided services to Equinix unrelated to the proposed Transactions, including having acted as lead initial purchaser for a $200 million offering of Equinix Senior Notes in December 1999 and as co-lead managing underwriter for an initial public offering of Equinix Common Stock in August 2000, for which services we and our affiliates have received compensation. We and our affiliates in the past also have provided services to certain affiliates of STT Communications unrelated to the proposed Transactions, for which services we and our affiliates have received compensation. In the ordinary course of our business, we and our affiliates may actively trade or hold the securities of Equinix and certain affiliates of STT Communications for our own account or for the account of our customers and, accordingly, may at any time hold a long or short position in such securities. In addition, we and our affiliates (including Citigroup Inc. and its affiliates) may maintain relationships with Equinix, Pihana, STT Communications and their respective affiliates.

Our advisory services and the opinion expressed herein are provided in connection with the proposed Merger and Stock Purchase and not any Related Transaction, and our opinion is not intended to be and does not constitute a recommendation to any stockholder as to how such stockholder should vote or act on the proposed Merger or Stock Purchase or as to any other matters relating to the Merger, Stock Purchase or Related Transactions.

Based upon and subject to the foregoing, our experience as investment bankers, our work as described above and other factors we deemed relevant, we are of the opinion that, as of the date hereof, the Aggregate Consideration to be paid by Equinix in the Merger and Stock Purchase is fair, from a financial point of view, to Equinix.

Very truly yours,

/s/ Salomon Smith Barney Inc.

SALOMON SMITH BARNEY INC.

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Annex C

AGREEMENT AND PLAN OF MERGER

This **AGREEMENT AND PLAN OF MERGER** is dated as of October 17, 2002 (this Agreement) among Equinix, Inc. (Equinix) and Eagle Oasis, Inc. (Eagle), each a Delaware corporation.

R E C I T A L S

A Equinix is a corporation duly organized and existing under the laws of the State of Delaware. Eagle is a corporation duly organized and existing under the laws of the State of Delaware and a wholly owned subsidiary of Equinix.

B. The respective boards of directors of Equinix and Eagle have determined that it is advisable and in the best interests of each corporation that Eagle merge with and into Equinix (the Merger) upon the terms and subject to the conditions of this Agreement. As a result of the Merger, Equinix will be the surviving corporation and the separate existence of Eagle will cease.

C. The respective boards of directors of Equinix and Eagle have been duly advised of the terms and conditions of the Merger and, by resolutions duly adopted, have authorized, approved and adopted this Agreement. The stockholders of Equinix will approve and adopt this Agreement at a special meeting of stockholders. The stockholder of Eagle will approve and adopt this Agreement by written consent without a meeting.

D. The parties intend by this Agreement to effect a reorganization under Section 368 of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, Equinix and Eagle hereby agree as follows:

ARTICLE I

THE MERGER

Section 1.01 *The Merger*. Upon the terms and subject to the conditions of this Agreement, and in accordance with the relevant provisions of the Delaware General Corporation Law (the DGCL), Eagle will merge with and into Equinix upon the Effective Time, as defined in this Agreement. Equinix will be the surviving corporation in the Merger (the Surviving Corporation). Upon the Effective Time, the separate existence of Eagle will cease, and the Surviving Corporation will succeed, without other transfer, to all of the rights and property of Eagle, and will be subject to all of the debts and liabilities of Eagle, as provided for in Section 259 of the DGCL. On and after the Effective Time, the Surviving Corporation will carry on its business with the assets of Eagle, as well as with the assets of the Surviving Corporation.

Section 1.02 *Effective Time*. As soon as practicable following the satisfaction or waiver of the conditions set forth in Article II, the Merger will be consummated by filing a certificate of merger (the Certificate of Merger) with the Secretary of State of the State of Delaware in accordance with the DGCL. The Merger will become effective when the Certificate of Merger is filed or such later time as is set forth in the Certificate of Merger. The time when the Merger becomes effective is called the Effective Time .

Section 1.03 *Certificate of Incorporation*. At the Effective Time, the Certificate of Incorporation of Equinix shall be amended to read in its entirety as set forth in Exhibit A hereto, and as so amended shall be the

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Certificate of Incorporation of the Surviving Corporation until changed or amended as provided therein or by applicable law. The name of the Surviving Corporation will be Equinix, Inc.

Section 1.04 *Directors and Officers*. The directors and officers of Equinix immediately prior to the Merger will continue to be the directors and officers of Equinix until the earlier of their resignation or removal or until their respective successors are duly elected and qualified.

Section 1.05 *Effect on Capital Stock*.

(a) Equinix Common Stock. Each share of common stock of Equinix outstanding immediately prior to the Effective Time of the Merger (Old Common Stock) shall automatically be converted, without any action on the part of the holder thereof, into a number of shares of Equinix common stock (New Common Stock) equal to the Exchange Ratio (as defined below).

(b) Eagle Common Stock. Each share of Eagle common stock outstanding immediately prior to the effective time shall be cancelled.

(c) Exchange Ratio. For purposes of this Section 1.05, Exchange Ratio shall mean the exchange ratio determined by the board of directors in its sole discretion such that the trading price of Equinix common stock on The Nasdaq National Market will be not less than $5.00 per share following the conversion of the common stock pursuant to Section 1.05(a).

(d) Exchange of Certificates; Fractional Shares. Each holder of a certificate or certificates, which immediately prior to the Effective Time represented outstanding shares of Old Common Stock (whether one or more, the Old Certificates), shall be entitled to receive upon surrender of such Old Certificates to the exchange agent duly appointed by Equinix (the Exchange Agent), for cancellation, a certificate or certificates (whether one or more, the New Certificates) representing the number of whole shares of the New Common Stock into which and for which the shares of the Old Common Stock formerly represented by such Old Certificates so surrendered are converted under the terms hereof. From and after the Effective Time, Old Certificates shall represent only the right to receive New Certificates (and, where applicable, cash in lieu of fractional shares, as provided below) pursuant to the provisions hereof. No certificates or scrip representing fractional share interests in New Common Stock will be issued, and no such fractional share interest will entitle the holder thereof to vote, or to any rights of a stockholder of Equinix. A holder of Old Certificates shall receive, in lieu of any fraction of a share of New Common Stock to which the holder would otherwise be entitled, a cash payment therefor. Such cash payment will equal the fraction to which the stockholder would otherwise be entitled multiplied by the average of the closing prices (as adjusted to reflect the effects of the Exchange Ratio on the conversion of common stock pursuant to Section 1.05) of the Old Common Stock, as reported in The Wall Street Journal, during the ten (10) trading days preceding the date that is three (3) trading days before the Effective Time. If more than one Old Certificate shall be surrendered at one time for the account of the same stockholder, the number of full shares of New Common Stock for which New Certificates shall be issued shall be computed on the basis of the aggregate number of shares represented by the Old Certificates so surrendered. In the event that the Exchange Agent determines that a holder of Old Certificates has not tendered all such certificates for exchange, the Exchange Agent shall carry forward any fractional share until all certificates of such holder have been presented for exchange such that payment for fractional shares to any one person shall not exceed the value of one share. If any New Certificate is to be issued in a name other than that in which the Old Certificates surrendered for exchange are issued, the Old Certificates so surrendered shall be properly endorsed and otherwise in proper form for transfer.

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Article II

Conditions to Consummation of the Merger

Section 2.01 *Conditions to Each Party s Obligation to Effect the Merger*. The respective obligations of each party to effect the Merger are subject to the satisfaction or waiver, where permissible, prior to the Effective Time, of the following conditions:

(a) more than 50% of the outstanding shares of Equinix common stock entitled to vote have voted to adopt this Agreement;

(b) no statute, rule, regulation, executive order, decree, injunction or other order has been enacted, entered, promulgated or enforced by any court or governmental authority that is in effect and has the effect of prohibiting the consummation of the Merger; and

(c) all approvals and consents necessary or desirable, if any, in connection with consummation of the Merger have been obtained.

Article III

Miscellaneous

Section 3.01 *Amendment; Waiver*. At any time before the Effective Time, Equinix and Eagle may, to the extent permitted by the DGCL, by written agreement amend, modify or supplement any provision of this Agreement.

Section 3.02 *Entire Agreement; Assignment*. This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Neither this Agreement nor any right, interest or obligation under this Agreement may be assigned, in whole or in part, by operation of law or otherwise, without the prior written consent of the other parties.

Section 3.03 *Governing Law*. This Agreement will be governed by and construed in accordance with the substantive laws of the State of Delaware regardless of the laws that might otherwise govern under principles of conflicts of laws applicable thereto.

Section 3.04 *Parties in Interest*. Nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement.

Section 3.05 *Counterparts*. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which will constitute one and the same agreement, and will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

Section 3.06 *Abandonment*. At any time before the Effective Time, this Agreement may be terminated and the Merger may be abandoned by the boards of directors of Equinix or Eagle.

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IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed on its behalf by its respective officers thereunto duly authorized, all as of the day and year first above written.

EQUINIX, INC.,
a Delaware corporation

By: /s/ PHIL KOEN

Name: Phil Koen
Title: President

EAGLE OASIS, INC.,
a Delaware corporation

By: /s/ PHIL KOEN

Name: Phil Koen
Title: President

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EXHIBIT A TO ANNEX C

RESTATED
CERTIFICATE OF INCORPORATION OF
EQUINIX, INC.
a Delaware corporation

ARTICLE I

The name of the corporation is Equinix, Inc. (the Corporation).

ARTICLE II

The address of the registered office of this corporation in the State of Delaware is 15 E. North St., P.O. Box 899, in the City of Dover, County of Kent. The name of its registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated common stock (Common Stock) and preferred stock (Preferred Stock). The number of shares of Common Stock authorized to be issued is Three Hundred Million (300,000,000), par value $.001 per share, and the number of shares of Preferred Stock authorized to be issued is One Hundred Million (100,000,000), par value $0.001 per share.

The Preferred Stock may be issued from time to time in one or more series, without further stockholder approval. The Board of Directors is hereby authorized, in the resolution or resolutions adopted by the Board of Directors providing for the issue of any wholly unissued series of Preferred Stock, within the limitations and restrictions stated in this Restated Certificate of Incorporation (the Restated Certificate), to fix or alter the dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption (including sinking fund provisions), the redemption price or prices, and the liquidation preferences of any wholly unissued series of Preferred Stock, and the number of shares constituting any such series and the designation thereof, or any of them, and to increase or decrease the number of shares of any series subsequent to the issue of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

ARTICLE V

Except as otherwise provided in this Restated Certificate, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

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ARTICLE VI

The number of directors of the Corporation shall be fixed from time to time by a bylaw or amendment thereof duly adopted by the Board of Directors or by the stockholders.

ARTICLE VII

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

ARTICLE VIII

Except as otherwise provided in this Restated Certificate, any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of the stockholders of the Corporation, and may not be effected by any consent in writing of such stockholders.

ARTICLE IX

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director s duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived any improper personal benefit. If the Delaware General Corporation Law is amended after approval by the stockholders of this Article to authorize corporate action further eliminating or limiting the personal liability of directors then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article IX by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of this Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

ARTICLE X

In addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Restated Certificate, the affirmative vote of the holders of a majority of the voting power of all of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal the provisions of ARTICLE I, ARTICLE II, and ARTICLE III of this Restated Certificate. Notwithstanding any other provision of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of this Corporation required by law or by this Restated Certificate, the affirmative vote of the holders of at least sixty-six and two thirds percent (66 2/3%) of the voting power of all of the then outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to amend or repeal any provision of this Restated Certificate not specified in the preceding sentence.

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PROXY EQUINIX, INC. PROXY

2450 Bayshore Parkway, Mountain View, California 94043

**This Proxy is Solicited on Behalf of the Board of Directors of Equinix, Inc.
for the Special Meeting of Stockholders to be held December 30, 2002**

The undersigned holder of Common Stock, par value $.001, of Equinix, Inc. (the Company) hereby appoints Peter F. Van Camp and Renee F. Lanam, or either of them, proxies for the undersigned, each with full power of substitution, to represent and to vote as specified in this Proxy all Common Stock of the Company that the undersigned stockholder would be entitled to vote if personally present at the Special Meeting of Stockholders (the Special Meeting) to be held on December 30, 2002 at 9:00 a.m. local time, located at the offices of Willkie, Farr & Gallagher, 787 Seventh Avenue, New York, New York 10019, and at any adjournments or postponements of the Special Meeting. The undersigned stockholder hereby revokes any proxy or proxies heretofore executed for such matters.

This proxy, when properly executed, will be voted in the manner as directed herein by the undersigned stockholder. IF NO DIRECTION IS MADE, THIS PROXY WILL BE VOTED FOR PROPOSAL 1 AND PROPOSAL 2 AND IN THE DISCRETION OF THE PROXIES AS TO ANY OTHER MATTERS THAT MAY PROPERLY COME BEFORE THE MEETING. The undersigned stockholder may revoke this proxy at any time before it is voted by delivering to the Corporate Secretary of the Company either a written revocation of the proxy or a duly executed proxy bearing a later date, or by appearing at the Special Meeting and voting in person.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE **FOR** PROPOSAL 1 AND **FOR** PROPOSAL 2.

PLEASE MARK, SIGN, DATE AND RETURN THIS CARD PROMPTLY USING THE ENCLOSED RETURN ENVELOPE. If you receive more than one proxy card, please sign and return ALL cards in the enclosed envelope.

(CONTINUED AND TO BE SIGNED ON REVERSE SIDE)

(Reverse)
EQUINIX, INC.

x **Please mark votes as in this example**

	FOR	AGAINST	ABSTAIN
1. To approve the issuance of shares of our common stock and preferred stock in connection with the combination, the financing and the senior note exchange, each as more fully described in the Company s proxy statement dated December 10, 2002.	··	··	··
2. To adopt the Agreement and Plan of Merger, dated as of October 17, 2002, by and between the Company and Eagle Oasis, Inc.	··	··	··

In their discretion, the proxies are authorized to vote upon such other business as may properly come before the Special Meeting.

The undersigned acknowledges receipt of the accompanying Notice of Special Meeting of Stockholders and Proxy Statement.

Signature: _____ Signature (if held jointly): _____ Date: _____, 2002.

Please date and sign exactly as your name(s) is (are) shown on the share certificate(s) to which the Proxy applies. When shares are held as joint-tenants, both should sign. When signing as an executor, administrator, trustee, guardian, attorney-in-fact or other fiduciary, please give full title as such. When signing as a corporation, please sign in full corporate name by President or other authorized officer. When signing as a partnership, please sign in partnership name by an authorized person.

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Vote by Telephone	**Vote by Internet**
It s fast, convenient, and immediate! Call Toll-Free on a Touch-Tone Phone 1-877-PRX-VOTE (1-877-779-8683)	It s fast, convenient, and your voice is immediately confirmed and posted.
Follow these four easy steps: Read the accompanying Proxy Statement/Prospectus and Proxy Card Call the toll-free number 1-877 PRX-VOTE (1-877-779-8683). Enter your 14-digit Voter Control Number located on your Proxy Card above your name. Follow the recorded instructions.	Follow these four easy steps: Read the accompanying Proxy Statement/Prospectus and Proxy Card. Go to the Website http://www.eproxyvote.com/cflo Enter your 14-digit Voter Control Number located on your Proxy Card above your name. Follow the instructions provided.
Your vote is important! Call 1-877-PRX-VOTE anytime!	**Your vote is important!** Go to http://www.eproxyvote.com/cflo anytime!

Do not return your Proxy Card if you are voting by Telephone or Internet

solid black" ROWSPAN=1 COLSPAN=3>Fair ValueDebt $237,683 $240,373 $174,000 $174,000

Note 6. Borrowings

In accordance with the 1940 Act, with certain limited exceptions, the Company is only allowed to borrow amounts such that its asset coverage, as defined in the 1940 Act, is at least 200% after such borrowing. On September 13, 2011, the Company received exemptive relief from the SEC allowing it to modify the asset coverage requirement to exclude the SBA debentures from this calculation. As such, the Company s ratio of total consolidated assets to outstanding indebtedness may be less than 200%. This provides the Company with increased investment flexibility, but also increases its risks related to leverage. As of September 30, 2011, the Company s asset coverage for borrowed amounts was 278.6%.

Debt Securitization: On July 16, 2010, the Company completed a $300,000 term debt securitization (Debt Securitization). The notes (Notes) offered in the Debt Securitization were issued by Golub Capital BDC 2010-1 LLC (the Issuer), a subsidiary of Golub Capital BDC 2010-1 Holdings LLC (Holdings), a direct subsidiary of the Company, and the Class A Notes and Class B Notes are secured by the assets held by the Issuer. The Debt Securitization was executed through a private placement of $174,000 of Aaa/AAA Class A Notes of the Issuer which bear interest at three-month London Inter Bank Offered Rate (LIBOR) plus 2.40%. The $10,000 face amount of Class B Notes bears interest at a rate of three-month LIBOR plus 2.40%, and the $116,000 face amount of Subordinated Notes does not bear interest. The Class A Notes are included in the September 30, 2011 and 2010 consolidated statements of financial condition. In partial consideration for the loans transferred to the Issuer as part of the Debt Securitization, Holdings retained all of the Class B and Subordinated Notes totaling $10,000 and $116,000, respectively, and all of the membership interests in the Issuer, which Holdings initially purchased for two hundred and fifty dollars.

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 6. Borrowings (continued)

During a period of up to three years from the closing date (which may be extended for two additional years, upon satisfaction of certain conditions), all principal collections received on the underlying collateral may be used by the Issuer to purchase new collateral under the direction of the Investment Adviser in its capacity as collateral manager of the Issuer and in accordance with the Company s investment strategy, allowing the Company to maintain the initial leverage in the securitization for such three-year period. The Notes are scheduled to mature on July 20, 2021.

The proceeds of the private placement of the Notes, net of expenses, were used to repay and terminate the Company s prior credit facility, which was a $300,000 credit facility entered into on July 27, 2007. As part of the Debt Securitization, the Company entered into a master loan sale agreement with Holdings and the Issuer under which the Company agreed to sell or contribute certain senior secured and second lien loans (or participation interests therein) to Holdings, and Holdings agreed to sell or contribute such loans (or participation interests therein) to the Issuer and to purchase or otherwise acquire subordinated notes issued by the Issuer. The Notes are the secured obligations of the Issuer, and an indenture governing the Notes includes customary covenants and events of default.

The Investment Adviser serves as collateral manager to the Issuer under a collateral management agreement and receives a fee for providing these services. As a result, the Company has amended and restated its Investment Advisory Agreement to provide that the base management fee payable under such agreement is reduced by an amount equal to the total fees that are paid to the Investment Adviser by the Issuer for rendering such collateral management services.

As of September 30, 2011 and 2010, there were 79 and 77 portfolio companies with a total fair value of $284,288 and $272,836, respectively, securing the Notes. The pool of loans in the Debt Securitization must meet certain requirements, including asset mix and concentration, collateral coverage, term, agency rating, minimum coupon, minimum spread and sector diversity requirements.

The interest charged under the Debt Securitization is based on three-month LIBOR, which as of September 30, 2011 was 0.4%. For the year ended September 30, 2011, the effective annualized average interest rate, which includes amortization of debt issuance costs on the Debt Securitization, was 3.2%, interest expense was $4,970 and cash paid for interest was $5,201. For the period from July 16, 2010 to September 30, 2010, the effective annualized average interest rate, which includes amortization of debt issuance costs on the Debt Securitization, was 3.1%, interest expense was $1,167 and cash paid for interest was zero.

The interest and other credit facility expenses on the terminated facility for the year ended September 30, 2010 and 2009 was $2,224 and $4,547. The average interest rate on the terminated facility for the years ended September 30, 2010 and 2009 was 1.3% and 1.5% respectively.

The classes, amounts, ratings and interest rates (expressed as a spread to LIBOR) of the Class A Notes are as follows:

Description	Class A Notes
Type	Senior Secured Floating Rate
Amount Outstanding	$174,000
Moody s Rating	Aaa
S&P Rating	AAA
Interest Rate	LIBOR + 2.40%
Stated Maturity	July 20, 2021

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
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Note 6. Borrowings (continued)

SBA Debentures: On August 24, 2010, GC SBIC IV, L.P. received approval for a license from the SBA to operate as a Small Business Investment Company (SBIC). As an SBIC, GC SBIC IV L.P. is subject to a variety of regulations and oversight by the SBA concerning the size and nature of the companies in which it may invest as well as the structures of those investments.

The license allows GC SBIC IV, L.P. to obtain leverage by issuing SBA-guaranteed debentures, subject to issuance of a capital commitment by the SBA and customary procedures. These debentures are non-recourse to the Company, have interest payable semiannually and a ten-year maturity. The interest rate is fixed at the time of issuance at a market-driven spread over U.S. Treasury Notes with ten-year maturities.

Under present SBIC regulations, the maximum amount of SBA-guaranteed debentures that may be issued by multiple licensees under common management is $225,000. As affiliates of the Investment Advisor manage two other SBICs, it is possible that GC SBIC IV, L.P. will be constrained in its ability to issue SBA-guaranteed debentures in the future if the other two affiliated SBICs have already issued such debentures. As of September 30, 2011, the two affiliated SBIC licensees had an aggregate of $123,820 of SBA-guaranteed debentures outstanding, while GC SBIC IV, L.P. had $61,300 of outstanding SBA-guaranteed debentures. This leaves incremental borrowing capacity of a maximum of $39,880 of SBA-guaranteed debentures for GC SBIC IV, L.P. and the two affiliated SBIC licensees. As of September 30, 2010, GC SBIC IV, L.P. did not have any outstanding SBA-guaranteed debentures. Unless specifically approved by the SBA, the other two licensees were prohibited by the SBA from making new investments when GC SBIC IV, L.P. received its license on August 24, 2010. As the two affiliated SBIC licenses are limited to only making add-on investments in existing portfolio companies, the majority of the incremental borrowing capacity is available for GC SBIC IV L.P. The borrowing capacity of GC SBIC IV, L.P. could be expanded further if the two affiliated SBICs retire their SBA-guaranteed debentures.

GC SBIC IV, L.P. is able to borrow funds from the SBA against regulatory capital that is paid-in, subject to customary regulatory requirements including an examination by the SBA. As of September 30, 2011, the Company had committed and funded $50,000 to GC SBIC IV, L.P. and had SBA-guaranteed debentures of $61,300 outstanding which mature between March 2021 and March 2022. The interest rate on $20,000 of outstanding debentures was fixed on March 29, 2011 at an interest rate of 4.5%. The interest rate on $35,300 was fixed on September 21, 2011 at an interest rate of 3.3%. Prior to this date, the Company was charged an interim financing rate of approximately 1.0%. The Company was also charged an interim financing rate of approximately 1.3% on the remaining $6,000 of outstanding debentures. For the year ended September 30, 2011, the effective annualized average interest rate, which includes amortization of fees paid on the debentures, was 3.0%. For the year ended September 30, 2011, interest expense was $656. Cash paid for interest during the year ended September 30, 2011 was $550.

As of September 30, 2011, the Company had available commitments of $38,700 from the SBA, which expire on September 30, 2015. These unfunded commitments are subject to funding approval through the SBA s draw request

process.

As indicated above, on September 13, 2011, the Company received exemptive relief from the SEC allowing it to modify the asset coverage requirement to exclude SBA debentures from this calculation. As such, the Company s ratio of total consolidated assets to outstanding indebtedness may be less than 200%. This provides the Company with increased investment flexibility, but also increases its risks related to leverage.

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 6. Borrowings (continued)

Revolving Credit Facility: On July 21, 2011, Golub Capital BDC Funding LLC (Funding), a wholly owned subsidiary of the Company, entered into a $75,000 senior, secured revolving credit facility (Credit Facility) with Wells Fargo Securities, LLC, as administrative agent and Wells Fargo Bank, N.A., as lender.

Under the Credit Facility, which matures on October 21, 2015, the lender has agreed to extend credit to Funding in an aggregate principal amount of $75,000. Funding s ability to draw under the Credit Facility is scheduled to terminate on October 20, 2012. The period from the closing date until October 20, 2012 is referred to as the reinvestment period. All amounts outstanding under the Credit Facility are required to be repaid by October 21, 2015. Through the reinvestment period, the Credit Facility bears interest at LIBOR plus 2.25% per annum. After the reinvestment period, the rate will reset to LIBOR plus 2.75% per annum for the remaining term of the Credit Facility. In addition to the stated interest expense on the Credit Facility, the Company is required to pay a non-usage fee of 0.50% per annum on any unused portion of the Revolving Credit Facility. After six months from the close of the Credit Facility, the non-usage fee will be 0.50% for any unused portion up to $30,000 and 2.00% on any unused portion in excess of $30,000. The Credit Facility is secured by all of the assets held by Funding, and the Company has pledged its interests in Funding as collateral to Wells Fargo Bank, N.A., as the collateral agent, under an ancillary agreement to secure the obligations of the Company as the transferor and servicer under the Credit Facility. Both the Company and Funding have made customary representations and warranties and are required to comply with various covenants, reporting requirements and other customary requirements for similar credit facilities. Borrowing under the Credit Facility is subject to the leverage restrictions contained in the 1940 Act.

The Company plans to transfer certain loans and debt securities it has originated or acquired from time to time to Funding through a Purchase and Sale Agreement (the Purchase and Sale Agreement) and may cause Funding to originate or acquire loans in the future, consistent with the Company s investment objectives.

As of September 30, 2011, the Company had outstanding debt under the Credit Facility of $2,383. For the year ended September 30, 2011, the effective annualized average interest rate on outstanding borrowings, which includes amortization of debt financing costs, was 2.9%, interest expense was $76 and cash paid for interest was $52.

The average total debt outstanding (including the debt under the Debt Securitization, SBA debentures and Credit Facility) for the years ended September 30, 2011, 2010 and 2009 was $201,294, $213,793 and $305,440, respectively.

For the years ended September 30, 2011, 2010 and 2009, the effective annualized average interest rate on the Company s total debt outstanding was 3.3%, 1.7% and 1.5%, respectively.

A summary of the Company s maturity requirements for borrowings as of September 30, 2011 is as follows:

	Payments Due by Period				
	Total	Less Than 1 Year	1	3 Years 3	5 Years More Than 5 Years
Debt Securitization	$ 174,000	$	$	$	$ 174,000
SBA Debentures	61,300				61,300
Credit Facility	2,383			2,383	
Total contractual obligations	$ 237,683	$	$	$ 2,383	$ 235,300

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 7. Derivative Instruments

The following table summarizes the fair value and location of the Company s derivative instruments on the consolidated statements of financial condition:

	September 30, 2011	
	Location	Fair Value
Futures Contracts	Unrealized depreciation on derivative instruments	$ (141)
Total Return Swap	Unrealized depreciation on derivative instruments	(1,845)
Total		$ (1,986)

Realized and unrealized gains and losses on derivative instruments recorded by the Company are in the following location on the consolidated statements of operations:

	Location	Realized Gain (Loss)	Location	Unrealized Gain (Loss)
Futures Contracts	Net realized gain on derivative instruments	$	Net change in unrealized depreciation on derivative instruments	$ (141)
Total Return Swap	Net realized gain on derivative instruments	40	Net change in unrealized depreciation on derivative instruments	(1,845)
		$ 40		$ (1,986)

Futures contracts: In September of 2011, the Company entered into ten-year U.S. Treasury futures contracts to mitigate its exposure to adverse fluctuation in interest rates related to the Company s SBA debentures with a total notional amount of $25,000. The interest rate on the Company s SBA-guaranteed debentures is fixed semi-annually (the pooling date) and is based on the ten-year U.S. Treasury rate plus a market spread. The transaction insulates the Company against adverse changes in the ten-year U.S. Treasury rate for debentures that the Company has drawn but for which the rate will not be fixed until the next pooling date. Upon entering into the futures contracts, the Company was required to pledge to the broker cash collateral in the amount of $1,500, which is included in cash collateral on deposit with custodian on the consolidated statements of financial condition. No subsequent collateral has been posted by the Company, and the balance remains $1,500 at September 30, 2011.

Based on the daily fluctuation of the fair value of the futures contracts, the Company records an unrealized gain or loss equal to the daily fluctuation in fair value. If market conditions move unexpectedly, the Company may not

achieve the anticipated benefits of the futures contracts and may realize a loss. Upon maturity or settlement of the futures contracts, the Company will realize a gain or loss based on the difference of the fair value of the futures contracts at inception and the fair value of the futures contracts at settlement or maturity. This gain or loss would be included on the consolidated statements of operations as net realized gain (loss) on derivative instruments.

For the year ended September 30, 2011 the fair value of the futures contracts was $(141). For the year ended September 30, 2011 the change in unrealized depreciation related to this future was $(141). The Company s total volume of futures contracts was two hundred and fifty for the year ended September 30, 2011.

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 7. Derivative Instruments (continued)

Total return swap: On June 17, 2011, GCMF entered into the TRS with Citibank, N.A. (Citibank). The purpose of entering into the TRS was to gain economic exposure to a portfolio of broadly syndicated loans. Generally, under the terms of a total return swap, one party agrees to make periodic payments to another party based on the change in the market value of the assets referenced by the total return swap, which may include a specified security, basket of securities or securities indices during the specified period, in return for periodic payments based on a fixed or variable interest rate. A total return swap is typically used to obtain exposure to a security or market without owning or taking physical custody of such security or investing directly in such market.

Under the terms of the TRS, the Company has the ability to recommend purchases of loans, but all investment decisions are subject to approval by Citibank. The loans are purchased in the open market by Citibank at fair value. The maximum fair value of the portfolio loans subject to the TRS is $100,000 (determined at the time each such loan becomes subject to the TRS).

In order for Citibank to purchase a loan for the TRS, each individual loan, and the portfolio of loans taken as a whole, must meet certain specified criteria. The Company receives from Citibank all interest and fees payable in respect of the loans included in the portfolio. The Company pays to Citibank interest at a rate equal to three-month LIBOR plus 1.2% per annum based on the settled notional value of the TRS. In addition, upon the termination or repayment of any loan subject to the TRS, the Company will either receive from Citibank the appreciation in the value of such loan, or pay to Citibank any depreciation in the value of such loan. On a quarterly basis, net payment between the Company and Citibank for interest and realized appreciation and depreciation on the portfolio of loans occurs.

At the time each loan is added to the TRS, the Company is initially required to cash collateralize 20% of the market value of the loan subject to the TRS. The Company may also be required to post additional collateral from time to time as a result of a decline in the fair value of the portfolio of loans subject to the TRS. If the Company declines to deposit additional cash collateral, then Citibank will have the right to terminate the TRS and seize all or a portion of the cash collateral posted by the Company to cover any losses it incurs in liquidating the loans subject to the TRS. The Company s exposure under the TRS is limited to the value of assets held at GCMF, which primarily consists of cash collateral on deposit with Citibank.

The Company acts as the manager of the rights and obligations of GCMF under the TRS.

Citibank may terminate the TRS on or after the third anniversary of the effectiveness of the TRS. The Company may terminate the TRS at any time upon providing at least 30 days prior to the proposed settlement date of the reference assets related to such termination.

As of September 30, 2011, the fair value of the TRS was $(1,845). The change in the fair value of the TRS was $(1,845) for the year ended September 30, 2011. Realized gains and losses on the TRS are composed of any gains or

losses on the referenced portfolio of loans as well as the net interest received or owed at the time of the quarterly settlement. Unrealized gains and losses on the TRS are composed of the net interest income earned or interest expense owed during the period that was not previously settled as well as the change in fair value of the referenced portfolio of loans.

The referenced portfolio of loans is valued by Citibank. Citibank bases its valuation on the indicative bid prices provided by an independent third party pricing service. Bid prices reflect the highest price that market participants may be willing to pay. These valuations are sent to the Company and its Board for review and testing. To the extent the Company or its Board has any questions or concerns regarding the valuation of the reference portfolio of loans, such valuation will be discussed or challenged pursuant to the terms of the TRS.

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Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 7. Derivative Instruments (continued)

As of September 30, 2011, the TRS has a portfolio with a cost basis of $97,485, an unfunded commitment of $163 and a notional value of $97,648 and, through GCMF, the Company recorded cash collateral on deposit with custodian in the amount of $19,662, which represents collateral held at Citibank. Of the $97,648 of notional value at September 30, 2011, $46,478 represented loans that were sold by the Company to various third party brokers at fair value, which were subsequently, independently purchased at a fair value of $46,460 by Citibank for the TRS. This sale was a true sale for legal purposes. There is no recourse to the Company for the sold loans other than pursuant to customary and standard Loan Syndication and Trading Association assignment documentation for breaches of representations and warranty as to title, nor does the Company have the right to redeem the sold loans. The Moody s weighted average rating of the referenced portfolio of loans within the TRS was B1 at September 30, 2011.

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(In thousands, except shares and per share data)

Note 7. Derivative Instruments (continued)

The following table summarizes the portfolio of loans held by the TRS as of September 30, 2011:

Reference Asset	Industry	Interest Rate	Maturity Date	Par	Cost	Fair Value
Ashland Inc	Chemicals, Plastics and Rubber	L + 2.75%	08/2018	$5,000	$4,987	$4,956
Autoparts Holdings Ltd	Automobile	L + 5.00%	07/2017	600	597	597
Barbri, Inc	Healthcare, Education and Childcare	L + 4.50%	06/2017	3,200	3,168	3,126
Blackboard Inc	Diversified Conglomerate Manufacturing	L + 6.00%	09/2018	5,000	4,600	4,638
Bojangles Holdings	Retail Stores	L + 6.50%	08/2017	5,000	4,900	4,875
Brickman Group	Farming and Agriculture	L + 5.50%	10/2016	997	983	980
California Pizza Kitchen, Inc.	Personal, Food and Miscellaneous Services	L + 5.50%	07/2017	3,990	3,930	3,920
Charter Communications Operating LLC	Telecommunications	L + 3.25%	09/2016	2,985	2,975	2,880
CHI Overhead Doors Inc	Buildings and Real Estate	L + 5.75%	08/2017	2,200	2,156	2,156
Del Monte Foods Company	Beverage, Food and Tobacco	L + 3.00%	03/2018	2,993	2,990	2,776
Dole Food Company, Inc.	Beverage, Food and Tobacco	L + 3.75%	07/2018	559	554	549
Fibertech Networks	Telecommunications	L + 5.00%	11/2016	2,000	1,985	1,955
Focus Brands	Personal, Food and Miscellaneous Services	L + 4.00%	11/2016	4,129	4,160	4,077
HCA Inc	Healthcare, Education and Childcare	L + 3.25%	03/2017	3,000	2,964	2,818
J Crew Group, Inc.	Retail Stores		03/2018	2,993	2,860	2,653

		L + 3.50%				
Jetro Holdings	Grocery	L + 2.25%	07/2014	2,799	2,751	2,708
Melissa and Doug LLC	Leisure, Amusement, Motion Pictures, Entertainment	L + 5.00%	12/2016	1,292	1,300	1,270
Mercury Payment Systems, LLC	Finance	L + 5.00%	07/2017	1,596	1,580	1,580
MetroPCS Wireless, Inc.	Telecommunications	L + 3.75%	03/2018	1,990	1,994	1,903
Mobilitie Investments II, LLC	Telecommunications	L + 4.00%	06/2017	3,591	3,573	3,465
NBTY, Inc.	Personal and Non Durable Consumer Products	L + 3.25%	10/2017	2,985	2,987	2,887
Nuveen Investments, Inc.	Finance	L + 3.00%	11/2014	1,922	1,903	1,754
Nuveen Investments, Inc.	Finance	L + 5.50%	05/2017	2,000	1,850	1,847
Protection One	Diversified Conglomerate Service	L + 4.25%	06/2016	2,747	2,749	2,685
Rally Parts LLC	Personal Transportation	L + 5.50%	12/2013	1,836	1,800	1,732
Rally Parts LLC	Personal Transportation	L + 5.50%	12/2013	1,920	1,824	1,811
RPI Finance Trust	Healthcare, Education and Childcare	L + 3.00%	05/2018	2,793	2,779	2,764
SNL Financial LC	Finance	L + 7.00%	08/2018	2,200	2,134	2,162
Solvest LTD	Beverage, Food and Tobacco	L + 3.75%	07/2018	1,037	1,030	1,020
Sotera Defense Solutions, Inc.	Aerospace and Defense	L + 5.50%	04/2017	2,000	1,970	1,940
Springboard Finance, LLC	Telecommunications	L + 5.00%	02/2015	1,858	1,871	1,846
Styron S.A.R.L.	Chemicals, Plastics and Rubber	L + 4.50%	08/2017	1,489	1,489	1,337
Styron S.A.R.L.	Chemicals, Plastics and Rubber	L + 4.50%	08/2017	1,496	1,444	1,344
Terex Corporation	Machinery	L + 4.00%	04/2017	600	594	588
Terex Corporation	Machinery	L + 4.00%	04/2017	600	600	588
The Container Store, INC.	Retail Stores	L + 3.00%	08/2014	6,501	6,342	6,110
U.S. Security Associates Holdings, Inc.	Diversified Conglomerate Manufacturing	L + 4.75%	08/2017		(2)	(5)
U.S. Security Associates Holdings, Inc.	Diversified Conglomerate	L + 4.75%	08/2017	837	829	810

Universal Health Services	Manufacturing Healthcare, Education and Childcare	L + 3.00%	11/2016	1,526	1,533	1,478
Univision Communications Inc	Broadcasting and Entertainment	L + 4.25%	03/2017	2,000	1,900	1,678
Valitas Health Services, INC.	Healthcare, Education and Childcare	L + 4.50%	06/2017	1,496	1,459	1,444
Warner Chilcott Company LLC	Healthcare, Education and Childcare	L + 3.25%	03/2018	142	142	138
Warner Chilcott Corporation	Healthcare, Education and Childcare	L + 3.25%	03/2018	284	284	276
Water Pik, Inc	Home and Office Furnishings, Housewares, and Durable Consumer	L + 5.25%	08/2017	2,800	2,772	2,744
WC Luxco Sarl	Healthcare, Education and Childcare	L + 3.25%	03/2018	195	195	190
Total				$99,178	$97,485	$95,050

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 8. Federal Income Tax Matters

The Company has elected to be treated as a RIC under Subchapter M of the Code, and to distribute substantially all of its respective net taxable income. Accordingly, no provision for federal income tax has been made in the financial statements.

Taxable income differs from net increase (decrease) in net assets resulting from operations primarily due to unrealized appreciation (depreciation) on investments as investment gains and losses are not included in taxable income until they are realized. The following reconciles net increase in net assets resulting from operations to taxable income:

	Years ended September 30,	
	2011	2010
Net increase in net assets resulting from operations	$21,339	$26,248
Net increase in net assets resulting from operations for the period October 1, 2009 to April 13, 2010		(15,673)
Net change in unrealized depreciation (appreciation) on investments	1,528	(1,995)
Net change in unrealized depreciation on derivative instruments	1,986	
Net realized loss on investments not taxable		40
Other income for tax not book	620	
Other deductions/losses for tax not book	(181)	
Taxable income before deductions for distributions	$25,292	$8,620

The tax character of distributions paid during the years ended September 30, 2011 and 2010 were as follows:

	As of September 30,	
	2011	2010
Ordinary Income	$ 23,254	$ 8,620
Long-Term Capital Gains	$ 1,815	$
Return of Capital	$	$ 1,122

The Company may make certain adjustments to the classification of stockholders equity as a result of permanent book-to-tax differences, which include the tax treatment on income from the TRS and return of capital. These reclassifications are due to permanent book-tax differences and have no impact on net assets. During the year ended September 30, 2011, as a result of these permanent book-to-tax differences, the Company increased capital distributions in excess of net investment by $40 and decreased net realized gain (loss) on investments and derivative instruments by $40. During the year ended September 30, 2010, the Company increased capital distributions in excess of net investment income by $1,122 and decreased paid in capital in excess of par by $1,122.

As of September 30, 2011, the tax basis components of distributable earnings / (accumulated losses) were as follows:

	As of September 30, 2011 Amount
Net unrealized depreciation on investments and derivatives	$ (1,998)
Undistributed ordinary income	223
Total	$ (1,775)

The Federal tax cost of investments is $462,991.

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Note 8. Federal Income Tax Matters (continued)

The differences between the components of distributable earnings on a tax basis and the amounts reflected in the consolidated statements of changes in net assets are primarily due to temporary book-tax differences that will reverse in a subsequent period. These book-tax differences are mainly due to investments in derivatives.

The Regulated Investment Company Modernization Act of 2010 (the Act) was signed into law on December 22, 2010. The Act makes changes to several tax rules impacting RICs. The provisions of the Act will generally be effective for the Company s taxable year ending September 30, 2012. The Act allows for capital losses originating in taxable years beginning after December 22, 2010 (post-enactment capital losses) to be carried forward indefinitely. Furthermore, post-enactment capital losses will retain their character as either short-term or long-term capital losses rather than being considered all short-term capital losses as under previous law.

Note 9. Commitments and Contingencies

Commitments: The Company had outstanding commitments to fund investments totaling $49,449 and $26,622 under various undrawn revolvers and other credit facilities as of September 30, 2011 and 2010, respectively.

Indemnifications: In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties that provide general indemnifications. The Company s maximum exposure under these arrangements is unknown, as these involve future claims that may be made against the Company but that have not occurred. The Company expects the risk of any future obligations under these indemnifications to be remote.

Off-balance sheet risk: Off-balance sheet risk refers to an unrecorded potential liability that may result in a future obligation or loss, even though it does not appear on the statements of financial condition. The Company s derivative instruments contain elements of off-balance sheet market and credit risk. Derivative instruments can be affected by market conditions, such as interest rate volatility, which could impact the fair value of the derivative instruments. If market conditions move against the Company, it may not achieve the anticipated benefits of these derivative instruments and may realize a loss. The Company minimizes market risk through monitoring its investments.

Concentration of credit risk: Credit risk arises primarily from the potential inability of counterparties to perform in accordance with the terms of the contract. The Company is engaged in derivative transactions with counterparties. In the event that the counterparties do not fulfill their obligation, the Company may be exposed to risk. The risk of default depends on the creditworthiness of the counterparties or issuers of the instruments. It is the Company s policy to review, as necessary, the credit standing of each counterparty.

Legal proceedings: In the normal course of business, the Company may be subject to legal and regulatory proceedings that are generally incidental to its ongoing operations. While there can be no assurance of the ultimate

disposition of any such proceedings, the Company does not believe their disposition will have a material adverse effect on the Company s consolidated financial statements.

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Golub Capital BDC, Inc. and Subsidiaries

Notes to Consolidated Financial Statements
(In thousands, except shares and per share data)

Note 10. Financial Highlights

The financial highlights for the Company are as follows:

	Years ended September 30,								Period from July 27, (Inception) through September 30,	
Per share data[1]:	2011		2010		2009		2008		2007	
Net asset value at beginning of period	$14.71		N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net increase in net assets as a result of public offering	0.06		N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Costs related to public offering	(0.04	)	N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Dividends and distributions declared	(1.27	)	N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net investment income	1.16		N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net realized gain (loss) on investments	0.11		N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net realized gain on derivative instruments			N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net change in unrealized (depreciation) appreciation on investments	(0.08	)	N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net change in unrealized depreciation on derivative instruments	(0.09	)	N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Net asset value at ending of period	$14.56		$14.71		N/A	(3)	N/A	(3)	N/A	(3)
Per share market value at end of period	$14.85		$15.30		N/A	(3)	N/A	(3)	N/A	(3)
Total return based on market value[2]	5.36	%	N/A	(3)	N/A	(3)	N/A	(3)	N/A	(3)
Total return based on average net asset value/members equity*	7.30	%	14.33	%	29.57	%	(9.82	)%	2.04	%
Shares outstanding at end of period	21,733,903		17,712,444		N/A	(3)	N/A	(3)	N/A	(3)

Ratios/Supplemental Data:										
Ratio of expenses (without incentive fees) to average net assets/members equity*	5.47	%	5.31	%	11.61	%	30.59	%	43.64	%
Ratio of incentive fees to average net assets/members equity	0.12	%	0.03	%	N/A		N/A		N/A	
Ratio of total expenses to average net assets/members equity*	5.59	%	5.34	%	11.61	%	30.59	%	43.64	%
Ratio of net investment income to average net assets/members equity*	7.80	%	12.79	%	37.64	%	28.87	%	21.57	%
Net assets at end of period	$316,549		$260,541		$92,752		$16,853		$33,481	
Average debt outstanding	$201,294		$213,793		$305,440		$191,225		$85,336	
Average debt outstanding per share	$9.26		$12.07		N/A	(3)	N/A	(3)	N/A	(3)
Portfolio turnover*	56.90	%	44.73	%	30.20	%	221.36	%	86.94	%

* Annualized for a period less than one year.

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Golub Capital BDC, Inc. and Subsidiaries

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Note 10. Financial Highlights (continued)

(1) Based on actual number of shares outstanding at the end of the corresponding period or the weighted average shares outstanding for the period, unless otherwise noted, as appropriate.

(2) Total return based on market value assumes dividends are reinvested.

(3) Per share data are not provided as the Company did not have shares of common stock outstanding or an equivalent prior to the Offering on April 14, 2010.

Note 11. Earnings Per Share

The following information sets forth the computation of the net increase in net assets per share resulting from operations for the year ended September 30, 2011:

	Year ended September 30, 2011
Earnings available to stockholders	$ 21,339
Basic and diluted weighted average shares outstanding	19,631,797
Basic and diluted earnings per share	$ 1.09

For historical periods that include financial results prior to April 1, 2010, the Company did not have common shares outstanding or an equivalent and, therefore, earnings per share and weighted average shares outstanding information for the years ended September 30, 2010 and 2009 are not provided.

Note 12. Public Offerings

The following table summarizes the total shares issued and proceeds received net of underwriting and offering costs in public offerings of the Company s common stock for the years ended September 30, 2011 and 2010.

	Shares issued	Offering price per share	Proceeds net of underwriting and offering costs
Fiscal year 2010 offering	8,727,581	$ 14.50	$ 117,605
Fiscal year 2011 offering	3,953,257	$ 15.75	$ 58,610

On April 14, 2010, GBDC priced the Offering, selling 7,100,000 shares of its common stock at a public offering price of $14.50 per share. Concurrent with the Offering, an additional 1,322,581 shares were sold through a private placement, also at $14.50 per share. On May 19, 2010, an additional 305,000 shares at $14.50 per share were issued upon the exercise of the underwriters over-allotment option.

On March 31, 2011, the Company priced a public offering of 3,500,000 shares of its common stock at a public offering price of $15.75 per share. On May 2, 2011, the Company sold an additional 453,257 shares of its common stock at a public offering price of $15.75 per share pursuant to the underwriters partial exercise of the over-allotment.

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Note 13. Dividends and Distributions

The Company s dividends and distributions are recorded on the record date. The following table summarizes the Company s dividend declaration and distribution during the year ended September 30, 2011 and 2010.

Date Declared	Record Date	Payment Date	Amount Per Share	Cash Distribution	DRIP Shares Issued	DRIP Shares Value
Fiscal Year ended September 30, 2010						
05/13/2010	06/22/2010	06/29/2010	$ 0.24	$ 3,881	N/A (1)	N/A (1)
08/05/2010	09/10/2010	09/30/2010	$ 0.31	$ 5,027	N/A (1)	N/A (1)
Fiscal Year ended September 30, 2011						
12/08/2010	12/20/2010	12/30/2010	$ 0.31	$ 5,028	25,753	$ 462
02/08/2011	03/18/2011	03/30/2011	$ 0.32	$ 5,375	17,779	$ 303
05/03/2011	06/17/2011	06/29/2011	$ 0.32	$ 6,583	24,670	$ 364
08/04/2011	09/19/2011	09/28/2011	$ 0.32	$ 6,629	N/A (1)	N/A (1)

(1) DRIP shares were purchased in the open market with an aggregate value of $370 at June 29, 2010, $464 at September 30, 2010 and $325 at September 28, 2011.

Note 14. Subsequent Events

Dividends: On December 7, 2011, the Company s Board declared a quarterly dividend of $0.32 per share payable on December 29, 2011 to holders of record as of December 19, 2011.

Note 15. Selected Quarterly Financial Data (Unaudited)

	September 30, 2011	June 30, 2011	March 31, 2011	December 31, 2010
Total investment income	$ 10,831	$ 10,071	$ 9,111	$ 9,137
Net investment income	6,450	5,952	5,181	5,233
Net realized and unrealized gain (loss)	(3,469)	568	695	729
Net increase (decrease) in members equity/net assets resulting from operations	2,981	6,520	5,876	5,962
Earnings per share	0.14	0.31	0.33	0.34
Net asset value per common share at period end	$ 14.56	$ 14.75	$ 14.75	$ 14.74

	September 30, 2010	June 30, 2010[1]	March 31, 2010	December 31, 2009
Total investment income	$ 7,431	$ 7,230	$ 7,645	$ 10,843
Net investment income	4,351	4,815	5,018	9,182
Net realized and unrealized gain (loss)	1,896	(100)	1,925	(840)
Net increase (decrease) in members equity/net assets resulting from operations	6,247	4,715	6,943	8,342
Earnings per share	0.35	0.29	N/A	N/A
Net asset value per common share at period end	$ 14.71	$ 14.67	N/A	N/A

(1) The earnings per share and weighted average shares outstanding calculations for the three months ended June 30, 2010 are based on the assumption that the number of shares issued immediately prior to the Conversion on April 14, 2010 (8,984,863 shares of common stock) had been issued on April 1, 2010, at the beginning of the three month period.

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4,500,000 Shares

GOLUB CAPITAL BDC, INC.

Common Stock

PRELIMINARY PROSPECTUS SUPPLEMENT
January 14, 2013

Wells Fargo Securities
Morgan Stanley
UBS Investment Bank
RBC Capital Markets
Stifel Nicolaus Weisel
